
HOUSE BILL 1928

State of Washington

58th Legislature

2003 Regular Session

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 02/17/2003. Referred to Committee on Judiciary.

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. It is further the intent of the
26 legislature that, notwithstanding any generally applicable principle of
27 vicarious liability to the contrary, individual health care
28 professionals will not be liable for the negligent or wrongful acts of
29 others, except those who were acting under their direct supervision and
30 control.

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

4 NEW SECTION. **Sec. 5.** A person who is a health care provider under
5 RCW 7.70.020 (1) or (2) shall not be personally liable for any act or
6 omission of any other health care provider who was not the person's
7 actual agent or employee or who was not acting under the person's
8 direct supervision and control at the time of the act or omission.

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

--- END ---