
HOUSE BILL 2881

State of Washington 58th Legislature 2004 Regular Session

By Representatives Lantz, Carrell, Clibborn, Moeller, Newhouse,
Lovick, Schual-Berke, Darneille and Kagi

Read first time 01/22/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to tort liability of governmental entities;
2 amending RCW 4.92.090 and 4.96.010; and adding a new section to chapter
3 4.24 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
6 to read as follows:

7 (1) In any action or claim filed against a governmental entity for
8 damages arising out of its tortious conduct, or the intentional
9 tortious conduct of its past or present public officials, whether
10 acting in a governmental or proprietary capacity, no liability may be
11 imposed against the governmental entity or the past or present public
12 officials, unless the tortious conduct breached a duty owed to the
13 injured person as an individual, rather than to the public in general.

14 (2) In addition to the limitations set forth in subsection (1) of
15 this section, liability may only be imposed if:

16 (a) The terms of a legislative enactment specifically state a clear
17 intent to identify and protect a particular and circumscribed class of
18 persons, and the injured person is within this class;

1 (b) A public official responsible for enforcing statutory
2 requirements had actual knowledge of a statutory violation, failed to
3 take corrective action despite a mandatory statutory duty to do so, and
4 the injured person is within the class the statute is intended to
5 protect. In addition, if the plaintiff alleges a breach of a duty to
6 enforce a building code, the plaintiff must establish the public
7 official had actual knowledge that the violation created an inherently
8 dangerous condition;

9 (c) There was direct contact or privity between the public official
10 and the injured person which sets the latter apart from the general
11 public and the public official, in direct response to a specific
12 inquiry, provided express assurances upon which the injured person
13 justifiably relied to his or her detriment;

14 (d) A duty to warn or to come to the aid of a particular person
15 existed. A duty to warn or come to the aid of a particular person
16 exists only when: (i) In response to a report of an emergency, express
17 assurances of a successful warning or rescue are given by the
18 governmental entity to the person or one in privity with the person;
19 (ii) the particular person or the person in privity reasonably relies
20 upon the assurances to his or her detriment; and (iii) the person
21 incurs bodily injury or property damage as a result of the governmental
22 entity's negligence; or

23 (e) A statutory duty to control a third person's conduct existed.
24 A statutory duty is imposed upon a governmental entity to control a
25 third person's conduct if the governmental entity has a "special
26 relationship" with the third person. This duty is owed to a victim of
27 the acts of the third party only if: (i) There is a direct nexus
28 between the nature of the conduct of the third person for which the
29 governmental entity is supervising the third person and the nature of
30 the conduct causing injury to the victim; (ii) the injury to the victim
31 is the foreseeable consequence of the governmental entity's failure to
32 control the third person's conduct; (iii) the governmental entity had
33 the lawful authority to prevent the third person from engaging in the
34 injury-causing conduct; and (iv) the governmental entity's conduct
35 amounts to negligence.

36 A governmental entity has a "special relationship" with a third
37 person for the purposes of this subsection only if it has a definite,

1 established, and continuing relationship with the third person based
2 upon lawful authority to control and supervise that third person's
3 conduct.

4 (3) Nothing in this section diminishes any immunity or defense that
5 may otherwise be applicable to the governmental entity.

6 (4) Unless the context clearly requires otherwise, for the purposes
7 of this section:

8 (a) "Governmental entity" means the state or a county, city, town,
9 special district, municipal corporation as defined in RCW 39.50.010,
10 quasi-municipal corporation, public hospital, or interlocal
11 organizations created by interlocal agreement between local
12 governmental entities.

13 (b) "Public official" means an officer, employee, or volunteer of
14 a governmental entity.

15 (c) "Volunteer" has the same meaning as defined in RCW 51.12.035.

16 **Sec. 2.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
17 as follows:

18 The state of Washington, whether acting in its governmental or
19 proprietary capacity, shall be liable for damages arising out of its
20 tortious conduct to the same extent as if it were a private person or
21 corporation. The liability of the state under this section is subject
22 to the provisions of section 1 of this act.

23 **Sec. 3.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
24 as follows:

25 (1) All local governmental entities, whether acting in a
26 governmental or proprietary capacity, shall be liable for damages
27 arising out of their tortious conduct, or the tortious conduct of their
28 past or present officers, employees, or volunteers while performing or
29 in good faith purporting to perform their official duties, to the same
30 extent as if they were a private person or corporation. Filing a claim
31 for damages within the time allowed by law shall be a condition
32 precedent to the commencement of any action claiming damages. The laws
33 specifying the content for such claims shall be liberally construed so
34 that substantial compliance therewith will be deemed satisfactory.

35 (2) The liability of a local government under this section is
36 subject to the provisions of section 1 of this act.

1 (3) Unless the context clearly requires otherwise, for the purposes
2 of this chapter, "local governmental entity" means a county, city,
3 town, special district, municipal corporation as defined in RCW
4 39.50.010, quasi-municipal corporation, or public hospital.

5 (~~(3)~~) (4) For the purposes of this chapter, "volunteer" is
6 defined according to RCW 51.12.035.

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