

**2SHB 2292 - H AMD 657**

By Representative Priest

**FAILED 1/23/2006**

1 On page 39, after line 28, insert the following:

2 **"Joint and Several Liability and Allocation of Fault**

3 **Sec. 304.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to  
4 read as follows:

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

24 (a) A party shall be responsible for the fault of another  
25 person or for payment of the proportionate share of another party  
26 where both were acting in concert or when a person was acting as an  
27 agent or servant of the party.

28 (b) (i) Except as provided in (b)(ii) of this subsection, if the  
29 trier of fact determines that the claimant or party suffering  
30 bodily injury or incurring property damages was not at fault, the

1 defendants against whom judgment is entered shall be jointly and  
2 severally liable for the sum of their proportionate shares of the  
3 (~~claimants [claimant's]~~) claimant's total damages.

4 (ii) Subsection (b)(i) of this subsection does not apply to  
5 health care providers as defined in RCW 7.70.020, in all cases  
6 governed by chapter 7.70 RCW with respect to judgments for  
7 noneconomic damages. In all cases governed by chapter 7.70 RCW,  
8 the liability of health care providers for noneconomic damages is  
9 several only. For the purposes of this section, "noneconomic  
10 damages" has the meaning given in RCW 4.56.250.

11 (2) In all actions for damages under chapter 7.70 RCW, the  
12 entities to whom fault may be attributed shall be limited to the  
13 claimants, defendants, and third-party defendants who are parties  
14 to the action and any entities released by the claimant.

15 (3) If a defendant is jointly and severally liable under one of  
16 the exceptions listed in subsections (1)(a) or (1)(b) of this  
17 section, such defendant's rights to contribution against another  
18 jointly and severally liable defendant, and the effect of  
19 settlement by either such defendant, shall be determined under RCW  
20 4.22.040, 4.22.050, and 4.22.060.

21 (~~(3)~~) (4)(a) Nothing in this section affects any cause of  
22 action relating to hazardous wastes or substances or solid waste  
23 disposal sites.

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

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

31 **Sec. 305.** RCW 70.105.112 and 1987 c 528 s 9 are each amended  
32 to read as follows:

33 This chapter does not apply to special incinerator ash  
34 regulated under chapter 70.138 RCW except that, for purposes of RCW  
35 4.22.070(~~(3)~~) (4)(a), special incinerator ash shall be considered  
36 hazardous waste."

- 1 Renumber the remaining sections consecutively, correct internal
- 2 references accordingly, and correct the title.

**EFFECT:** Eliminates a health care provider's joint liability for non-economic damages in a medical malpractice case.

Eliminates the requirement that any entity causing a claimant's damages, including entities who are not parties to the lawsuit, must be assigned a percentage of the total fault for a claimant's damages, and instead requires that 100 percent of the fault be assigned only to entities who are parties to the action or who have been released by the claimant.