
Judiciary Committee

HB 2828

Title: An act relating to the liability of hospitals for noneconomic damages in actions under chapter 7.70 RCW.

Brief Description: Limiting the liability of hospitals for noneconomic damages in actions under chapter 7.70 RCW.

Sponsors: Representatives Lantz, Moeller, Cody, Morrell and Darneille.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides that a hospital in a medical negligence action is not jointly and severally liable for damages if the hospital was less than 25% at fault.

Hearing Date: 1/27/04

Staff: Edie Adams (786-7180).

Background:

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the required standard of care;
- The health care provider promised that the injury suffered would not occur; or
- The injury resulted from health care to which the patient did not consent.

Failure to follow the standard of care means that the health care provider failed to exercise the degree of care expected of a reasonably prudent provider of the same field at that time, and acting in the same or similar circumstances.

As a general rule, a defendant in a tort case is responsible only for his or her own percentage of fault in causing the plaintiff's harm. In some instances, however, multiple defendants may be "jointly and severally" liable for the whole of the plaintiff's damages. 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 plaintiff was not at fault in causing his or her own harm.

The damages that may be awarded to a plaintiff in a tort action include both "economic" and "non-economic" damages. "Economic" damages are "objectively verifiable monetary losses" such as lost earnings, medical expenses, and other out-of-pocket expenses. "Non-economic" damages, on the other hand, are defined as "subjective, non-monetary 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.

Summary of Bill:

A hospital in a medical negligence action is not jointly and severally liable for non-economic damages if the hospital is less than 25% at fault. The hospital, if less than 25% at fault, is responsible for paying only that portion of a non-economic damage award that represents the hospital's percentage of fault in causing the harm.

Appropriation: None.

Fiscal Note: Not requested.

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