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HOUSE BILL 2992

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State of Washington

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2004 Regular Session

By Representatives Newhouse, Carrell, McMahan, Benson, Bush, Campbell, Schoesler, Boldt, Schindler, Holmquist, McDonald, Kristiansen, Roach, Cairnes, Woods, Condotta and Nixon

Read first time 01/26/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to civil liability reform; amending RCW 4.22.070  
2 and 4.22.015; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that counties, cities,  
5 other governmental entities, professionals, health care providers,  
6 businesses, individuals, and nonprofit organizations are finding it  
7 increasingly difficult to find affordable liability insurance. One of  
8 the drivers increasing the cost of liability insurance is the potential  
9 liability beyond one's proportionate share of fault that a defendant  
10 must be insured against. Therefore, it is the intent of the  
11 legislature to enact reforms that create a more equitable distribution  
12 of liability based upon one's proportionate share of fault.

13 The legislature also finds, notwithstanding the tort reform  
14 measures it has enacted in the past, that in many instances defendants  
15 continue to pay more than their proportionate share of a claimant's  
16 total damages. The legislature in the 1986 tort reform act adopted as  
17 the policy of this state that several, or proportionate, liability is  
18 the general rule, subject to certain limited exceptions. This policy  
19 has been consistently recognized by the Washington state supreme court

1 and most recently in *Tegman v. Accident & Medical Investigations*, 75  
2 P.3d 497 (2003) when the court correctly stated "As we have  
3 consistently recognized, RCW 4.22.070 provides that several, or  
4 proportionate, liability is now intended to be the general rule."  
5 *Tegman*, 75 P.3d 499 (2003). The legislature now intends to limit  
6 further the exceptions to the general rule of several or proportionate  
7 liability.

8 **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
9 as follows:

10 (1) In all actions involving fault of more than one entity, the  
11 trier of fact shall determine the percentage of the total fault which  
12 is attributable to every entity which caused the claimant's damages  
13 except entities immune from liability to the claimant under Title 51  
14 RCW. The sum of the percentages of the total fault attributed to at-  
15 fault entities shall equal one hundred percent. The entities whose  
16 fault shall be determined include the claimant or person suffering  
17 personal injury or incurring property damage, defendants, third-party  
18 defendants, entities ~~((released by))~~ who have entered into a release,  
19 covenant not to sue, covenant not to enforce judgment, or similar  
20 agreement with the claimant, entities with any other individual defense  
21 against the claimant, and entities immune from liability to the  
22 claimant, but shall not include those entities immune from liability to  
23 the claimant under Title 51 RCW. Judgment shall be entered against  
24 each defendant except those entities who have ~~((been released by))~~  
25 entered into a release, covenant not to sue, covenant not to enforce  
26 judgment, or similar agreement with the claimant or are immune from  
27 liability to the claimant or have prevailed on any other individual  
28 defense against the claimant in an amount which represents that party's  
29 proportionate share of the claimant's total damages. The liability of  
30 each defendant shall be several only and shall not be joint except(~~(+~~  
31 ~~(a+))~~) a party shall be responsible for the fault of another person  
32 or for payment of the proportionate share of another party where both  
33 were acting in concert or when a person was acting as an agent or  
34 servant of the party.

35 ~~((b) If the trier of fact determines that the claimant or party~~  
36 ~~suffering bodily injury or incurring property damages was not at fault,~~

1 ~~the defendants against whom judgment is entered shall be jointly and~~  
2 ~~severally liable for the sum of their proportionate shares of the~~  
3 ~~claimants [claimant's] total damages.)~~

4 (2) If a defendant is jointly and severally liable under (~~one of~~)  
5 the exception(~~s~~) listed in subsection(~~s~~) (1)(~~(a) or (1)(b)~~) of  
6 this section, such defendant's rights to contribution against another  
7 jointly and severally liable defendant, and the effect of settlement by  
8 either such defendant, shall be determined under RCW 4.22.040,  
9 4.22.050, and 4.22.060.

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

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

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

18 **Sec. 3.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as  
19 follows:

20 "Fault" includes acts or omissions, including misuse of a product,  
21 that are in any measure negligent or reckless toward the person or  
22 property of the actor or others, or that subject a person to strict  
23 tort liability or liability on a product liability claim. The term  
24 also includes breach of warranty, unreasonable assumption of risk, and  
25 unreasonable failure to avoid an injury or to mitigate damages. Legal  
26 requirements of causal relation apply both to fault as the basis for  
27 liability and to contributory fault.

28 A comparison of fault for any purpose under RCW 4.22.005 through  
29 (~~4.22.060~~) 4.22.070 shall involve consideration of both the nature of  
30 the conduct of the parties to the action and the extent of the causal  
31 relation between such conduct and the damages.

32 NEW SECTION. **Sec. 4.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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