
Judiciary Committee

HB 2292

Title: An act relating to admissibility of evidence of remedial measures.

Brief Description: Limiting admissibility of evidence relating to remedial measures taken to prevent future traffic accidents.

Sponsors: Representatives Buck, Dunn, Benson, Lisk, Alexander and Pflug.

Brief Summary of Bill

- Bars admissibility of remedial measures taken by the Department of Transportation after an accident that was potentially caused by icy conditions for the purpose of proving fault.
- Bars admissibility of measures taken by the Department of Transportation to aid drivers in safely negotiating icy state highways in one location for proof of fault in connection with an accident occurring at another location.

Hearing Date: 2/1/02

Staff: Ryan Jensen (786-5793); Bill Perry (786-7123).

Background:

The Department of Transportation (DOT) is required to adopt and designate a uniform state standard for the manufacturing, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected on state highways. These signs are for the purpose of furnishing information to travelers regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution. DOT also has a duty to erect and maintain caution and warning signs or signals wherever practicable on all primary and secondary state highways.

Since 1979, Washington Evidence Rule 407 has codified the common law doctrine that excludes evidence of subsequent remedial measures as proof of an admission of "negligence or culpable conduct." The rule's exclusionary principle applies to repairs or design changes in tangible products as well as to warning signs and disciplinary actions. Washington courts justify the exclusion of such evidence because it is viewed as having only marginal relevance,

and because it may discourage development and implementation of safety measures. Rule 407 applies only to subsequent remedial measures taken by a party to the litigation, and does not exclude evidence of measures taken by a nonparty.

Rule 407 does provide for exceptions. It does not exclude evidence of subsequent remedial measures when the evidence is offered to prove ownership, control, or feasibility of precautionary measures. But even when evidence is offered to prove an issue other than negligence or culpable conduct, admissibility depends on whether the issue is actually controverted.

Washington Evidence Rule 407:

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Summary of Bill:

DOT is encouraged to take reasonable precautions to aid drivers in safely negotiating icy state highways.

Measures taken by DOT after an accident on a state highway are inadmissible to prove negligence or culpable conduct where: (1) the measures would have made the event less likely to have occurred; and (2) the accident was potentially caused by icy conditions. This provision is already covered by Rule 407.

Measures taken by DOT to aid drivers in safely negotiating icy state highways in one location are inadmissible for proving negligence or culpable conduct in connection with an accident that occurred at another location. This provision may go beyond the scope of Rule 407 because it is not limited to "subsequent" remedial measures.

Subsequent remedial measures are admissible where such evidence is offered for a purpose other than proving negligence or culpable conduct. "Other" purposes may include proving ownership, control, feasibility of precautionary measures, or impeachment. This provision is already provided for by Rule 407.

Appropriation: None.

Fiscal Note: Not Requested.

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