

ESHB 1928 - H AMD TO H AMD (1928-S.E AMH LANT ADAM 047)

By Representative

1 On page 2, after line 37 of the amendment, insert the
2 following:

3 "NEW SECTION. **Sec. 3.** It is the intent of the legislature by
4 enacting sections 4 and 5 of this act that health care providers
5 should remain personally liable for their own negligent or wrongful
6 acts or omissions in connection with the provision of health care
7 services, but that their vicarious liability for the negligent or
8 wrongful acts or omissions of others should be curtailed. To that
9 end, it is the intent of the legislature that *Adamski v. Tacoma*
10 *General Hospital*, 20 Wn. App. 98, 579 P.2d 970 (1978), and its
11 holding that hospitals may be held liable for a physician's acts or
12 omissions under so-called "apparent agency" or "ostensible agency"
13 theories should be reversed, so that hospitals will not be liable
14 for the act or omission of a health care provider granted hospital
15 privileges unless the health care provider is an actual agent or
16 employee of the hospital. It is further the intent of the
17 legislature that, notwithstanding any generally applicable
18 principle of vicarious liability to the contrary, individual health
19 care professionals will not be liable for the negligent or wrongful
20 acts of others, except those who were acting under their direct
21 supervision and control.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 7.70
23 RCW to read as follows:

24 A public or private hospital shall be liable for an act or
25 omission of a health care provider granted privileges to provide
26 health care at the hospital only if the health care provider is an
27 actual agent or employee of the hospital and the act or omission of
28 the health care provider occurred while the health care provider
29 was acting within the course and scope of the health care
30 provider's agency or employment with the hospital.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 7.70
2 RCW to read as follows:

3 A person who is a health care provider under RCW 7.70.020 (1)
4 or (2) shall not be personally liable for any act or omission of
5 any other health care provider who was not the person's actual
6 agent or employee or who was not acting under the person's direct
7 supervision and control at the time of the act or omission."

8 Renumber the remaining section and correct the title.

EFFECT: Adds provisions limiting the vicarious liability of a
hospital or health care provider for the negligent acts of
persons who are not actual agents or employees of the hospital
or health care provider.

Provides a legislative intent that the holding of *Adamski v.
Tacoma General Hospital* be reversed with respect to the theory
of ostensible agency.

Provides that a hospital is liable for the act of a
provider granted privileges at the hospital only if the
provider is an actual agent or employee and the act
occurred during the course of employment.

Provides that an individual health care provider is not
liable for the act of another provider who is not his or
her actual agent or employee and who is not acting under
his or her direct supervision or control.