SENATE BILL 6485
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State of Washington   **62nd Legislature**   **2012 Regular Session**

By Senators Fain, Holmquist Newbry, Hill, Litzow, Schoesler, Honeyford, Ericksen, Hargrove, and Hewitt

Read first time 01/25/12. Referred to Committee on Judiciary.

1   AN ACT Relating to limiting the exceptions to the general rule of
2 several or proportionate liability; amending RCW 4.22.015 and 4.22.070;
3 creating new sections; and declaring an emergency.

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

5   NEW SECTION. **Sec. 1.** The legislature finds that in order to
6 encourage economic development and job growth, the state must create
7 the best environment possible for private employers to protect and
8 create jobs. The current economic situation, as well as discussions
9 and actions by federal and state governments, have created a high
10 degree of uncertainty for employers about the future. By enhancing
11 stability and predictability, as well as by reducing costs imposed on
12 employers, the state can facilitate the creation of jobs in Washington.
13 The legislature finds that it is important to shape a system where the
14 obligations of individuals, businesses, and governments are stable and
15 predictable. Therefore, it is the intent of the legislature to enact
16 reforms that create a more equitable distribution of liability based
17 upon one's proportionate share of fault.
18   The legislature also finds, notwithstanding the tort reform
19 measures it has enacted in the past, that in many instances defendants

1 continue to pay more than their proportionate share of a claimant's
2 total damages. The legislature in the 1986 tort reform act adopted as
3 the policy of this state that several, or proportionate, liability is
4 the general rule subject to certain exceptions. The legislature now
5 intends to limit further the exceptions to the general rule of several
6 or proportionate liability.

7   **Sec. 2.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as
8 follows:
9   "Fault" includes acts or omissions, including misuse of a product,
10 that are in any measure negligent ((or)), reckless, or intentional
11 toward the person or property of the actor or others, or that subject
12 a person to strict tort liability or liability on a product liability
13 claim.   The term also includes breach of warranty, unreasonable
14 assumption of risk, and unreasonable failure to avoid an injury or to
15 mitigate damages. Legal requirements of causal relation apply both to
16 fault as the basis for liability and to contributory fault.
17   A comparison of fault for any purpose under RCW 4.22.005 through
18 ((4.22.060)) 4.22.070 shall involve consideration of both the nature of
19 the conduct of the parties to the action and the extent of the causal
20 relation between such conduct and the damages.

21   **Sec. 3.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
22 as follows:
23   (1) In all actions involving fault of more than one entity, the
24 trier of fact shall determine the percentage of the total fault which
25 is attributable to every entity which caused the claimant's damages
26 except entities immune from liability to the claimant under Title 51
27 RCW. The sum of the percentages of the total fault attributed to at-
28 fault entities shall equal one hundred percent. The entities whose
29 fault shall be determined include the claimant or person suffering
30 personal injury or incurring property damage, defendants, third-party
31 defendants, entities released by the claimant, entities with any other
32 individual defense against the claimant, and entities immune from
33 liability to the claimant, but shall not include those entities immune
34 from liability to the claimant under Title 51 RCW. Judgment shall be
35 entered against each defendant except those who have been released by
36 the claimant or are immune from liability to the claimant or have

1 prevailed on any other individual defense against the claimant in an
2 amount which represents that party's proportionate share of the
3 claimant's total damages. The liability of each defendant shall be
4 several only and shall not be joint except((÷

5   (a))) a party shall be responsible for the fault of another person
6 or for payment of the proportionate share of another party where both
7 were acting in concert or when a person was acting as an agent or
8 servant of the party.

9   (((b) If the trier of fact determines that the claimant or party
10 suffering bodily injury or incurring property damages was not at fault,
11 the defendants against whom judgment is entered shall be jointly and
12 severally liable for the sum of their proportionate shares of the
13 claimants [claimant's] total damages.))

14   (2) If a defendant is jointly and severally liable under ((one of))
15 the exception((s)) listed in subsection((s)) (1)(((a) or (1)(b))) of
16 this section, such defendant's rights to contribution against another
17 jointly and severally liable defendant, and the effect of settlement by
18 either such defendant, shall be determined under RCW 4.22.040,
19 4.22.050, and 4.22.060.

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

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

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

28   NEW SECTION. **Sec. 4.** This act applies to all claims that have not
29 been reduced to judgment on the effective date of this section.

30   NEW SECTION. **Sec. 5.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately.

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