

# HOUSE BILL REPORT

## 2ESHB 1928

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**As Passed House:**

February 16, 2004

**Title:** An act relating to parties liable for damages in actions under chapter 7.70 RCW.

**Brief Description:** Changing provisions relating to parties liable for damages in actions under chapter 7.70 RCW.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lantz, Carrell, McMahan, Clibborn, Campbell, Moeller, Schual-Berke, Cody, Newhouse, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Veloria, Conway, G. Simpson, Sommers and Haigh).

**Brief History:**

**Committee Activity:**

Judiciary: 2/6/04 [DP].

**Floor Activity:**

Passed House: 2/16/04, 71-27.

**Brief Summary of Second Engrossed Substitute Bill**

- Eliminates, with respect to medical malpractice cases, the requirement that any entity causing a claimant's damages, including entities who are not parties to the lawsuit, must be assigned a percentage of the total fault for a claimant's damages, and requires that 100 percent of the fault be assigned only to entities who are parties to the action or who are immune or have been released by the claimant.
- Eliminates a health care provider's joint liability for noneconomic damages in a medical malpractice case.
- Changes the rules relating to admissibility of collateral source payments.

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**HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Edie Adams (786-7180).

**Background:**

Determination of Percentages of Fault in Tort Cases.

In a tort case based on fault, the trier of facts is required to assign a percentage of the fault to "every entity which caused the claimant's damages." (An exception is provided for entities who are immune under the state's Industrial Insurance Law.) These assigned percentages must add up to 100 percent. The "entities" to whom fault must be assigned include:

- the claimant;
- defendants;
- entities released by the claimant;
- entities who are immune from liability; and
- entities who have an individual defense against the claimant.

This list of entities to whom fault may be assigned is potentially longer than the list of defendants against whom judgment may be entered in a given case. Only defendants who are parties to the case and against whom judgment is entered are responsible for paying the claimant's damages. Defendants pay damages in proportion to their percentages of fault.

#### Joint and Several Liability.

With some exceptions, a defendant in a tort case is responsible only for his or her own percentage of fault in causing the claimant's harm. In some instances, however, multiple defendants may be "jointly and severally" liable for the whole of the claimant's damages. This joint and several liability means that any one defendant can be required to pay all of the damages. (The paying defendant then has a "right of contribution" against any other defendant to recover shares of the damages based on each defendant's fault.) One of the instances in which joint and several liability applies is when the claimant was not at fault in causing his or her own harm.

The damages that may be awarded to a claimant include payments for a variety of harms. Some of these are "economic" damages which are defined as "objectively verifiable monetary losses" such as lost earnings and out-of-pocket expenses required to deal with the harm done. "Noneconomic damages," on the other hand, are defined as "subjective, nonmonetary losses" and include:

- pain, suffering, inconvenience, mental anguish, disability or disfigurement;
- emotional distress;
- loss of society and companionship;
- loss of consortium;
- injury to reputation;
- humiliation; and
- destruction of the parent-child relationship.

#### Collateral Source Payments.

In the context of tort actions, "collateral sources" are sources of payments or benefits available to the injured person that are totally independent of the tortfeasor. Examples of collateral sources are health insurance coverage, disability insurance, or sick leave. Under the common law "collateral source rule," a defendant is barred from introducing evidence that the plaintiff

has received collateral source compensation for the injury. The rationales provided by the courts for the rule include: (1) that the wrongdoer should not benefit from collateral payments made by third parties to the person he has wronged and thereby escape responsibility for the harm; and (2) to prevent the possibility that evidence of collateral sources will prejudice the fact finder in determining the injured person's damages.

The traditional collateral source rule has been modified in medical malpractice actions. In a medical malpractice action, any party may introduce evidence that the plaintiff has received compensation for the injury from collateral sources, except those purchased with the plaintiff's assets (e.g., insurance plan payments). The plaintiff may present evidence of an obligation to repay the collateral source compensation.

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### **Summary of Second Engrossed Substitute Bill:**

The rules on several features of the tort law are changed with respect to medical malpractice cases. These changes include adjusting the way percentages of fault are assigned, limiting the application of joint and several liability with respect to a health care provider's responsibility for noneconomic damages, and limiting the vicarious liability of hospitals and health care providers.

#### Determination of Percentages of Fault in Tort Cases.

In medical malpractice cases, fault is to be assigned only to claimants and defendants who are parties to the action, and to entities who are immune or have been released by the claimant.

#### Joint and Several Liability.

A health care provider cannot be held jointly and severally liable for the noneconomic damages of an injured claimant in a medical malpractice case.

#### Collateral Sources.

The restriction on presenting evidence of collateral source payments that come from insurance purchased by the plaintiff is removed. The plaintiff, however, may introduce evidence of amounts paid to secure the right to the collateral source payments (e.g., premiums), in addition to introducing evidence of an obligation to repay the collateral source compensation.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.