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SENATE BILL 5584

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Newhouse, Vognild, Nelson, Hansen, Thorsness, Owen and Bailey.

Read first time February 8, 1991. Referred to Committee on Law & Justice.

1            AN ACT Relating to eliminating joint and several liability for  
2 noneconomic damages; amending RCW 4.22.070; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.**            The legislature finds that in *Sofie v.*  
5 *Fibreboard Corp.*, 112 Wn.2d 636 (1989), the Washington state supreme  
6 court struck down the limit on noneconomic damages enacted by the  
7 legislature in 1986, because the court found that the statutory  
8 limitation on noneconomic damages interfered with the jury's province  
9 to determine damages, and thus violated a plaintiff's constitutionally  
10 protected right to trial by jury.

11            The legislature further finds that reforms in existing law for  
12 actions involving fault are necessary and proper to avoid catastrophic  
13 economic consequences for state and local governmental entities as well  
14 as private individuals and businesses.

1           Therefore, the legislature declares that to remedy the economic  
2 inequities which may arise from *Sofie*, defendants in actions involving  
3 fault should be held financially liable in closer proportion to their  
4 respective degree of fault. To treat them differently is unfair and  
5 inequitable.

6           It is further the intent of the legislature to partially eliminate  
7 causes of action based on joint and several liability as provided by  
8 this act for the purpose of reducing costs associated with the civil  
9 justice system.

10           **Sec. 2.** RCW 4.22.070 and 1986 c 305 s 401 are each amended to read  
11 as follows:

12           (1) For the purposes of this section, the term "economic damages"  
13 means objectively verifiable monetary losses, including medical  
14 expenses, loss of earnings, burial costs, loss of use of property, cost  
15 of replacement or repair, cost of obtaining substitute domestic  
16 services, loss of employment, and loss of business or employment  
17 opportunities. "Economic damages" does not include subjective,  
18 nonmonetary losses such as pain and suffering, mental anguish,  
19 emotional distress, disability and disfigurement, inconvenience, injury  
20 to reputation, humiliation, destruction of the parent-child  
21 relationship, the nature and extent of an injury, loss of consortium,  
22 society, companionship, support, love, affection, care, services,  
23 guidance, training, instruction, and protection.

24           (2) In all actions involving fault of more than one entity, the  
25 trier of fact shall determine the percentage of the total fault which  
26 is attributable to every entity which caused the claimant's damages,  
27 including the claimant or person suffering personal injury or incurring  
28 property damage, defendants, third-party defendants, entities released  
29 by the claimant, entities immune from liability to the claimant and

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

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

12 (b) If the trier of fact determines that the claimant or party  
13 suffering bodily injury or incurring property damages was not at fault,  
14 the defendants against whom judgment is entered shall be jointly and  
15 severally liable for the sum of their proportionate shares of the  
16 claimant's ~~((total))~~ economic damages.

17 ~~((+2))~~ (3) If a defendant is jointly and severally liable under  
18 one of the exceptions listed in subsections (1)(a) or (1)(b) of this  
19 section, such defendant's rights to contribution against another  
20 jointly and severally liable defendant, and the effect of settlement by  
21 either such defendant, shall be determined under RCW 4.22.040,  
22 4.22.050, and 4.22.060.

23 ~~((+3))~~ (4)(a) Nothing in this section affects any cause of action  
24 relating to hazardous wastes or substances or solid waste disposal  
25 sites.

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

28 (c) Nothing in this section shall affect any cause of action  
29 arising from the manufacture or marketing of a fungible product in a

1 generic form which contains no clearly identifiable shape, color, or  
2 marking.

3 NEW SECTION. **Sec. 3.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.