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HOUSE BILL 2506

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Sawyer, Kilduff, Ormsby, and Appleton

1 AN ACT Relating to liability for exemplary damages; amending RCW  
2 4.92.090 and 4.96.010; and adding a new section to chapter 4.24 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW  
5 to read as follows:

6 (1) Except as provided in RCW 4.92.090 and 4.96.010 with respect  
7 to the state of Washington and local governmental entities, in a tort  
8 action for damages a person may be liable for exemplary damages  
9 arising out of his or her willful or wanton misconduct.

10 (2) "Exemplary damages" includes punitive damages and means any  
11 damages awarded as a penalty or by way of punishment but not for  
12 compensatory purposes. Exemplary damages are neither economic nor  
13 noneconomic damages.

14 (3) "Wanton misconduct" is the intentional doing of an act which  
15 one has a duty to refrain from doing or the intentional failure to do  
16 an act which one has a duty to do, in reckless disregard of the  
17 consequences and under such surrounding circumstances and conditions  
18 that a reasonable person would know, or should know, that such  
19 conduct would, in a high degree of probability, result in substantial  
20 harm to another.

1 (4) "Willful misconduct" is the intentional doing of an act which  
2 one has a duty to refrain from doing or the intentional failure to do  
3 an act which one has the duty to do when one has actual knowledge of  
4 the peril that will be created and intentionally fails to avert  
5 injury or actually intends to cause harm.

6 **Sec. 2.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read  
7 as follows:

8 (1) The state of Washington, whether acting in its governmental  
9 or proprietary capacity, shall be liable for damages arising out of  
10 its tortious conduct to the same extent as if it were a private  
11 person or corporation except as provided in subsection (2) of this  
12 section.

13 (2) The state of Washington, whether acting in its governmental  
14 or proprietary capacity, is not liable for exemplary damages under  
15 section 1 of this act.

16 **Sec. 3.** RCW 4.96.010 and 2011 c 258 s 10 are each amended to  
17 read as follows:

18 (1)(a) All local governmental entities, whether acting in a  
19 governmental or proprietary capacity, shall be liable for damages  
20 arising out of their tortious conduct, or the tortious conduct of  
21 their past or present officers, employees, or volunteers while  
22 performing or in good faith purporting to perform their official  
23 duties, to the same extent as if they were a private person or  
24 corporation except as provided in (b) of this subsection. Filing a  
25 claim for damages within the time allowed by law shall be a condition  
26 precedent to the commencement of any action claiming damages. The  
27 laws specifying the content for such claims shall be liberally  
28 construed so that substantial compliance therewith will be deemed  
29 satisfactory.

30 (b) Local governmental entities, whether acting in their  
31 governmental or proprietary capacity, are not liable for exemplary  
32 damages under section 1 of this act.

33 (2) Unless the context clearly requires otherwise, for the  
34 purposes of this chapter, "local governmental entity" means a county,  
35 city, town, special district, municipal corporation as defined in RCW  
36 39.50.010, quasi-municipal corporation, any joint municipal utility  
37 services authority, any entity created by public agencies under RCW  
38 39.34.030, or public hospital.

1           (3) For the purposes of this chapter, "volunteer" is defined  
2 according to RCW 51.12.035.

3           NEW SECTION.   **Sec. 4.**   If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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