
Judiciary Committee

HB 1719

Title: An act relating to limiting liability for unauthorized passengers in a vehicle.

Brief Description: Limiting liability for unauthorized passengers in a vehicle.

Sponsors: Representatives Rodne, Schmick, Haler, Smith, Wilcox, Johnson, Klippert, Kristiansen, McCune, Short, Ross and Warnick.

Brief Summary of Bill

- Makes state and local governments, as well as private employers, immune from liability for injuries received by unauthorized third-party occupants of vehicles used for the benefit of government or private employers.
- Applies the immunity remedially and retroactively to all causes of action occurring before the bill's effective date where a final judgment has not been entered, and to all new causes of action.

Hearing Date: 2/9/11

Staff: Parker Howell (786-5793) and Edie Adams (786-7180).

Background:

Sovereign Immunity.

The State has generally waived its sovereign immunity from suit by a statute enacted in 1961. The law makes the State and its political subdivisions generally liable for damages arising out of tortious conduct to the same extent as if the government were a private person or corporation.

Respondeat Superior.

The common-law theory of "respondeat superior" allows an employer, including state and local governments in Washington, to be held vicariously liable for an employee's tortious act under

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certain circumstances. Generally, the employee must commit tortious conduct in the scope of his or her employment, although Washington courts have held that an employer may be held liable for conduct that occurs when an employee does a mix of work and personal business.

The Washington Supreme Court ("Court") held 6-3 in the case of *Rahman v. State*, No. 83428-8 (Jan. 20, 2011), that the state may be held vicariously liable for injuries suffered by a third-party passenger in a state vehicle driven by a state employee for work purposes. The plaintiff in *Rahman* was the wife of a state agency intern injured when her husband, Mohammad Shahidur Rahman, failed to negotiate a curve while driving from Olympia to Spokane. Although Rahman was driving for work purposes, state rules prohibited him from bringing non-employee passengers. The majority ruled that court precedents and sound policy weighed in favor of holding the state vicariously liable because Rahman was in the service of the state's business at the time of the accident.

The dissent argued that the state should not be liable because Rahman was not authorized to transport non-employees, and thus he acted outside the scope of his employment. Writing for the dissent, Justice Jim M. Johnson contended that the policy underlying respondeat superior — an employer's control over an employee — is absent when the employee is not acting with actual or apparent authority and the employer has no control over the employee.

Remedial and Retroactive Legislation.

Although courts generally disfavor retroactive legislation, the Legislature may make a bill apply to past conduct by expressly designating that it applies retroactively. Remedial legislation relates to practice, procedure or remedies and does not affect a substantive or vested right. Washington courts have labeled legislation remedial in certain circumstances, such as those involving statutes of limitations, authorizing an award for suffering caused by an employer's unfair discriminatory practice, and changing the calculation of a property's net value for purposes of the homestead exemption.

Summary of Bill:

The Legislature declares that it does not agree with or accept the *Rahman* decision. The Legislature intends to restore common sense to the law by overruling the decision that a government or private employer may be held liable for injuries to unauthorized occupants of an employer's vehicles.

Neither the state nor its political subdivisions are liable for any injury received by a third-party occupant of a vehicle owned, leased, rented, or used for the benefit of the government as long as the occupant was not expressly authorized by the government to occupy the vehicle at the time he or she suffered injuries. Third-party occupants are people who occupy a government vehicle who are not government officers, employees, or agents.

A private employer is not liable for any injury received by a third-party occupant of a vehicle owned, leased, rented, or used for the benefit of the employer unless: (1) the employer specifically and expressly authorized the occupancy; or (2) the third-party occupant was acting on behalf of or for the benefit of the employer, and the employer knew or impliedly approved or

acquiesced. Third-party occupants are people who occupy an employer vehicle who are not officers, employees, agents, or authorized or constructive invitees of the private employer.

This immunity applies to all causes of action occurring before the bill's effective date where final judgment has not been entered, and to causes of action arising on or after the bill's effective date.

Appropriation: None.

Fiscal Note: Requested on February 1, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.