

HOUSE BILL ANALYSIS

HB 1205

Title: An act relating to defenses in civil actions.

Brief Description: Addressing defenses in civil actions.

Sponsors: Representatives Carrell, Sheahan, Sullivan, Koster, Cairnes, Crouse, Schindler, Fortunato, Bush, Mielke, Campbell, Sump, Hurst, Boldt, Mulliken, Wensman, D. Sommers and Dunn.

Brief Summary of Bill

- Provides a complete defense in any action for damages for personal injury or wrongful death if the person injured or killed was committing a gross misdemeanor or misdemeanor at the time, and the gross misdemeanor or misdemeanor was a proximate cause of the injury or death.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

A person who has been wrongfully injured by another may seek damages for the injury in a civil action. A statute provides that it is a complete defense in an action for damages for personal injury or wrongful death if the person injured or killed was committing a felony at the time of the occurrence causing the injury or death, as long as the felony was a proximate cause of the injury or death.

There are two components in determining if an act is the proximate cause of an injury. First, the trier of fact must determine if the injury would not have occurred except for the act. Second, the court must determine if the act was the legal causation— of the injury. Courts have found legal causation when the injury was reasonably foreseeable. Legal causation involves policy considerations— of how far the consequences of a person's acts should extend. See McCoy v. American Suzuki Motor Corp., 86 Wn. App. 107 (1997).

Under common law, a landowner owes no duty to a trespasser, except to refrain from causing willful or wanton injury to the trespasser. The doctrine of attractive nuisance is an exception to that general rule. The attractive nuisance doctrine applies where: (a) an artificial condition exists on the land and is attractive to young children; (b) the condition is left unguarded and exposed where it is reasonable to expect young

children to be; (c) the condition is likely to cause injury; (d) the child is incapable, because of youth, to comprehend the danger; and (e) it was reasonably feasible to prevent access or otherwise make the condition safe.

Summary of Bill:

The statute providing a complete defense in certain civil actions is expanded. It is a complete defense to any action for damages for personal injury or wrongful death if the person was engaged in the commission of a gross misdemeanor or misdemeanor at the time of the occurrence causing the injury or death, and the crime was a proximate cause of the injury or death.

The complete defense does not apply to the doctrine of attractive nuisance when the only offense committed or intended to be committed was trespass.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.