
SUBSTITUTE HOUSE BILL 2126

State of Washington **58th Legislature** **2003 Regular Session**

By House Committee on Judiciary (originally sponsored by Representative Campbell)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to in-home long-term care services liability; and
2 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) If the trier of fact determines that the claimant or party
10 suffering bodily injury or incurring property damages was not at fault,
11 the defendants against whom judgment is entered shall be jointly and
12 severally liable for the sum of their proportionate shares of the
13 ~~((claimants [claimant's]))~~ claimant's total damages. The exception set
14 forth in this subsection does not apply to entities providing in-home
15 case management services under chapter 74.39A RCW, including the home
16 care quality authority, the department of social and health services,
17 and the area agencies on aging, or their contractors.

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

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

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

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

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