

ESHB 1928 - H AMD

By Representative Lantz

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** 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, any entities released by the claimant, and entities
15 immune from liability to the claimant.

16 (3) If a defendant is jointly and severally liable under one of
17 the exceptions listed in subsections (1)(a) or (1)(b) of this
18 section, such defendant's rights to contribution against another
19 jointly and severally liable defendant, and the effect of
20 settlement by either such defendant, shall be determined under RCW
21 4.22.040, 4.22.050, and 4.22.060.

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

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

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

32 **Sec. 2.** RCW 70.105.112 and 1987 c 528 s 9 are each amended to
33 read as follows:

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

1 **Sec. 3.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
2 amended to read as follows:

3 Any party may present evidence to the trier of fact that the
4 ~~((patient))~~ plaintiff has already been compensated for the injury
5 complained of from any source except the assets of the ~~((patient,~~
6 ~~his))~~ plaintiff, the plaintiff's representative, or ((his)) the
7 plaintiff's immediate family~~((, or insurance purchased with such~~
8 ~~assets))~~. In the event such evidence is admitted, the plaintiff
9 may present evidence of an obligation to repay such compensation
10 and evidence of any amount paid by the plaintiff, or his or her
11 representative or immediate family, to secure the right to the
12 compensation. ~~((Insurance bargained for or provided on behalf of~~
13 ~~an employee shall be considered insurance purchased with the assets~~
14 ~~of the employee.))~~ Compensation as used in this section shall mean
15 payment of money or other property to or on behalf of the patient,
16 rendering of services to the patient free of charge to the patient,
17 or indemnification of expenses incurred by or on behalf of the
18 patient. Notwithstanding this section, evidence of compensation by
19 a defendant health care provider may be offered only by that
20 provider."

21 Correct the title.

EFFECT: Amends the section on allocation of fault to include
immune entities among those entities to whom fault must be
allocated.

Removes the "ostensible agency" provision, which limited the
liability of hospitals and providers for another's negligent
acts unless the other person was an actual agent or employee of
the hospital or provider.

Adds an amendment to the "collateral source statute" to allow
evidence to be introduced of any collateral source payment made
to the plaintiff (e.g., insurance benefits), but allows the
plaintiff to show evidence of costs incurred to obtain the
right to the collateral source payment (e.g., premiums), in
addition to an obligation to repay the compensation.