

2SHB 1025 - H AMD 268

By Representative Graham

**NOT CONSIDERED 01/02/2024**

1 On page 1, line 10, after "law." insert "Additionally, the people  
2 of Washington undertake to protect the liberty and security of  
3 individuals, and to preserve public peace and advance the public  
4 interest, by electing officials entrusted with the power to create,  
5 implement, and enforce state law, regulations, and policies, and to  
6 appoint officials with similar powers."  
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8 On page 1, line 12, after "peace officer" strike "or the officer's  
9 employer" and insert ", or elected or appointed official, or the  
10 officer or official's employer,"  
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12 On page 1, line 17, after "policing" insert ", and unlawful  
13 legislation and execution of state laws,"  
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15 On page 1, line 18, after "communities" strike "and law  
16 enforcement" and insert ", law enforcement, and government officials"  
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18 On page 1, line 21, after "officers" insert ", elected or  
19 appointed officials,"  
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21 On page 2, line 9, after (1) insert "Elected or appointed  
22 official" means members of the legislature; the governor; holders of  
23 elective office in the executive branch of state government; chief  
24 executive officers of state agencies; members of boards, commissions,  
25 or committees with authority over one or more state agencies or  
26 institutions; employees of the state who have high-level discretionary  
27 authority to draft, approve, implement, or enforce state laws,

1 regulations, or policies; elected or appointed prosecutors; and any  
2 person exercising or undertaking to exercise the powers or functions  
3 of an elected or appointed official. "Elected or appointed official"  
4 does not include any justice, judge, commissioner, special master,  
5 court clerk, law clerk, bailiff, court security officer, or other  
6 employee of the judicial branch of state government.

7 (2)"

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9 Renumber the remaining subsections consecutively and correct any  
10 internal references accordingly.

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12 On page 2, line 11, after "officer's" insert "or elected or  
13 appointed official's"

14

15 On page 2, beginning on line 19, after "(1)" strike all material  
16 through "under:" on line 25 and insert "Any person injured in person  
17 or property by a peace officer, or elected or appointed official,  
18 acting under color of authority has a cause of action against the  
19 peace officer, or elected or appointed official, and against any other  
20 peace officer, or elected or appointed official, who had the power  
21 through reasonable diligence to prevent or aid in preventing the  
22 injury from occurring and failed to do so, if the peace officer, or  
23 elected or appointed official, engaged in conduct that is unlawful  
24 under:"

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26 On page 2, beginning on line 29, after "(2)" strike all material  
27 through "employment." on line 33 and insert "In an action against a  
28 peace officer, or elected or appointed official, under subsection (1)  
29 of this section, the plaintiff may also name the officer's or  
30 official's employer as a defendant. The employer is vicariously liable  
31 if the unlawful conduct causing the injury was within the scope of the  
32 peace officer's or elected or appointed official's employment."

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1 On page 3, line 33, after "(5)" strike "It" and insert "In any  
2 action against a peace officer or their employer, it"

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4 On page 3, after line 36, insert the following:

5 "(6) In any action against an elected or appointed official, or  
6 their employer, brought under this chapter, the following immunities  
7 and defenses are inapplicable and may not be raised:

8 (a) Qualified immunity, as it has developed in litigation of  
9 suits under 42 U.S.C. Sec. 1983, including without limitation any  
10 immunity or defense premised on the argument that the rights,  
11 privileges, or immunities sued upon were not clearly established at  
12 the time of the act, omission, or decision;

13 (b) Qualified immunity, as it has developed in litigation of  
14 common law torts, including without limitation any immunity or  
15 defense premised on the argument that the official carried out a  
16 statutory duty according to procedures dictated by statute and  
17 superiors, and acted reasonably;

18 (c) Discretionary immunity, including without limitation any  
19 immunity or defense premised on the argument that discretionary  
20 governmental acts are immune from tort liability, the act is the  
21 outcome of a conscious balancing of risks and advantages, or the act  
22 is a basic policy decision made by a high-level executive;

23 (d) Legislative immunity, including without limitation any  
24 immunity or defense premised on the argument that purely legislative  
25 acts are immune from tort liability, the government has absolute  
26 immunity for purely legislative acts, or that immunity is necessary  
27 to avoid rendering the legislative process inoperable; and

28 (e) Prosecutorial immunity, including without limitation any  
29 immunity or defense premised on the argument that a prosecutor has  
30 absolute immunity from liability when acting within the scope of  
31 their duties in initiating and pursuing a criminal prosecution, or  
32 that immunity is warranted to protect the prosecutor's role as an  
33 advocate."

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1 On page 4, line 10, after "accrues." insert "For purposes of  
2 this chapter, a cause of action accrues when the plaintiff  
3 discovers, or in the reasonable exercise of diligence should  
4 discover, the elements of the cause of action."

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6 On page 4, line 12, after "officer" insert ", or elected or  
7 appointed official,"

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EFFECT: Makes the following modifications to the bill:

- Authorizes a cause of action against elected or appointed officials for violations of the state constitution or specified state laws.
- Permits plaintiffs to name an elected or appointed official's employer as a defendant and establishes vicarious liability for an elected or appointed official's employer.
- Provides that, in an action against an elected or appointed official or their employer, the following immunities and defenses are inapplicable: qualified immunity, discretionary immunity, legislative immunity, and prosecutorial immunity.
- Modifies the intent section to reference elected and appointed officials.
- Adds a definition of "elected or appointed official".
- Modifies the definition of employer to include an elected or appointed official's employing agency or entity.
- Provides actions accrue when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action.
- Provides the act is not intended to limit the right of an elected or appointed official to have a legal defense provided by their employer or have a judgment satisfied by their employer.

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