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**SUBSTITUTE HOUSE BILL 1928**

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**State of Washington**

**58th Legislature**

**2003 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; amending RCW 4.22.070 and 70.105.112; adding new  
3 sections to chapter 7.70 RCW; and creating a new section.

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

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

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

1 the claimant or are immune from liability to the claimant or have  
2 prevailed on any other individual defense against the claimant in an  
3 amount which represents that party's proportionate share of the  
4 claimant's total damages. The liability of each defendant shall be  
5 several only and shall not be joint except:

6 (a) A party shall be responsible for the fault of another person or  
7 for payment of the proportionate share of another party where both were  
8 acting in concert or when a person was acting as an agent or servant of  
9 the party.

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

16 (ii) Subsection (b)(i) of this subsection does not apply to a  
17 hospital, as defined in RCW 70.41.020, in all cases governed by chapter  
18 7.70 RCW with respect to judgments for noneconomic damages where the  
19 percentage of total fault attributed to the hospital is less than  
20 twenty-five percent. In all cases governed by chapter 7.70 RCW where  
21 the percentage of total fault that is attributed to a hospital is less  
22 than twenty-five percent and where the case would otherwise come under  
23 (b)(i) of this subsection, the liability of the hospital for  
24 noneconomic damages is several only. For the purposes of this section,  
25 "noneconomic damages" has the meaning given in RCW 4.56.250.

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

30 (3) If a defendant is jointly and severally liable under one of the  
31 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
32 defendant's rights to contribution against another jointly and  
33 severally liable defendant, and the effect of settlement by either such  
34 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
35 4.22.060.

36 ~~((3))~~ (4)(a) Nothing in this section affects any cause of action  
37 relating to hazardous wastes or substances or solid waste disposal  
38 sites.

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

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

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

9 This chapter does not apply to special incinerator ash regulated  
10 under chapter 70.138 RCW except that, for purposes of RCW  
11 4.22.070(~~(+3)~~) (4)(a), special incinerator ash shall be considered  
12 hazardous waste.

13 NEW SECTION. **Sec. 3.** It is the intent of the legislature that  
14 health care providers should remain personally liable for their own  
15 negligent or wrongful acts or omissions in connection with the  
16 provision of health care services, but that their vicarious liability  
17 for the negligent or wrongful acts or omissions of others should be  
18 curtailed. To that end, it is the intent of the legislature that  
19 *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 579 P.2d 970  
20 (1978), and its holding that hospitals may be held liable for a  
21 physician's acts or omissions under so-called "apparent agency" or  
22 "ostensible agency" theories should be reversed, so that hospitals will  
23 not be liable for the act or omission of a health care provider granted  
24 hospital privileges unless the health care provider is an actual agent  
25 or employee of the hospital or unless the hospital's negligence  
26 proximately caused the injury. It is further the intent of the  
27 legislature that, notwithstanding any generally applicable principle of  
28 vicarious liability to the contrary, individual health care  
29 professionals will not be liable for the negligent or wrongful acts of  
30 others, except those who were acting under their direct supervision and  
31 control.

32 NEW SECTION. **Sec. 4.** A public or private hospital shall be liable  
33 for an act or omission of a health care provider granted privileges to  
34 provide health care at the hospital only if the health care provider is  
35 an actual agent or employee of the hospital and the act or omission of

1 the health care provider occurred while the health care provider was  
2 acting within the course and scope of the health care provider's agency  
3 or employment with the hospital. A public or private hospital may be  
4 liable for failing to exercise reasonable care in granting credentials  
5 and practice privileges to a health care provider, or in failing to  
6 revoke such credentials and privileges when the hospital knew or  
7 reasonably should have known such revocation was appropriate.

8 NEW SECTION. **Sec. 5.** A person who is a health care provider under  
9 RCW 7.70.020 (1) or (2) shall not be personally liable for any act or  
10 omission of any other health care provider who was not the person's  
11 actual agent or employee or who was not acting under the person's  
12 direct supervision and control at the time of the act or omission,  
13 unless the person's negligence proximately caused the injury.

14 NEW SECTION. **Sec. 6.** Sections 4 and 5 of this act are each added  
15 to chapter 7.70 RCW.

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