

SENATE BILL REPORT

SB 5361

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 1, 1993

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

SPONSORS: Senators A. Smith and Niemi

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators A. Smith, Chairman; Niemi, Quigley, Rinehart, and Spanel.

Minority Report: Do not pass.

Signed by Senators Hargrove, McCaslin, Nelson, and Roach.

Staff: Jon Carlson (786-7459)

Hearing Dates: February 3, 1993; March 1, 1993

BACKGROUND:

Prior to 1986, in personal injury cases where more than one person or entity was at fault, the traditional rule of joint and several liability provided that each defendant was legally responsible for the entire harm to the claimant. Thus, a claimant could bring an action against one or all of the defendants in order to obtain a full recovery. However, in 1986, joint and several liability was modified so that, with a few exceptions, each defendant is only responsible for his or her proportionate share of fault.

Although fault is assigned to each defendant at trial, a party which is released by the claimant as a result of settlement is not subject to a judgment. In those instances, a claimant's recovery may result in either overcompensation or undercompensation. This depends on whether the claimant has settled with a party for more or less than the proportionate share of the party's fault as determined by the factfinder or jury. In addition, settlements are discouraged as a claimant cannot settle with any party without risking a chance that the claimant cannot recover the full judgment rendered by the factfinder or jury.

To address these concerns, language is suggested which would require the remaining defendants in a lawsuit to jointly and severally bear the proportionate share of fault of a released party.

SUMMARY:

A defendant is jointly and severally liable to the claimant for any fault of an entity released by the claimant, provided that the total damages are first reduced by any amount paid to the claimant by a released entity.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Allowing a settling party's proportionate share of fault to be borne jointly and severally by the remaining defendants in a lawsuit would encourage settlements and result in more equitable judgment awards.

TESTIMONY AGAINST:

Imposing joint and several liability in these instances would unfairly impact "deep-pocket" defendants, such as political subdivisions, who are minimally at fault.

TESTIFIED: John Budlong, WA State Trial Lawyers Assn. (pro); Lee Pardini, Merritt & Pardini, (con); William Phillips, WA Defense Trial Lawyers (con); Sonja Alexander, Assn. of WA Cities (con); Sean Sheehan, City of Seattle Law Dept. (con)