
ENGROSSED SUBSTITUTE HOUSE BILL 1928

State of Washington

58th Legislature

2003 Regular Session

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, Voloria, Conway, Simpson, Sommers and Haigh)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to parties liable for damages in actions under
2 chapter 7.70 RCW; amending RCW 4.22.070 and 70.105.112; adding new
3 sections to chapter 7.70 RCW; and creating a new section.

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

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

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

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

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

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

16 (ii) Subsection (b)(i) of this subsection does not apply to health
17 care providers as defined in RCW 7.70.020, in all cases governed by
18 chapter 7.70 RCW with respect to judgments for noneconomic damages. In
19 all cases governed by chapter 7.70 RCW, the liability of health care
20 providers for noneconomic damages is several only. For the purposes of
21 this section, "noneconomic damages" has the meaning given in RCW
22 4.56.250.

23 (2) In all actions for damages under chapter 7.70 RCW, the entities
24 to whom fault may be attributed shall be limited to the claimants,
25 defendants, and third-party defendants who are parties to the action
26 and any entities released by the claimant.

27 (3) If a defendant is jointly and severally liable under one of the
28 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
29 defendant's rights to contribution against another jointly and
30 severally liable defendant, and the effect of settlement by either such
31 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
32 4.22.060.

33 ~~((3))~~ (4)(a) Nothing in this section affects any cause of action
34 relating to hazardous wastes or substances or solid waste disposal
35 sites.

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

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

5 **Sec. 2.** RCW 70.105.112 and 1987 c 528 s 9 are each amended to read
6 as follows:

7 This chapter does not apply to special incinerator ash regulated
8 under chapter 70.138 RCW except that, for purposes of RCW
9 4.22.070(~~(+3)~~) (4)(a), special incinerator ash shall be considered
10 hazardous waste.

11 NEW SECTION. **Sec. 3.** It is the intent of the legislature that
12 health care providers should remain personally liable for their own
13 negligent or wrongful acts or omissions in connection with the
14 provision of health care services, but that their vicarious liability
15 for the negligent or wrongful acts or omissions of others should be
16 curtailed. To that end, it is the intent of the legislature that
17 *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 579 P.2d 970
18 (1978), and its holding that hospitals may be held liable for a
19 physician's acts or omissions under so-called "apparent agency" or
20 "ostensible agency" theories should be reversed, so that hospitals will
21 not be liable for the act or omission of a health care provider granted
22 hospital privileges unless the health care provider is an actual agent
23 or employee of the hospital or unless the hospital's negligence
24 proximately caused the injury. It is further the intent of the
25 legislature that, notwithstanding any generally applicable principle of
26 vicarious liability to the contrary, individual health care
27 professionals will not be liable for the negligent or wrongful acts of
28 others, except those who were acting under their direct supervision and
29 control.

30 NEW SECTION. **Sec. 4.** A public or private hospital shall be liable
31 for an act or omission of a health care provider granted privileges to
32 provide health care at the hospital only if the health care provider is
33 an actual agent or employee of the hospital and the act or omission of
34 the health care provider occurred while the health care provider was
35 acting within the course and scope of the health care provider's agency

1 or employment with the hospital. A public or private hospital may be
2 liable for failing to exercise reasonable care in granting credentials
3 and practice privileges to a health care provider, or in failing to
4 revoke such credentials and privileges when the hospital knew or
5 reasonably should have known such revocation was appropriate.

6 NEW SECTION. **Sec. 5.** A person who is a health care provider under
7 RCW 7.70.020 (1) or (2) shall not be personally liable for any act or
8 omission of any other health care provider who was not the person's
9 actual agent or employee or who was not acting under the person's
10 direct supervision and control at the time of the act or omission,
11 unless the person's negligence proximately caused the injury.

12 NEW SECTION. **Sec. 6.** Sections 4 and 5 of this act are each added
13 to chapter 7.70 RCW.

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