
SUBSTITUTE HOUSE BILL 2828

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Moeller, Cody, Morrell and Darneille)

READ FIRST TIME 02/03/04.

1 AN ACT Relating to the liability of hospitals for noneconomic
2 damages in actions under chapter 7.70 RCW; and amending RCW 4.22.070
3 and 4.56.250.

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. In all
19 cases governed by chapter 7.70 RCW where the case would otherwise come
20 under (b)(i) of this subsection, the liability of the hospital for
21 noneconomic damages is several only. For the purposes of this section,
22 "noneconomic damages" has the meaning given in RCW 4.56.250.

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

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

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

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

1 **Sec. 2.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read
2 as follows:

3 (1) As used in this section, the following terms have the meanings
4 indicated unless the context clearly requires otherwise.

5 (a) "Economic damages" means objectively verifiable monetary
6 losses, including medical expenses, loss of earnings, burial costs,
7 loss of use of property, cost of replacement or repair, cost of
8 obtaining substitute domestic services, loss of employment, and loss of
9 business or employment opportunities.

10 (b) "Noneconomic damages" means subjective, nonmonetary losses,
11 including, but not limited to pain, suffering, inconvenience, mental
12 anguish, disability or disfigurement incurred by the injured party,
13 loss of ability to enjoy life, emotional distress, loss of society and
14 companionship, loss of consortium, injury to reputation and
15 humiliation, (~~and~~) destruction of the parent-child relationship, and
16 other nonpecuniary damages of any type.

17 (c) "Bodily injury" means physical injury, sickness, or disease,
18 including death.

19 (d) "Average annual wage" means the average annual wage in the
20 state of Washington as determined under RCW 50.04.355.

21 (2) In no action seeking damages for personal injury or death may
22 a claimant recover a judgment for noneconomic damages exceeding an
23 amount determined by multiplying 0.43 by the average annual wage and by
24 the life expectancy of the person incurring noneconomic damages, as the
25 life expectancy is determined by the life expectancy tables adopted by
26 the insurance commissioner. For purposes of determining the maximum
27 amount allowable for noneconomic damages, a claimant's life expectancy
28 shall not be less than fifteen years. The limitation contained in this
29 subsection applies to all claims for noneconomic damages made by a
30 claimant who incurred bodily injury. Claims for loss of consortium,
31 loss of society and companionship, destruction of the parent-child
32 relationship, and all other derivative claims asserted by persons who
33 did not sustain bodily injury are to be included within the limitation
34 on claims for noneconomic damages arising from the same bodily injury.

35 (3) If a case is tried to a jury, the jury shall not be informed of
36 the limitation contained in subsection (2) of this section.

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