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HOUSE BILL 2997

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State of Washington

58th Legislature

2004 Regular Session

By Representatives McMahan, Carrell, Newhouse, Benson, Boldt, Schindler, Holmquist, Kristiansen, Roach, Cairnes, Woods and Condotta

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

1 AN ACT Relating to civil liability reform; amending RCW 4.92.005,  
2 4.96.010, 4.92.040, 4.92.090, and 4.92.130; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** While the common law doctrine of sovereign  
5 immunity declares that the state is immune from liability for the  
6 tortious conduct of its employees and officers, Article II, section 26  
7 of the state Constitution allows the legislature to waive its immunity  
8 and specify by statute "in what manner, and in what courts, suit may be  
9 brought against the state." In the granting or withholding of  
10 sovereign immunity, there are limitations, gradations, and competing  
11 interests to be balanced by the legislature, including fairness to the  
12 citizens of the state, the preservation of proper and essential  
13 functions of government, and the conservation of scarce public  
14 resources.

15 In balancing these competing interests, the legislature must also  
16 balance the traditional role of the jury in determining damages in  
17 civil cases and the legislature's constitutional mandate under Article  
18 VIII, section 4 of the state Constitution to protect the state treasury  
19 through the appropriation process.

1 The legislature finds that these constitutional principles are not  
2 adequately served by either complete sovereign immunity or the complete  
3 waiver of sovereign immunity. Pursuant to the express authority of  
4 Article II, section 26 of the state Constitution, the purpose of this  
5 act is to recognize and implement these fundamental constitutional  
6 principles while providing a fair and equitable means of recovery  
7 against governmental entities for the negligent acts of their employees  
8 and officers.

9 The legislature further finds that government agencies administer  
10 programs, in the exercise of their constitutional, statutory, and moral  
11 obligations, that inherently create a significant risk of tort  
12 liability in the absence of sovereign immunity. This potential  
13 liability is unique to the governmental function. As a result, state  
14 and local governments are not similarly situated to individual and  
15 private organizations, who are not under legal or moral obligations to  
16 provide for the public health, safety, and welfare. For these reasons,  
17 the legislature finds it necessary and appropriate to distinguish  
18 between the civil liability of private entities and governmental  
19 agencies.

20 **Sec. 2.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read  
21 as follows:

22 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,  
23 (~~4.92.140~~)) and 4.92.150, volunteer is defined in RCW 51.12.035.

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

26 (1) All local governmental entities, whether acting in a  
27 governmental or proprietary capacity, shall be liable for damages  
28 arising out of their tortious conduct, or the tortious conduct of their  
29 past or present officers, employees, or volunteers while performing or  
30 in good faith purporting to perform their official duties, to the same  
31 extent as if they were a private person or corporation, subject to the  
32 limitations provided in subsection (2) of this section. Filing a claim  
33 for damages within the time allowed by law shall be a condition  
34 precedent to the commencement of any action claiming damages. The laws  
35 specifying the content for such claims shall be liberally construed so  
36 that substantial compliance therewith will be deemed satisfactory.

1       (2)(a) Neither local government entities, nor their officers,  
2 employees, or volunteers are liable to pay a claim or a judgment for  
3 noneconomic damages as defined in RCW 4.56.250 by any one person that  
4 exceeds the sum of one million dollars or any claim or judgment, or  
5 portions thereof, that, when totaled with all other claims or judgments  
6 paid by the local government entities, officers, employees, or  
7 volunteers arising out of the same incident or occurrence, exceeds the  
8 sum of two million dollars. However, a judgment or judgments may be  
9 claimed and rendered in excess of these amounts and may be settled and  
10 paid under this section up to one million dollars or two million  
11 dollars, as the case may be, and that portion of the judgment that  
12 exceeds these amounts may be reported to the local legislative  
13 authority, but may be paid in part or in whole only by further act of  
14 the local legislative authority. Notwithstanding the limited waiver of  
15 sovereign immunity provided in this section, the local government  
16 entities, officers, employees, or volunteers may agree, within the  
17 limits of insurance coverage provided, to settle a claim made or a  
18 judgment rendered against it without further action by the local  
19 legislative authority, but the local government entities, officers,  
20 employees, or volunteers have not waived any defense of sovereign  
21 immunity or increased the limits of its liability as a result of its  
22 obtaining insurance coverage for tortious acts in excess of the waiver  
23 provided in this section.

24       (b) The liability of the local government entities, officers,  
25 employees, or volunteers is several only and is not joint.

26       (c) No attorney may charge, demand, receive, or collect, for  
27 services rendered, fees in excess of twenty-five percent of any  
28 judgment or settlement under this section.

29       (d) Subsection (2)(a) of this section does not apply in cases in  
30 which the local government entity or its officers, employees, or  
31 volunteers are held liable for civil damages resulting from any  
32 negligent act or omission in the rendering of community placement,  
33 community supervision, community custody, parole supervision, probation  
34 supervision, or supervision of suspended sentences if (i) the offender  
35 under supervision has ever been convicted of the crime of first or  
36 second degree rape, first or second degree rape of a child, or first or  
37 second degree homicide, and (ii) the civil damages resulted from the  
38 subsequent commission of one of these specified offenses.

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.

7       **Sec. 4.** RCW 4.92.040 and 2002 c 332 s 11 are each amended to read  
8 as follows:

9       (1) No execution shall issue against the state on any judgment.

10       (2) Whenever a final judgment against the state is obtained in an  
11 action on a claim arising out of tortious conduct, the claim shall be  
12 paid from the liability account, subject to the limitations of RCW  
13 4.92.090.

14       (3) Whenever a final judgment against the state shall have been  
15 obtained in any other action, the clerk of the court shall make and  
16 furnish to the risk management division a duly certified copy of such  
17 judgment; the risk management division shall thereupon audit the amount  
18 of damages and costs therein awarded, and the same shall be paid from  
19 appropriations specifically provided for such purposes by law.

20       (4) Final judgments for which there are no provisions in state law  
21 for payment shall be transmitted by the risk management division to the  
22 senate and house of representatives committees on ways and means as  
23 follows:

24       (a) On the first day of each session of the legislature, the risk  
25 management division shall transmit judgments received and audited since  
26 the adjournment of the previous session of the legislature.

27       (b) During each session of legislature, the risk management  
28 division shall transmit judgments immediately upon completion of audit.

29       (5) All claims, other than judgments, made to the legislature  
30 against the state of Washington for money or property, shall be  
31 accompanied by a statement of the facts on which such claim is based  
32 and such evidence as the claimant intends to offer in support of the  
33 claim and shall be filed with the risk management division, which shall  
34 retain the same as a record. All claims of two thousand dollars or  
35 less shall be approved or rejected by the risk management division, and  
36 if approved shall be paid from appropriations specifically provided for  
37 such purpose by law. Such decision, if adverse to the claimant in

1 whole or part, shall not preclude the claimant from seeking relief from  
2 the legislature. If the claimant accepts any part of his or her claim  
3 which is approved for payment by the risk management division, such  
4 acceptance shall constitute a waiver and release of the state from any  
5 further claims relating to the damage or injury asserted in the claim  
6 so accepted. The risk management division shall submit to the house  
7 and senate committees on ways and means, at the beginning of each  
8 regular session, a comprehensive list of all claims paid pursuant to  
9 this subsection during the preceding year. For all claims not approved  
10 by the risk management division, the risk management division shall  
11 recommend to the legislature whether such claims should be approved or  
12 rejected. Recommendations shall be submitted to the senate and house  
13 of representatives committees on ways and means not later than the  
14 thirtieth day of each regular session of the legislature. Claims which  
15 cannot be processed for timely submission of recommendations shall be  
16 held for submission during the following regular session of the  
17 legislature. The recommendations shall include, but not be limited to:

18 (a) A summary of the facts alleged in the claim, and a statement as  
19 to whether these facts can be verified by the risk management division;

20 (b) An estimate by the risk management division of the value of the  
21 loss or damage which was alleged to have occurred;

22 (c) An analysis of the legal liability, if any, of the state for  
23 the alleged loss or damage; and

24 (d) A summary of equitable or public policy arguments which might  
25 be helpful in resolving the claim.

26 (6) The legislative committees to whom such claims are referred  
27 shall make a transcript, recording, or statement of the substance of  
28 the evidence given in support of such a claim. If the legislature  
29 approves a claim the same shall be paid from appropriations  
30 specifically provided for such purpose by law.

31 (7) Subsections (3) through (6) of this section do not apply to  
32 judgments or claims against the state housing finance commission  
33 created under chapter 43.180 RCW.

34 **Sec. 5.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read  
35 as follows:

36 The state of Washington, whether acting in its governmental or

1 proprietary capacity, shall be liable for damages arising out of its  
2 tortious conduct to the same extent as if it were a private person or  
3 corporation, subject to the limitations provided in this section.

4 (1) Neither the state nor its agencies, institutions, officers,  
5 employees, or volunteers are liable to pay a claim or a judgment for  
6 noneconomic damages as defined in RCW 4.56.250 by any one person that  
7 exceeds the sum of one million dollars or any claim or judgment, or  
8 portions thereof, that, when totaled with all other claims or judgments  
9 paid by the state or its agencies, institutions, officers, employees,  
10 or volunteers arising out of the same incident or occurrence, exceeds  
11 the sum of two million dollars. However, a judgment or judgments may  
12 be claimed and rendered in excess of these amounts and may be settled  
13 and paid under this section up to one million dollars or two million  
14 dollars, as the case may be, and that portion of the judgment that  
15 exceeds these amounts may be reported to the legislature, but may be  
16 paid in part or in whole only by further act of the legislature.  
17 Notwithstanding the limited waiver of sovereign immunity provided in  
18 this section, the state or an agency, institution, or any officer,  
19 employee, or volunteer may agree, within the limits of insurance  
20 coverage provided, to settle a claim made or a judgment rendered  
21 against it without further action by the legislature, but the state or  
22 agency has not waived any defense of sovereign immunity or increased  
23 the limits of its liability as a result of its obtaining insurance  
24 coverage for tortious acts in excess of the waiver provided in this  
25 section.

26 (2) The liability of the state, its agencies, and institutions is  
27 several only and is not joint.

28 (3) No attorney may charge, demand, receive, or collect, for  
29 services rendered, fees in excess of twenty-five percent of any  
30 judgment or settlement under this section.

31 (4) Subsection (1) of this section does not apply in cases in which  
32 the state or its agencies, institutions, officers, employees, or  
33 volunteers are held liable for civil damages resulting from any  
34 negligent act or omission in the rendering of community placement,  
35 community supervision, community custody, parole supervision, probation  
36 supervision, or supervision of suspended sentences if (a) the offender  
37 under supervision has ever been convicted of the crime of first or

1 second degree rape, first or second degree rape of a child, or first or  
2 second degree homicide, and (b) the civil damages resulted from the  
3 subsequent commission of one of these specified offenses.

4 **Sec. 6.** RCW 4.92.130 and 2002 c 332 s 14 are each amended to read  
5 as follows:

6 A liability account in the custody of the treasurer is hereby  
7 created as a nonappropriated account to be used solely and exclusively  
8 for the payment of liability settlements and judgments against the  
9 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of  
10 its officers, employees, and volunteers and all related legal defense  
11 costs. Legislative appropriation is required for expenditures from the  
12 liability account to the extent specified in RCW 4.92.090.

13 (1) The purpose of the liability account is to: (a) Expeditiously  
14 pay legal liabilities and defense costs of the state resulting from  
15 tortious conduct; (b) promote risk control through a cost allocation  
16 system which recognizes agency loss experience, levels of self-  
17 retention, and levels of risk exposure; and (c) establish an  
18 actuarially sound system to pay incurred losses, within defined limits.

19 (2) The liability account shall be used to pay claims for injury  
20 and property damages and legal defense costs exclusive of agency-  
21 retained expenses otherwise budgeted.

22 (3) No money shall be paid from the liability account, except for  
23 defense costs, unless all proceeds available to the claimant from any  
24 valid and collectible liability insurance shall have been exhausted and  
25 unless:

26 (a) The claim shall have been reduced to final judgment in a court  
27 of competent jurisdiction and legislative appropriation has been made  
28 to the extent required by RCW 4.92.090; or

29 (b) The claim has been approved for payment.

30 (4) The liability account shall be financed through annual premiums  
31 assessed to state agencies, based on sound actuarial principles, and  
32 shall be for liability coverage in excess of agency-budgeted self-  
33 retention levels.

34 (5) Annual premium levels shall be determined by the risk manager,  
35 with the consultation and advice of the risk management advisory  
36 committee. An actuarial study shall be conducted to assist in  
37 determining the appropriate level of funding.

1 (6) Disbursements for claims from the liability account shall be  
2 made to the claimant, or to the clerk of the court for judgments, upon  
3 written request to the state treasurer from the risk manager.

4 (7) The director may direct agencies to transfer moneys from other  
5 funds and accounts to the liability account if premiums are delinquent.

6 (8) The liability account shall not exceed fifty percent of the  
7 actuarial value of the outstanding liability as determined annually by  
8 the risk management division. If the account exceeds the maximum  
9 amount specified in this section, premiums may be adjusted by the risk  
10 management division in order to maintain the account balance at the  
11 maximum limits. If, after adjustment of premiums, the account balance  
12 remains above the limits specified, the excess amount shall be prorated  
13 back to the appropriate funds.

14 NEW SECTION. **Sec. 7.** This act applies to all claims that have not  
15 been reduced to judgment on the effective date of this section.

16 NEW SECTION. **Sec. 8.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

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