

HOUSE BILL REPORT

HB 1358

As Reported By House Committee On:
Judiciary

Title: An act relating to civil liability of joint tortfeasors.

Brief Description: Changing provisions relating to civil liability of joint tortfeasors.

Sponsors: Representatives Appelwick, Ludwig, Johanson, Campbell, H. Myers, R. Meyers, Wineberry and Dellwo.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Campbell; Chappell; Johanson; Locke; Mastin; H. Myers; Riley; and Wineberry.

Minority Report: Do not pass. Signed by 6 members: Representatives Ballasiotes, Assistant Ranking Minority Member; Forner; Long; Schmidt; Scott; and Tate.

Staff: Bill Perry (786-7123).

Background: Joint and several liability was generally abolished by the Tort Reform Act of 1986. With some exceptions, under the current law when there are multiple defendants whose fault led to the plaintiff's injury, each defendant is responsible only for the percentage of the injury that his or her fault caused. That is, each defendant is "severally" or individually liable only.

Under a system of "joint" liability, each defendant is liable for all of the injury caused by the defendants. The plaintiff may recover all of his or her judgment from any one or more of the liable defendants. Any defendant who has paid more than his or her "share" of the judgment then has a right of contribution from the other defendants. That is, the injured party can choose his or her target for collecting all of the judgment, and leave the defendants to

sort out the fair shares among themselves. Under this kind of joint liability, the risk of loss due to inability to collect from any one defendant is born by the other defendants.

Under the Tort Reform Act of 1986, joint liability still applies in the case of a plaintiff who is not at fault. Therefore, a plaintiff who did not contribute to his or her own injury still gets a full recovery of damages so long as at least one defendant is available and solvent enough to pay the entire award. On the other hand, a plaintiff who did contribute to his or her own injury will not get a full recovery to the extent that the amount owed by any of the defendants is uncollectible.

Summary of Substitute Bill: In certain circumstances, a judgment debt that is uncollectible from one defendant may be reallocated between an at-fault plaintiff and any other defendants who are at least as much at fault as the plaintiff. The reallocation is made in the same ratio as the respective percentages of fault that were assigned to the plaintiff and the remaining defendants.

A defendant whose share has been reallocated remains liable to the plaintiff on the judgment and to the other defendants for contribution.

The court is to determine whether or not a judgment is "uncollectible" based on three factors: (1) the current and future availability and extent of resources from which collection might be made; (2) the current and future ability of the plaintiff to collect the judgment; and (3) the reasonableness of the plaintiff's past efforts to collect.

Substitute Bill Compared to Original Bill: The substitute limits the reallocation provisions to defendants who are at least as much at fault as the plaintiff.

Fiscal Note: Not requested.

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

Testimony For: This bill is a good balance between the old pure joint and several rule and the 1986 Tort Reform Act. An injured plaintiff and defendants who caused the injury should share the burden of an uncollectible judgment.

Testimony Against: A defendant should be responsible only for his or her own fault. The bill is detrimental to a good business climate.

Witnesses: Hal Hodgins, Washington State Trial Lawyers Association (pro); Sean Sheehan, city of Seattle (con); Sonja Alexander, Liability Reform Coalition (con); Craig McGee, PEMCO Financial Center (con); Matt Thomas, Washington Association of Prosecuting Attorneys (con); William Phillips, Washington Defense Trial Lawyers (con); and Cliff Finch, Association of Washington Businesses (con).