

# SENATE BILL REPORT

## 2ESHB 1928

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As Reported By Senate Committee On:  
Judiciary, February 26, 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:** 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, Simpson, Sommers and Haigh).

**Brief History:**

**Committee Activity:** Health & Long-Term Care: 4/2/03, 4/3/03 [DPA, DNPA].  
Judiciary: 2/25/04, 2/26/04 [DP, DNP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Hargrove, Haugen, Johnson, Roach and Thibaudeau.

**Minority Report:** Do not pass.

Signed by Senator Kline.

**Staff:** Jinnah Rose-McFadden (786-7421)

**Background:** Determination of Percentages of Fault in Tort Cases: When making a determination of liability in tort actions involving negligent or reckless acts or omissions, a jury decides the percent of fault of each entity connected to the action. The percent of fault attributed to an entity is recoverable if that entity: 1) is a party to the action; 2) has had judgment entered against them; 3) does not have a claim of immunity; and 4) has not entered into a release with the plaintiff. Each entity is responsible for its percent of fault, as adjudged by the jury.

Joint and Several Liability: In 1986, the Legislature abolished traditional joint and several liability and adopted proportionate share liability. While several liability is the general rule, exceptions exist holding defendants jointly and severally liable for the sum of their proportionate liability. Joint and several liability means that any one defendant can be required to pay all of the damages. One instance in which joint and several liability applies is where a claimant was not at fault in causing his or her own harm.

Economic and Noneconomic Damages: Damages that may be awarded to a claimant include payments for a variety of harms. Economic damages are objectively verifiable monetary

losses, including lost earnings and out-of-pocket expenses. Noneconomic damages are subjective nonmonetary losses, including: 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 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 an injury.

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 an injury from collateral sources, except those purchased with the plaintiff's assets, such as insurance. The plaintiff may present evidence of an obligation to repay the collateral source compensation.

**Summary of Bill:** The rules on several features of the tort law are changed with respect to medical malpractice cases.

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 defendant in a medical malpractice action may present evidence of collateral source payments from insurance purchased by the plaintiff. The plaintiff, however, may introduce evidence of amounts paid to secure the right to the collateral source payments, in addition to introducing evidence of an obligation to repay the collateral source compensation.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Concerns: Eliminating the "empty chair" defense from our statutory scheme is positive. This will reduce the cost of litigation by decreasing the number of parties named in medical malpractice claims.

**Testimony Against:** The title of the bill does not include all possible medical malpractice claims and is therefore insufficient. The title should include reference to wrongful death claims. Eliminating joint and several liability for health care providers is a good component of this bill. However, the bill does not go far enough. Joint and several liability should be eliminated for both economic as well as noneconomic damages. The "empty chair" defense should not be eliminated from the statute.

**Testified:** WITH CONCERNS: Larry Shannon, WA State Trial Lawyers Association; CON:  
Cliff Webster, WA State Medical Association.