

# HOUSE BILL REPORT

## HB 2828

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### As Reported by House Committee On: Judiciary

**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.

#### Brief History:

##### Committee Activity:

Judiciary: 1/27/04, 1/29/04 [DPS].

#### Brief Summary of Substitute Bill

- Provides that a hospital in a medical negligence action is not jointly and severally liable for non-economic damages.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Lovick and Newhouse.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Flannigan and Kirby.

**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.

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### **Summary of Substitute Bill:**

A hospital in a medical malpractice action is not jointly and severally liable for non-economic damages. The hospital 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.

The definition of non-economic damages is amended to specifically include "loss of ability to enjoy life" and "other non-pecuniary damages."

### **Substitute Bill Compared to Original Bill:**

The original bill eliminated a hospital's joint and several liability for non-economic damages only if the hospital was less than 25 percent at fault in causing the plaintiff's injuries.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** None.

**Testimony Against:** The bill recognizes that hospitals are perceived as the deep pocket and that joint and several liability creates a greater risk for hospitals. However, there are two flaws in the bill. First, the bill applies only to hospitals, but joint and several liability is an issue for the entire medical community, as well as for every business, nonprofit organization and governmental entity. We support broad-based reform rather than this limited reform for hospitals. Second, the 25 percent threshold seems arbitrary. It would make more sense to have several liability apply if the hospital is 50 percent or less at fault.

This legislation will take away a patient's right to receive full compensation for his or her injuries. If a hospital is providing the health care service to the public, the hospital should be responsible for making the victim whole. This legislation will benefit hospitals and their insurance companies and harm victims a second time.

**Persons Testifying:** Barbara Shickich, Washington State Hospital Association; Larry Shannon, Washington State Trial Lawyers Association; Cliff Webster, Washington State Medical Association; Bob Guile, citizen; Ashley Bucy, citizen; and Bob Budlong, Washington State Trial Lawyers Association.

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