HOUSE BILL ANALYSIS
SB 6665

Title: An act relating to any cause of action based on negligence brought against any accountant licensed under chapter 18.04 RCW.

Brief Description: Establishing privity of contract for actions brought against accountants.

Sponsors: Senators Roach and Goings.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: Negligence is a type of tort liability based on damages caused by another person's failure to exercise reasonable care. To establish a negligence cause of action, the plaintiff must prove the following elements: the existence of a duty on the part of the defendant for the benefit of the plaintiff; breach of that duty by the defendant through neglect or carelessness; and damage to the plaintiff caused by the breach.

In addition to the general negligence tort, a person may be sued for the tort of negligent misrepresentation. To establish a case of negligent misrepresentation, the plaintiff must prove: a misrepresentation was made by the defendant in a business or professional capacity; the defendant breached a duty owed to the particular plaintiff; the plaintiff justifiably relied on the misrepresentation; and the breach caused damages to the plaintiff. A defendant is liable for negligent misrepresentation only if the defendant could contemplate reliance on the misrepresentation by the particular plaintiff.

The negligence standard is one of reasonableness, the failure to use the care that a reasonably prudent person would use under similar circumstances. A professional person, such as an accountant, is required to exercise the knowledge, competence, and skill that a member of the profession who is in good standing would exercise in the same or similar circumstances.

The accountancy profession provides a number of types of services to various business entities and individuals. These services include the preparation of taxes, the issuance of auditing reports, or the compilation or review of a business's financial statements. Often, the financial statements, reports, or audits prepared by an accountant or firm are available to persons other than the person for whom they are prepared and will be used by these other persons in making financial or other decisions.

Summary of Bill: The ability of a person to bring a negligence cause of action against an accountant or accounting firm for an injury relating to the performance of accountancy services is limited.

A negligence action against an accountant or accounting firm may only be brought under the following two circumstances:

- The plaintiff is the issuer of the financial statement or other information examined, compiled, reviewed, audited, or reported on by the accountant or firm, and the plaintiff engaged the accountant or firm to provide those services; or

- The accountant or firm: (1) knew the financial statements or other information would be made available for use in a specified transaction by the plaintiff; (2) was aware the plaintiff intended to rely on the information in connection with a specified transaction; and (3) directly contacted and communicated with the plaintiff and expressed an understanding that the plaintiff would rely on the information.

These limitations apply to all causes of actions commenced after the effective date of the act, regardless of when the cause of action arose.

Fiscal Note: Not requested.

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

Office of Program Research