

HOUSE BILL ANALYSIS

HB 2020

Title: An act relating to limiting actions for damages by certain persons.

Brief Description: Limiting actions for damages.

Sponsors: Representatives L. Thomas, Dyer, Zellinsky and DeBolt.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: Several statutes restrict damage recovery or provide defenses to recovery in tort cases involving injury or death to persons who are committing crimes, including drunk driving (DUI).

A person who is sued has a complete defense against any action for damages for personal injury or death if the person injured or killed was committing a felony that was the proximate cause of the injury or death. RCW 4.24.420. This defense is not limited to actions based on any particular degree of culpability such as negligence, gross negligence, recklessness, or intent. A conviction is not required in order to prove a felony was committed.

In addition, generally a violation of any criminal statute may be considered as evidence of negligence. In the case of a plaintiff who commits a crime, that evidence may result in a finding of contributory negligence on the part of an injured claimant, and thereby reduce the liability of a defendant. Furthermore, in the case of DUI, the commission of the crime is negligence per se. That is, an injured plaintiff who was driving drunk is automatically contributorily negligent. RCW 5.40.050. These provisions do not require that the injured plaintiff be convicted in order to prove violation of the criminal statute.

In addition, intoxication by alcohol or drugs, even if it does not involve criminal activity, may affect a plaintiff's ability to recover damages. Generally, it is a complete defense to an action for damages that the plaintiff's intoxication was a proximate cause of his or her injuries and the plaintiff was more than 50 percent at fault. However, an exception to this rule is provided in the case of an injured plaintiff who was drunk and is suing the driver of a motor vehicle who was also drunk, if the driver's drunkenness was a proximate cause of the injury and the

plaintiff's drunkenness was not a proximate cause of the occurrence causing the injury. RCW 5.40.060.

Summary of Bill: A plaintiff who sues based on negligence may not recover damages if the plaintiff's injuries were proximately caused by the plaintiff's commission of a felony for which he or she has been convicted.

Limits are placed on the recovery of damages and on the liability of insurers' cases of damages arising out of the operation of a motor vehicle. A person may not recover noneconomic damages if:

- o The injured person was convicted of a DUI committed at the time of the injury; or
- o The injured person was the owner of the vehicle, had been cited in the past for not having insurance, and the vehicle was not insured at the time of the injury.

Generally, an insurer is not liable to indemnify an injured person for noneconomic damages that are barred under this provision. An exception to this immunity is provided for if the injured person was an uninsured owner barred from recovering damages under this provision and was injured by a person convicted of DUI.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

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