

HOUSE BILL REPORT

HB 2354

As Passed House:

February 11, 2002

Title: An act relating to expressions of benevolence, sympathy, and regret.

Brief Description: Regulating the admissibility of benevolent gestures in civil actions.

Sponsors: By Representatives Alexander, Lantz and Esser; by request of Governor Locke and Attorney General.

Brief History:

Committee Activity:

Judiciary: 1/24/02, 1/29/02 [DP].

Floor Activity:

Passed House: 2/11/02, 94-0.

Brief Summary of Bill

- Makes inadmissible as evidence in a civil action an expression of sympathy or benevolence relating to the pain, suffering or death of a person involved in an accident.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Edie Adams (786-7180).

Background:

During the 2001 interim, Governor Locke and Attorney General Gregoire sponsored a Risk Management Task Force in response to increasing attention to incidents of severe harm to citizens and the increasing liability of the state for injuries and losses. The purpose of the task force was to identify how the state can deliver its difficult and risky programs and services in a way that better protects citizens of the state from harm or injury and that engages in the most effective risk management possible. The task force

was comprised of a number of groups, including: the Attorney General, legislators, agency directors and budget officials, risk managers, attorneys, and advisors from the University of Washington.

The Risk Management Task Force issued a number of recommendations in its final report. One of the recommendations of the task force is that an agency involved in a loss should consider visiting victims and their family members to express regret for the loss and consider offering services that might aid them in dealing with the loss.

Under state evidence laws, a statement of regret from an agency involved in a civil action would generally be admissible in the action since a statement by a party to a suit is admissible in court as long as it is relevant and not subject to a specific exclusion.

Summary of Bill:

The portion of statements, writings or benevolent gestures that are made to a person or the person's family and that express sympathy or benevolence relating to the pain, suffering or death of the person involved in an accident are inadmissible as evidence in a civil action. A statement of fault is not made inadmissible under this provision.

"Accident" is defined as an occurrence that results in an injury or death that is not the result of wilful action by a party. "Benevolent gestures" means actions that convey a sense of compassion or commiseration emanating from human impulses. "Family" is defined as any of the following relations of an injured party: spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half-brother, half-sister, adopted child of a parent or spouse's parents.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The purpose of the Risk Management Task Force was to respond to the dramatic increase of financial responsibility of the state in tort claims and the terrible tragedies and loss of life that this represents. The goal was to be proactive so the state can deliver services in a manner that doesn't harm citizens and that engages in the lowest risk management possible. Many recommendations of the task force have already been implemented. Victims and families of victims who provided information and input to the task force expressed that they really want a human face on government that can express the government's regret for the loss. The concern that an expression of regret could be used against the state in a lawsuit has prevented them from being made. Making

statements of regret inadmissible will enable agencies to say they are sorry without worrying about it being used against them. The bill applies to anyone who makes a statement of regret for a loss, not just state agencies. It is an important step in improving the discourse between plaintiffs and defendants. It does not prevent admissions of fault from being admissible.

Testimony Against: None.

Testified: Representative Alexander, prime sponsor; Christine Gregoire, Attorney General; Marty Brown, Office of Financial Management; Dale Carlisle, Washington State Bar Association; Larry Shannon, Washington State Trial Lawyers Association; Dana Childers, Liability Reform Coalition; and Sophia Byrd, Washington State Association of Counties.