

SENATE BILL REPORT

SHB 1719

As of March 18, 2011

Title: An act relating to limiting liability for unauthorized passengers in a vehicle.

Brief Description: Limiting liability for unauthorized passengers in a vehicle.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rodne, Schmick, Haler, Smith, Wilcox, Johnson, Klippert, Kristiansen, McCune, Short, Ross and Warnick).

Brief History: Passed House: 3/01/11, 98-0.

Committee Activity: Judiciary: 3/16/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: The common-law theory of respondeat superior allows an employer, including state and local governments in Washington, to be held vicariously liable for an employee's tortious act under certain circumstances. The term respondeat superior literally translates as "let the master answer." Generally, the employee must commit tortious conduct in the scope of employment, although Washington courts have held that an employer may be held liable for conduct that occurs when an employee does a mix of work and personal business.

The Washington Supreme Court recently held in the case of *Rahman v. State* that the state may be held vicariously liable for injuries suffered by a third-party passenger in a state vehicle driven by a state employee for work purposes. The plaintiff in *Rahman* was the wife of a state agency intern injured when her husband failed to negotiate a curve while driving from Olympia to Spokane. Although the intern was driving for work purposes, state rules prohibited him from bringing non-employee passengers. The majority ruled that court precedents and sound policy weighed in favor of holding the state vicariously liable because the intern was in the service of the state's business at the time of the accident. The dissent argued that the state should not be liable because the intern was not authorized to transport non-employees, and thus he acted outside the scope of his employment. Writing for the dissent, Justice Jim M. Johnson contended that the policy underlying respondeat superior – an employer's control over an employee – is absent when the employee is not acting with actual or apparent authority and the employer has no control over the employee.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The state has generally waived its sovereign immunity from suit by a statute enacted in 1961. The law makes the state and its political subdivisions generally liable for damages arising out of tortious conduct to the same extent as if the government were a private person or corporation.

Summary of Bill: The Legislature intends to overrule the Washington Supreme Court's decision in *Rahman v. State* by modifying the application of the legal doctrine of respondeat superior. State and local governments are not liable for injuries suffered by a third-party occupant of a vehicle owned, leased, or rented by the government if, at the time the injuries occurred, the third-party occupant was (1) riding in or on the vehicle with a government employee who had explicitly acknowledged in writing the government's policy on use of such vehicles; and (2) not expressly authorized by the government to be an occupant of the vehicle. Third-party occupants are people who occupy a government vehicle who are not government officers, employees, or agents. Local governments include cities, counties, or other subdivisions of the state and any municipal corporations, quasi-municipal corporations, or special districts within the state.

A private employer is not liable for any injury suffered by a third-party occupant of a vehicle owned, leased, or rented by the employer when the third-party occupant was riding in or on the vehicle with an employee who had explicitly acknowledged in writing the employer's policy on use of such vehicles, unless (1) the employer specifically and expressly authorized the occupancy; or (2) the third-party occupant was acting on behalf of or for the benefit of the employer, and the employer knew or impliedly approved or acquiesced. Third-party occupants are people who occupy an employer vehicle who are not officers, employees, agents, or authorized or constructive invitees of the private employer.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In the *Rahman* case, it was a question of fact as to whether the intern knew or should have known he was not allowed to have a passenger. This substitute bill is prospective, the original bill was retrospective. The bill helps to protect the state in a time of incredible strain on the budget. The scenario addressed by this bill doesn't come up too often but in the recent Supreme Court case, *Rahman*, the court changed the doctrine of respondeat superior. It was undisputed that Mr. Rahman was not authorized to take his wife on the trip to Spokane. But despite this, the Supreme Court still held that the state was liable for the unauthorized passenger's injuries. Prior to this case, the test was whether the employee was authorized to take the passenger on the trip. This bill reinstates that approach. In *Rahman*, the employee had been given the policy but the question was whether he had read the policy. His behavior also violated the state's ethics code for using a state owned resource for his own benefit. Unless an employer has some ability to control the employee, the employer shouldn't be liable for what the employee does.

Persons Testifying: PRO: Representative Jay Rodne, prime sponsor; Michael Lynch, WA State Attorney General's Office.