

**2ESSB 6508** - H AMD TO WAYS COMM AMD (H-5513.1/10) **1467**

By Representative Shea

NOT ADOPTED 3/04/2010

1 On page 2, after line 2 of the striking amendment, insert the  
2 following:

3 "(3) In an action under RCW 4.20.010 that is based on a parent's  
4 significant involvement in an adult child's life, if a defendant  
5 establishes by a preponderance of the evidence that a violation of RCW  
6 46.61.687 or 46.61.688 contributed to the decedent's death, the  
7 liability of any defendants against whom judgment is entered is  
8 several and not joint."

9  
10 On page 2, after line 36 of the striking amendment, insert the  
11 following:

12 "(5) In an action under this section that is based on a parent's  
13 significant involvement in a child's life, if a defendant establishes  
14 by a preponderance of the evidence that a violation of RCW 46.61.687  
15 or 46.61.688 contributed to the decedent's death, the liability of any  
16 defendants against whom judgment is entered is several and not joint."

17  
18 On page 4, line 8 of the striking amendment, after "death" insert  
19 "."

20 (5) In an action under this section that is based on a parent's  
21 significant involvement in a child's life, if a defendant establishes  
22 by a preponderance of the evidence that a violation of RCW 46.61.687  
23 or 46.61.688 contributed to the decedent's death, the liability of any  
24 defendants against whom judgment is entered is several and not joint"

25  
26 On page 5, after line 12 of the striking amendment, insert the  
27 following:

1        "(6) In an action under this section that is based on a parent's  
2 significant involvement in a child's life, if a defendant establishes  
3 by a preponderance of the evidence that a violation of RCW 46.61.687  
4 or 46.61.688 contributed to the decedent's death, the liability of any  
5 defendants against whom judgment is entered is several and not joint.

6  
7        **Sec. 5.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
8 as follows:

9        (1) In all actions involving fault of more than one entity, the  
10 trier of fact shall determine the percentage of the total fault which  
11 is attributable to every entity which caused the claimant's damages  
12 except entities immune from liability to the claimant under Title 51  
13 RCW. The sum of the percentages of the total fault attributed to at-  
14 fault entities shall equal one hundred percent. The entities whose  
15 fault shall be determined include the claimant or person suffering  
16 personal injury or incurring property damage, defendants, third-party  
17 defendants, entities released by the claimant, entities with any other  
18 individual defense against the claimant, and entities immune from  
19 liability to the claimant, but shall not include those entities immune  
20 from liability to the claimant under Title 51 RCW. Judgment shall be  
21 entered against each defendant except those who have been released by  
22 the claimant or are immune from liability to the claimant or have  
23 prevailed on any other individual defense against the claimant in an  
24 amount which represents that party's proportionate share of the  
25 claimant's total damages. The liability of each defendant shall be  
26 several only and shall not be joint except in the following  
27 circumstances:

28        (a) A party shall be responsible for the fault of another person  
29 or for payment of the proportionate share of another party where both  
30 were acting in concert or when a person was acting as an agent or  
31 servant of the party.

32        (b) If the trier of fact determines that the claimant or party  
33 suffering bodily injury or incurring property damages was not at  
34 fault, the defendants against whom judgment is entered shall be

1 jointly and severally liable for the sum of their proportionate shares  
2 of the (~~claimants~~) claimant's total damages, except as otherwise  
3 provided in RCW 4.20.020, 4.20.046, 4.20.060, and 4.24.010.

4 (2) If a defendant is jointly and severally liable under one of  
5 the exceptions listed in subsections (1)(a) or (1)(b) of this section,  
6 such defendant's rights to contribution against another jointly and  
7 severally liable defendant, and the effect of settlement by either  
8 such defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
9 4.22.060.

10 (3)(a) Nothing in this section affects any cause of action  
11 relating to hazardous wastes or substances or solid waste disposal  
12 sites.

13 (b) Nothing in this section shall affect a cause of action arising  
14 from the tortious interference with contracts or business relations.

15 (c) Nothing in this section shall affect any cause of action  
16 arising from the manufacture or marketing of a fungible product in a  
17 generic form which contains no clearly identifiable shape, color, or  
18 marking.

19  
20 **Sec. 6.** RCW 46.61.687 and 2007 c 510 s 4 are each amended to read  
21 as follows:

22 (1) Whenever a child who is less than sixteen years of age is  
23 being transported in a motor vehicle that is in operation and that is  
24 required by RCW 46.37.510 to be equipped with a safety belt system in  
25 a passenger seating position, or is being transported in a  
26 neighborhood electric vehicle or medium-speed electric vehicle that is  
27 in operation, the driver of the vehicle shall keep the child properly  
28 restrained as follows:

29 (a) A child must be restrained in a child restraint system, if the  
30 passenger seating position equipped with a safety belt system allows  
31 sufficient space for installation, until the child is eight years old,  
32 unless the child is four feet nine inches or taller. The child  
33 restraint system must comply with standards of the United States  
34 department of transportation and must be secured in the vehicle in

1 accordance with instructions of the vehicle manufacturer and the child  
2 restraint system manufacturer.

3 (b) A child who is eight years of age or older or four feet nine  
4 inches or taller shall be properly restrained with the motor vehicle's  
5 safety belt properly adjusted and fastened around the child's body or  
6 an appropriately fitting child restraint system.

7 (c) The driver of a vehicle transporting a child who is under  
8 thirteen years old shall transport the child in the back seat  
9 positions in the vehicle where it is practical to do so.

10 (2) Enforcement of subsection (1) of this section is subject to a  
11 visual inspection by law enforcement to determine if the child  
12 restraint system in use is appropriate for the child's individual  
13 height, weight, and age. The visual inspection for usage of a child  
14 restraint system must ensure that the child restraint system is being  
15 used in accordance with the instruction of the vehicle and the child  
16 restraint system manufacturers. The driver of a vehicle transporting  
17 a child who is under thirteen years old shall transport the child in  
18 the back seat positions in the vehicle where it is practical to do so.

19 (3) A person violating subsection (1) of this section may be  
20 issued a notice of traffic infraction under chapter 46.63 RCW. If the  
21 person to whom the notice was issued presents proof of acquisition of  
22 an approved child passenger restraint system or a child booster seat,  
23 as appropriate, within seven days to the jurisdiction issuing the  
24 notice and the person has not previously had a violation of this  
25 section dismissed, the jurisdiction shall dismiss the notice of  
26 traffic infraction.

27 (4) Except as provided in RCW 4.20.020, 4.20.046, 4.20.060, and  
28 4.24.010, failure to comply with the requirements of this section  
29 shall not constitute negligence by a parent or legal guardian((-)),  
30 and failure to use a child restraint system shall not be admissible as  
31 evidence of negligence in any civil action.

32 (5) This section does not apply to: (a) For hire vehicles, (b)  
33 vehicles designed to transport sixteen or less passengers, including  
34 the driver, operated by auto transportation companies, as defined in

1 RCW 81.68.010, (c) vehicles providing customer shuttle service between  
2 parking, convention, and hotel facilities, and airport terminals, and  
3 (d) school buses.

4 (6) As used in this section, "child restraint system" means a  
5 child passenger restraint system that meets the Federal Motor Vehicle  
6 Safety Standards set forth in 49 C.F.R. 571.213.

7 (7) The requirements of subsection (1) of this section do not  
8 apply in any seating position where there is only a lap belt available  
9 and the child weighs more than forty pounds.

10 (8)(a) Except as provided in (b) of this subsection, a person who  
11 has a current national certification as a child passenger safety  
12 technician and who in good faith provides inspection, adjustment, or  
13 educational services regarding child passenger restraint systems is  
14 not liable for civil damages resulting from any act or omission in  
15 providing the services, other than acts or omissions constituting  
16 gross negligence or willful or wanton misconduct.

17 (b) The immunity provided in this subsection does not apply to a  
18 certified child passenger safety technician who is employed by a  
19 retailer of child passenger restraint systems and who, during his or  
20 her hours of employment and while being compensated, provides  
21 inspection, adjustment, or educational services regarding child  
22 passenger restraint systems.

23  
24 **Sec. 7.** RCW 46.61.688 and 2009 c 275 s 8 are each amended to read  
25 as follows:

26 (1) For the purposes of this section, "motor vehicle" includes:

27 (a) "Buses," meaning motor vehicles with motive power, except  
28 trailers, designed to carry more than ten passengers;

29 (b) "Medium-speed electric vehicle" meaning a self-propelled,  
30 electrically powered four-wheeled motor vehicle, equipped with a roll  
31 cage or crush-proof body design, whose speed attainable in one mile is  
32 more than thirty miles per hour but not more than thirty-five miles  
33 per hour and otherwise meets or exceeds the federal regulations set  
34 forth in 49 C.F.R. Sec. 571.500;

1 (c) "Motorcycle," meaning a three-wheeled motor vehicle that is  
2 designed (i) so that the driver rides on a seat in a partially or  
3 completely enclosed seating area that is equipped with safety belts  
4 and (ii) to be steered with a steering wheel;

5 (d) "Multipurpose passenger vehicles," meaning motor vehicles with  
6 motive power, except trailers, designed to carry ten persons or less  
7 that are constructed either on a truck chassis or with special  
8 features for occasional off-road operation;

9 (e) "Neighborhood electric vehicle," meaning a self-propelled,  
10 electrically powered four-wheeled motor vehicle whose speed attainable  
11 in one mile is more than twenty miles per hour and not more than  
12 twenty-five miles per hour and conforms to federal regulations under  
13 49 C.F.R. Sec. 571.500;

14 (f) "Passenger cars," meaning motor vehicles with motive power,  
15 except multipurpose passenger vehicles, motorcycles, or trailers,  
16 designed for carrying ten passengers or less; and

17 (g) "Trucks," meaning motor vehicles with motive power, except  
18 trailers, designed primarily for the transportation of property.

19 (2)(a) This section only applies to:

20 (i) Motor vehicles that meet the manual seat belt safety standards  
21 as set forth in 49 C.F.R. Sec. 571.208;

22 (ii) Motorcycles, when equipped with safety belts that meet the  
23 standards set forth in 49 C.F.R. Part 571; and

24 (iii) Neighborhood electric vehicles and medium-speed electric  
25 vehicles that meet the seat belt standards as set forth in 49 C.F.R.  
26 Sec. 571.500.

27 (b) This section does not apply to a vehicle occupant for whom no  
28 safety belt is available when all designated seating positions as  
29 required under 49 C.F.R. Part 571 are occupied.

30 (3) Every person sixteen years of age or older operating or riding  
31 in a motor vehicle shall wear the safety belt assembly in a properly  
32 adjusted and securely fastened manner.

33 (4) No person may operate a motor vehicle unless all child  
34 passengers under the age of sixteen years are either: (a) Wearing a

1 safety belt assembly or (b) are securely fastened into an approved  
2 child restraint device.

3 (5) A person violating this section shall be issued a notice of  
4 traffic infraction under chapter 46.63 RCW. A finding that a person  
5 has committed a traffic infraction under this section shall be  
6 contained in the driver's abstract but shall not be available to  
7 insurance companies or employers.

8 (6) Except as provided in RCW 4.20.020, 4.20.046, 4.20.060, and  
9 4.24.010, failure to comply with the requirements of this section does  
10 not constitute negligence, nor may failure to wear a safety belt  
11 assembly be admissible as evidence of negligence in any civil action.

12 (7) This section does not apply to an operator or passenger who  
13 possesses written verification from a licensed physician that the  
14 operator or passenger is unable to wear a safety belt for physical or  
15 medical reasons.

16 (8) The state patrol may adopt rules exempting operators or  
17 occupants of farm vehicles, construction equipment, and vehicles that  
18 are required to make frequent stops from the requirement of wearing  
19 safety belts."

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21 Renumber the remaining sections consecutively and correct internal  
22 references accordingly.

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**EFFECT:** Provides that in a wrongful death or survival action based on a parent's significant involvement in a child's life, joint and several liability does not apply if it is established that either of the following contributed to the death of the decedent: the failure of a parent to comply with child passenger restraint requirements; or the failure of the decedent to wear a safety belt assembly.

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