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HOUSE BILL 1859

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State of Washington

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By Representatives Schual-Berke, Pflug, Carrell, Ahern, Chandler, Cox, Alexander, Talcott, Schindler, Mastin, DeBolt, Clements, Holmquist and Woods

Read first time 02/12/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to joint and several liability for damages in  
2 actions under chapter 7.70 RCW; and amending RCW 4.22.070.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
5 as follows:

6 (1) In all actions involving fault of more than one entity, the  
7 trier of fact shall determine the percentage of the total fault which  
8 is attributable to every entity which caused the claimant's damages  
9 except entities immune from liability to the claimant under Title 51  
10 RCW. The sum of the percentages of the total fault attributed to at-  
11 fault entities shall equal one hundred percent. The entities whose  
12 fault shall be determined include the claimant or person suffering  
13 personal injury or incurring property damage, defendants, third-party  
14 defendants, entities released by the claimant, entities with any other  
15 individual defense against the claimant, and entities immune from  
16 liability to the claimant, but shall not include those entities immune  
17 from liability to the claimant under Title 51 RCW. Judgment shall be  
18 entered against each defendant except those who have been released by  
19 the claimant or are immune from liability to the claimant or have

1 prevailed on any other individual defense against the claimant in an  
2 amount which represents that party's proportionate share of the  
3 claimant's total damages. The liability of each defendant shall be  
4 several only and shall not be joint except:

5 (a) A party shall be responsible for the fault of another person or  
6 for payment of the proportionate share of another party where both were  
7 acting in concert or when a person was acting as an agent or servant of  
8 the party.

9 (b)(i) Except as provided in (b)(ii) of this subsection, if the  
10 trier of fact determines that the claimant or party suffering bodily  
11 injury or incurring property damages was not at fault, the defendants  
12 against whom judgment is entered shall be jointly and severally liable  
13 for the sum of their proportionate shares of the ((claimants  
14 {claimant's}) claimant's total damages.

15 (ii) (b)(i) of this subsection does not apply to health care  
16 providers as defined in RCW 7.70.020, in all cases governed by chapter  
17 7.70 RCW with respect to judgments for noneconomic damages. In all  
18 cases governed by chapter 7.70 RCW, the liability of health care  
19 providers for noneconomic damages is several only. For the purposes of  
20 this section, "noneconomic damages" has the meaning given in RCW  
21 4.56.250.

22 (2) If a defendant is jointly and severally liable under one of the  
23 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
24 defendant's rights to contribution against another jointly and  
25 severally liable defendant, and the effect of settlement by either such  
26 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
27 4.22.060.

28 (3)(a) Nothing in this section affects any cause of action relating  
29 to hazardous wastes or substances or solid waste disposal sites.

30 (b) Nothing in this section shall affect a cause of action arising  
31 from the tortious interference with contracts or business relations.

32 (c) Nothing in this section shall affect any cause of action  
33 arising from the manufacture or marketing of a fungible product in a  
34 generic form which contains no clearly identifiable shape, color, or  
35 marking.

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