
SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1928

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Carrell, McMahan, Clibborn, Campbell, Moeller, Schual-Berke, Cody, Newhouse, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Voloria, Conway, Simpson, Sommers and Haigh)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to parties liable for damages in actions under
2 chapter 7.70 RCW; and amending RCW 4.22.070, 70.105.112, and 7.70.080.

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

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

6 (1) In all actions involving fault of more than one entity, the
7 trier of fact shall determine the percentage of the total fault which
8 is attributable to every entity which caused the claimant's damages
9 except entities immune from liability to the claimant under Title 51
10 RCW. The sum of the percentages of the total fault attributed to at-
11 fault entities shall equal one hundred percent. The entities whose
12 fault shall be determined include the claimant or person suffering
13 personal injury or incurring property damage, defendants, third-party
14 defendants, entities released by the claimant, entities with any other
15 individual defense against the claimant, and entities immune from
16 liability to the claimant, but shall not include those entities immune
17 from liability to the claimant under Title 51 RCW. Judgment shall be
18 entered against each defendant except those who have been released by
19 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 or
6 for payment of the proportionate share of another party where both were
7 acting in concert or when a person was acting as an agent or servant of
8 the party.

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

15 (ii) Subsection (b)(i) of this subsection does not apply to health
16 care providers as defined in RCW 7.70.020, in all cases governed by
17 chapter 7.70 RCW with respect to judgments for noneconomic damages. In
18 all cases governed by chapter 7.70 RCW, the liability of health care
19 providers for noneconomic damages is several only. For the purposes of
20 this section, "noneconomic damages" has the meaning given in RCW
21 4.56.250.

22 (2) In all actions for damages under chapter 7.70 RCW, the entities
23 to whom fault may be attributed shall be limited to the claimants,
24 defendants, and third-party defendants who are parties to the action
25 any entities released by the claimant, and entities immune from
26 liability to the claimant.

27 (3) If a defendant is jointly and severally liable under one of the
28 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
29 defendant's rights to contribution against another jointly and
30 severally liable defendant, and the effect of settlement by either such
31 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
32 4.22.060.

33 ((+3+)) (4)(a) Nothing in this section affects any cause of action
34 relating to hazardous wastes or substances or solid waste disposal
35 sites.

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

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

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

7 This chapter does not apply to special incinerator ash regulated
8 under chapter 70.138 RCW except that, for purposes of RCW
9 4.22.070(~~(+3+)~~) (4)(a), special incinerator ash shall be considered
10 hazardous waste.

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

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

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