
SENATE BILL 5896

State of Washington

65th Legislature

2017 Regular Session

By Senators Rossi, Brown, Braun, Becker, Fortunato, Bailey, Angel, Schoesler, Sheldon, Warnick, Honeyford, Wilson, Walsh, Hawkins, and Short

1 AN ACT Relating to claims against public entities; amending RCW
2 4.22.070, 4.56.115, 4.92.005, 4.96.010, 4.92.040, 4.92.090, and
3 4.92.130; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** While the common law doctrine of sovereign
6 immunity declares that the state is immune from liability for the
7 tortious conduct of its employees and officers, Article II, section
8 26 of the state Constitution allows the legislature to waive its
9 immunity and specify by statute "in what manner, and in what courts,
10 suit may be brought against the state." In the granting or
11 withholding of sovereign immunity, there are limitations, gradations,
12 and competing interests to be balanced by the legislature, including
13 fairness to the citizens of the state, the preservation of proper and
14 essential functions of government, and the conservation of scarce
15 public resources.

16 In balancing these competing interests, the legislature must also
17 balance the traditional role of the jury in determining damages in
18 civil cases and the legislature's constitutional mandate under
19 Article VIII, section 4 of the state Constitution to protect the
20 state treasury through the appropriation process.

1 The legislature finds that these constitutional principles are
2 not adequately served by either complete sovereign immunity or the
3 complete waiver of sovereign immunity. Pursuant to the express
4 authority of Article II, section 26 of the state Constitution, the
5 purpose of this act is to recognize and implement these fundamental
6 constitutional principles while providing a fair and equitable means
7 of recovery against governmental entities for the negligent acts of
8 their employees and officers.

9 **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
10 as follows:

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

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

33 (b) If the trier of fact determines that the claimant or party
34 suffering bodily injury or incurring property damages was not at
35 fault, the defendants against whom judgment is entered shall be
36 jointly and severally liable for the sum of their proportionate
37 shares of the ~~((claimants-[claimant's]))~~ claimant's total damages,
38 except as provided in RCW 4.92.090 and 4.96.010.

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

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

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

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

17 **Sec. 3.** RCW 4.56.115 and 2004 c 185 s 1 are each amended to read
18 as follows:

19 Judgments founded on the tortious conduct of the state of
20 Washington or of the political subdivisions, municipal corporations,
21 and quasi municipal corporations of the state, whether acting in
22 their governmental or proprietary capacities, shall bear interest
23 from the date of entry at two percentage points above the equivalent
24 coupon issue yield (as published by the board of governors of the
25 federal reserve system) of the average bill rate for twenty-six week
26 treasury bills as determined at the first bill market auction
27 conducted during the calendar month immediately preceding the date of
28 entry thereof. In any case where a court is directed on review to
29 enter judgment on a verdict or in any case where a judgment entered
30 on a verdict is wholly or partly affirmed on review, interest on the
31 judgment or on that portion of the judgment affirmed shall date back
32 to and shall accrue from the date the verdict was rendered.

33 Interest does not accrue on that portion of a judgment that is
34 subject to appropriation by the legislature under RCW 4.92.090 or by
35 a local legislative authority under RCW 4.96.010 until the
36 appropriation has been made by the legislature or local legislative
37 authority.

1 **Sec. 4.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read
2 as follows:

3 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,
4 (~~4.92.140~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

5 **Sec. 5.** RCW 4.96.010 and 2011 c 258 s 10 are each amended to
6 read as follows:

7 (1) All local governmental entities, whether acting in a
8 governmental or proprietary capacity, shall be liable for damages
9 arising out of their tortious conduct, or the tortious conduct of
10 their past or present officers, employees, or volunteers while
11 performing or in good faith purporting to perform their official
12 duties, to the same extent as if they were a private person or
13 corporation, subject to the limitations provided in subsection (2) of
14 this section. Filing a claim for damages within the time allowed by
15 law shall be a condition precedent to the commencement of any action
16 claiming damages. The laws specifying the content for such claims
17 shall be liberally construed so that substantial compliance therewith
18 will be deemed satisfactory.

19 (2)(a) Local government entities, officers, employees, and
20 volunteers are not liable to pay a claim or a judgment by any one
21 person that exceeds the sum of one million dollars or any claim or
22 judgment, or portions thereof, that, when totaled with all other
23 claims or judgments paid by the local government entities, officers,
24 employees, or volunteers arising out of the same incident or
25 occurrence, exceeds the sum of two million dollars. However, a
26 judgment or judgments may be claimed and rendered in excess of these
27 amounts and may be settled and paid under this section up to one
28 million dollars or two million dollars, as the case may be, and that
29 portion of the judgment that exceeds these amounts may be reported to
30 the local legislative authority, but may be paid in part or in whole
31 only by further act of the local legislative authority.
32 Notwithstanding the limited waiver of sovereign immunity provided in
33 this section, the local government entities, officers, employees, or
34 volunteers may agree, within the limits of insurance coverage
35 provided, to settle a claim made or a judgment rendered against it
36 without further action by the local legislative authority, but the
37 local government entities, officers, employees, or volunteers have
38 not waived any defense of sovereign immunity or increased the limits

1 of its liability as a result of its obtaining insurance coverage for
2 tortious acts in excess of the waiver provided in this section.

3 (b) No attorney may charge, demand, receive, or collect, for
4 services rendered, fees in excess of twenty-five percent of any
5 judgment or settlement under this section.

6 (3) Unless the context clearly requires otherwise, for the
7 purposes of this chapter, "local governmental entity" means a county,
8 city, town, special district, municipal corporation as defined in RCW
9 39.50.010, quasi-municipal corporation, any joint municipal utility
10 services authority, any entity created by public agencies under RCW
11 39.34.030, or public hospital.

12 ~~((3))~~ (4) For the purposes of this chapter, "volunteer" is
13 defined according to RCW 51.12.035.

14 **Sec. 6.** RCW 4.92.040 and 2011 1st sp.s. c 43 s 512 are each
15 amended to read as follows:

16 (1) No execution shall issue against the state on any judgment.

17 (2) Whenever a final judgment against the state is obtained in an
18 action on a claim arising out of tortious conduct, the claim shall be
19 paid from the liability account, subject to the limitations of RCW
20 4.92.090.

21 (3) Whenever a final judgment against the state shall have been
22 obtained in any other action, the clerk of the court shall make and
23 furnish to the office of risk management a duly certified copy of
24 such judgment; the office of risk management shall thereupon audit
25 the amount of damages and costs therein awarded, and the same shall
26 be paid from appropriations specifically provided for such purposes
27 by law.

28 (4) Final judgments for which there are no provisions in state
29 law for payment shall be transmitted by the office of risk management
30 to the senate and house of representatives committees on ways and
31 means as follows:

32 (a) On the first day of each session of the legislature, the
33 office of risk management shall transmit judgments received and
34 audited since the adjournment of the previous session of the
35 legislature.

36 (b) During each session of legislature, the office of risk
37 management shall transmit judgments immediately upon completion of
38 audit.

1 (5) All claims, other than judgments, made to the legislature
2 against the state of Washington for money or property, shall be
3 accompanied by a statement of the facts on which such claim is based
4 and such evidence as the claimant intends to offer in support of the
5 claim and shall be filed with the office of risk management, which
6 shall retain the same as a record. All claims of two thousand dollars
7 or less shall be approved or rejected by the office of risk
8 management, and if approved shall be paid from appropriations
9 specifically provided for such purpose by law. Such decision, if
10 adverse to the claimant in whole or part, shall not preclude the
11 claimant from seeking relief from the legislature. If the claimant
12 accepts any part of his or her claim which is approved for payment by
13 the office of risk management, such acceptance shall constitute a
14 waiver and release of the state from any further claims relating to
15 the damage or injury asserted in the claim so accepted. The office of
16 risk management shall submit to the house and senate committees on
17 ways and means, at the beginning of each regular session, a
18 comprehensive list of all claims paid pursuant to this subsection
19 during the preceding year. For all claims not approved by the office
20 of risk management, the office of risk management shall recommend to
21 the legislature whether such claims should be approved or rejected.
22 Recommendations shall be submitted to the senate and house of
23 representatives committees on ways and means not later than the
24 thirtieth day of each regular session of the legislature. Claims
25 which cannot be processed for timely submission of recommendations
26 shall be held for submission during the following regular session of
27 the legislature. The recommendations shall include, but not be
28 limited to:

29 (a) A summary of the facts alleged in the claim, and a statement
30 as to whether these facts can be verified by the office of risk
31 management;

32 (b) An estimate by the office of risk management of the value of
33 the loss or damage which was alleged to have occurred;

34 (c) An analysis of the legal liability, if any, of the state for
35 the alleged loss or damage; and

36 (d) A summary of equitable or public policy arguments which might
37 be helpful in resolving the claim.

38 (6) The legislative committees to whom such claims are referred
39 shall make a transcript, recording, or statement of the substance of
40 the evidence given in support of such a claim. If the legislature

1 approves a claim the same shall be paid from appropriations
2 specifically provided for such purpose by law.

3 (7) Subsections (3) through (6) of this section do not apply to
4 judgments or claims against the state housing finance commission
5 created under chapter 43.180 RCW.

6 **Sec. 7.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
7 as follows:

8 The state of Washington, whether acting in its governmental or
9 proprietary capacity, shall be liable for damages arising out of its
10 tortious conduct to the same extent as if it were a private person or
11 corporation, subject to the limitations provided in this section.

12 (1)(a) The state and its agencies, institutions, officers,
13 employees, and volunteers are not liable to pay a claim or a judgment
14 by any one person that exceeds the sum of one million dollars or any
15 claim or judgment, or portions thereof, that, when totaled with all
16 other claims or judgments paid by the state or its agencies,
17 institutions, officers, employees, or volunteers arising out of the
18 same incident or occurrence, exceeds the sum of two million dollars.
19 However, a judgment or judgments may be claimed and rendered in
20 excess of these amounts and may be settled and paid under this
21 section up to one million dollars or two million dollars, as the case
22 may be, and that portion of the judgment that exceeds these amounts
23 may be reported to the legislature, but may be paid in part or in
24 whole only by further act of the legislature. Notwithstanding the
25 limited waiver of sovereign immunity provided in this section, the
26 state or an agency, institution, or any officer, employee, or
27 volunteer may agree, within the limits of insurance coverage
28 provided, to settle a claim made or a judgment rendered against it
29 without further action by the legislature, but the state or agency
30 has not waived any defense of sovereign immunity or increased the
31 limits of its liability as a result of its obtaining insurance
32 coverage for tortious acts in excess of the waiver provided in this
33 section.

34 (b) When a claim is submitted to the legislature for payment, the
35 legislature must consider any percentage of fault attributed to every
36 entity as determined by the trier of fact.

37 (2) No attorney may charge, demand, receive, or collect, for
38 services rendered, fees in excess of twenty-five percent of any
39 judgment or settlement under this section.

1 **Sec. 8.** RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each
2 amended to read as follows:

3 A liability account in the custody of the treasurer is hereby
4 created as a nonappropriated account to be used solely and
5 exclusively for the payment of liability settlements and judgments
6 against the state under 42 U.S.C. Sec. 1981 et seq. or for the
7 tortious conduct of its officers, employees, and volunteers and all
8 related legal defense costs. Legislative appropriation is required
9 for expenditures from the liability account to the extent specified
10 in RCW 4.92.090.

11 (1) The purpose of the liability account is to: (a) Expeditiously
12 pay legal liabilities and defense costs of the state resulting from
13 tortious conduct; (b) promote risk control through a cost allocation
14 system which recognizes agency loss experience, levels of self-
15 retention, and levels of risk exposure; and (c) establish an
16 actuarially sound system to pay incurred losses, within defined
17 limits.

18 (2) The liability account shall be used to pay claims for injury
19 and property damages and legal defense costs exclusive of agency-
20 retained expenses otherwise budgeted.

21 (3) No money shall be paid from the liability account, except for
22 defense costs, unless all proceeds available to the claimant from any
23 valid and collectible liability insurance shall have been exhausted
24 and unless:

25 (a) The claim shall have been reduced to final judgment in a
26 court of competent jurisdiction and legislative appropriation has
27 been made to the extent required by RCW 4.92.090; or

28 (b) The claim has been approved for payment.

29 (4) The liability account shall be financed through annual
30 premiums assessed to state agencies, based on sound actuarial
31 principles, and shall be for liability coverage in excess of agency-
32 budgeted self-retention levels.

33 (5) Annual premium levels shall be determined by the risk
34 manager. An actuarial study shall be conducted to assist in
35 determining the appropriate level of funding.

36 (6) Disbursements for claims from the liability account shall be
37 made to the claimant, or to the clerk of the court for judgments,
38 upon written request to the state treasurer from the risk manager.

1 (7) The director may direct agencies to transfer moneys from
2 other funds and accounts to the liability account if premiums are
3 delinquent.

4 (8) The liability account shall not exceed fifty percent of the
5 actuarial value of the outstanding liability as determined annually
6 by the office of risk management. If the account exceeds the maximum
7 amount specified in this section, premiums may be adjusted by the
8 office of risk management in order to maintain the account balance at
9 the maximum limits. If, after adjustment of premiums, the account
10 balance remains above the limits specified, the excess amount shall
11 be prorated back to the appropriate funds.

12 NEW SECTION. **Sec. 9.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 10.** This act applies to all claims that have
17 not been reduced to judgment on the effective date of this act.

18 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of
20 the state government and its existing public institutions, and takes
21 effect immediately.

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