
HOUSE BILL 3135

State of Washington 59th Legislature 2006 Regular Session

By Representatives Hinkle, Schual-Berke, Holmquist, Shabro and Schindler

Read first time 01/23/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to actions for injuries resulting from health care;
2 amending RCW 4.22.070 and 7.70.070; adding a new section to chapter
3 4.56 RCW; and adding a new section to chapter 43.70 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.56 RCW
6 to read as follows:

7 (1)(a) In an action or arbitration for damages for injury or death
8 occurring as a result of providing health care, or arranging for the
9 provision of health care, whether brought under chapter 7.70, 4.20, or
10 4.24 RCW, or any other applicable law, the total amount of noneconomic
11 damages that may be awarded to the claimant shall not exceed one
12 million dollars unless the injury or death resulted from an act or
13 omission that constituted gross negligence, or that was reckless,
14 willful or wanton, or intentional, in which case there is no limitation
15 on the amount of noneconomic damages that may be awarded to the
16 claimant.

17 (b) In an action involving more than one defendant where at least
18 one defendant's acts or omissions are found to be negligent, and at

1 least one defendant's acts or omissions are found to be grossly
2 negligent, reckless, willful or wanton, or intentional:

3 (i) The amount of noneconomic damages that may be awarded to the
4 claimant from the judgment against a defendant whose acts or omissions
5 constituted simple negligence are limited to the amount specified in
6 subsection (1) of this section; and

7 (ii) There is no limitation on the amount of noneconomic damages
8 that may be awarded to the claimant from the judgment entered against
9 a defendant whose acts or omissions constituted gross negligence, or
10 were reckless, willful or wanton, or intentional.

11 (2) If the jury's assessment of noneconomic damages that are
12 attributable to a negligent defendant exceeds the amount that may be
13 awarded under subsection (1) of this section, the court shall enter a
14 judgment that:

15 (a) Limits the claimant's award of noneconomic damages from the
16 negligent defendant to the amount specified in subsection (1) of this
17 section; and

18 (b) Requires the negligent defendant to pay the amount of the
19 jury's assessment of noneconomic damages attributable to the negligent
20 defendant that is in excess of the limitation in subsection (1) of this
21 section to the court for deposit into the indigent emergency medical
22 care account established in section 2 of this act.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70 RCW
24 to read as follows:

25 The indigent emergency medical care account is created in the
26 custody of the state treasurer. The account shall receive deposits of
27 excess awards of noneconomic damages as provided in section 1 of this
28 act. Disbursements from the account shall be made by the department
29 subject to legislative appropriation. Expenditures from the account
30 may be used only to provide grants to health care facilities that
31 provide emergency room health care services. The department shall
32 distribute the funds under a formula that provides a relatively larger
33 share of the available funding to health care facilities that serve a
34 disproportionate share of low-income and medically indigent patients
35 with emergency room health care services. Any residue in the account
36 shall accumulate in the account and shall not revert to the general

1 fund at the end of the biennium. Costs incurred by the department in
2 administering the account shall be paid from the account.

3 **Sec. 3.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
4 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 which
7 is attributable to every entity which caused the claimant's damages
8 except entities immune from liability to the claimant under Title 51
9 RCW. The sum of the percentages of the total fault attributed to at-
10 fault entities shall equal one hundred percent. The entities whose
11 fault shall be determined include the claimant or person suffering
12 personal injury or incurring property damage, defendants, third-party
13 defendants, entities released by the claimant, entities with any other
14 individual defense against the claimant, and entities immune from
15 liability to the claimant, but shall not include those entities immune
16 from liability to the claimant under Title 51 RCW. Judgment shall be
17 entered against each defendant except those who have been released by
18 the claimant or are immune from liability to the claimant or have
19 prevailed on any other individual defense against the claimant in an
20 amount which represents that party's proportionate share of the
21 claimant's total damages. The liability of each defendant shall be
22 several only and shall not be joint except:

23 (a) A party shall be responsible for the fault of another person or
24 for payment of the proportionate share of another party where both were
25 acting in concert or when a person was acting as an agent or servant of
26 the party.

27 (b)(i) Except as provided in (b)(ii) of this subsection, if the
28 trier of fact determines that the claimant or party suffering bodily
29 injury or incurring property damages was not at fault, the defendants
30 against whom judgment is entered shall be jointly and severally liable
31 for the sum of their proportionate shares of the ~~((claimants~~
32 ~~{claimant's})~~) claimant's total damages.

33 (ii) Subsection (1)(b)(i) of this section does not apply to health
34 care providers as defined in RCW 7.70.020, in an action or arbitration
35 for damages for injury or death occurring as a result of providing
36 health care, or arranging for the provision of health care, whether
37 brought under chapter 7.70, 4.20, or 4.24 RCW, or any other applicable

1 law, with respect to judgments for noneconomic damages. In such an
2 action or arbitration, the liability of health care providers for
3 noneconomic damages is several only. For the purposes of this section,
4 "noneconomic damages" has the meaning given in RCW 4.56.250.

5 (2) If a defendant is jointly and severally liable under one of the
6 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
7 defendant's rights to contribution against another jointly and
8 severally liable defendant, and the effect of settlement by either such
9 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
10 4.22.060.

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

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

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

19 **Sec. 4.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
20 amended to read as follows:

21 (1) Except as provided in subsection (2) of this section, the court
22 shall, in any action under this chapter, determine the reasonableness
23 of each party's attorneys fees. The court shall take into
24 consideration the following:

25 ~~((1))~~ (a) The time and labor required, the novelty and difficulty
26 of the questions involved, and the skill requisite to perform the legal
27 service properly;

28 ~~((2))~~ (b) The likelihood, if apparent to the client, that the
29 acceptance of the particular employment will preclude other employment
30 by the lawyer;

31 ~~((3))~~ (c) The fee customarily charged in the locality for similar
32 legal services;

33 ~~((4))~~ (d) The amount involved and the results obtained;

34 ~~((5))~~ (e) The time limitations imposed by the client or by the
35 circumstances;

36 ~~((6))~~ (f) The nature and length of the professional relationship
37 with the client;

1 ~~((7))~~ (g) The experience, reputation, and ability of the lawyer
2 or lawyers performing the services;

3 ~~((8))~~ (h) Whether the fee is fixed or contingent.

4 (2)(a) An attorney may not contract for or collect a contingency
5 fee for representing a person in connection with an action for damages
6 for injury or death occurring as a result of providing health care or
7 related services, or the arranging for the provision of health care or
8 related services, that exceeds twenty percent of the amount recovered.

9 (b) The limitation in this subsection (2) applies whether the
10 recovery is by judgment, settlement, arbitration, mediation, or other
11 form of alternative dispute resolution.

12 (c) For purposes of this subsection (2), "recovered" means the net
13 sum recovered after deducting any disbursements or costs incurred in
14 connection with the arbitration, litigation, or settlement of the
15 claim. Costs of medical care incurred by the plaintiff and the
16 attorney's office overhead costs or charges are not deductible
17 disbursements or costs for such purposes.

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