
SENATE BILL 5999

State of Washington

58th Legislature

2003 Regular Session

By Senators Rossi, Hargrove, Deccio, T. Sheldon, Hale, Hewitt, Morton, Stevens, Sheahan, Schmidt, Oke, Haugen, Horn, Mulliken, Honeyford, Brandland, McCaslin and West

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1 AN ACT Relating to claims against public entities; amending RCW
2 4.22.070, 4.56.115, 4.92.005, 4.96.010, 4.92.040, 4.92.090, and
3 4.92.130; creating new sections; and declaring an emergency.

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

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

16 In balancing these competing interests, the legislature must also
17 balance the traditional role of the jury in determining damages in
18 civil cases and the legislature's constitutional mandate under Article

1 VIII, section 4 of the state Constitution to protect the state treasury
2 through the appropriation process.

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

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

13 (1) In all actions involving fault of more than one entity, the
14 trier of fact shall determine the percentage of the total fault which
15 is attributable to every entity which caused the claimant's damages
16 except entities immune from liability to the claimant under Title 51
17 RCW. The sum of the percentages of the total fault attributed to at-
18 fault entities shall equal one hundred percent. The entities whose
19 fault shall be determined include the claimant or person suffering
20 personal injury or incurring property damage, defendants, third-party
21 defendants, entities released by the claimant, entities with any other
22 individual defense against the claimant, and entities immune from
23 liability to the claimant, but shall not include those entities immune
24 from liability to the claimant under Title 51 RCW. Judgment shall be
25 entered against each defendant except those who have been released by
26 the claimant or are immune from liability to the claimant or have
27 prevailed on any other individual defense against the claimant in an
28 amount which represents that party's proportionate share of the
29 claimant's total damages. The liability of each defendant shall be
30 several only and shall not be joint except:

31 (a) A party shall be responsible for the fault of another person or
32 for payment of the proportionate share of another party where both were
33 acting in concert or when a person was acting as an agent or servant of
34 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,
37 the defendants against whom judgment is entered shall be jointly and

1 severally liable for the sum of their proportionate shares of the
2 (~~claimants~~~~[claimant's]~~) claimant's total damages, except as provided
3 in RCW 4.92.090(2) and 4.96.010(2).

4 (2) If a defendant is jointly and severally liable under one of the
5 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
6 defendant's rights to contribution against another jointly and
7 severally liable defendant, and the effect of settlement by either such
8 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
9 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 4.56.115 and 1983 c 147 s 2 are each amended to read
19 as follows:

20 Judgments founded on the tortious conduct of the state of
21 Washington or of the political subdivisions, municipal corporations,
22 and quasi municipal corporations of the state, whether acting in their
23 governmental or proprietary capacities, shall bear interest from the
24 date of entry at the maximum rate permitted under RCW 19.52.020 on the
25 date of entry thereof: PROVIDED, That in any case where a court is
26 directed on review to enter judgment on a verdict or in any case where
27 a judgment entered on a verdict is wholly or partly affirmed on review,
28 interest on the judgment or on that portion of the judgment affirmed
29 shall date back to and shall accrue from the date the verdict was
30 rendered.

31 Interest does not accrue on that portion of a judgment that is
32 subject to appropriation by the legislature under RCW 4.92.090 or by a
33 local legislative authority under RCW 4.96.010 until the appropriation
34 has been made by the legislature or local legislative authority.

35 **Sec. 4.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read
36 as follows:

1 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,
2 (~~4.92.140~~)) and 4.92.150, volunteer is defined in RCW 51.12.035.

3 **Sec. 5.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
4 as follows:

5 (1) All local governmental entities, whether acting in a
6 governmental or proprietary capacity, shall be liable for damages
7 arising out of their tortious conduct, or the tortious conduct of their
8 past or present officers, employees, or volunteers while performing or
9 in good faith purporting to perform their official duties, to the same
10 extent as if they were a private person or corporation, subject to the
11 limitations provided in subsection (2) of this section. Filing a claim
12 for damages within the time allowed by law shall be a condition
13 precedent to the commencement of any action claiming damages. The laws
14 specifying the content for such claims shall be liberally construed so
15 that substantial compliance therewith will be deemed satisfactory.

16 (2)(a) Local government entities, officers, employees, or
17 volunteers are liable to pay a claim or a judgment by any one person
18 that exceeds the sum of one million dollars or any claim or judgment,
19 or portions thereof, that, when totaled with all other claims or
20 judgments paid by the local government entities, officers, employees,
21 or volunteers arising out of the same incident or occurrence, exceeds
22 the sum of two million dollars. However, a judgment or judgments may
23 be claimed and rendered in excess of these amounts and may be settled
24 and paid under this section up to one million dollars or two million
25 dollars, as the case may be, and that portion of the judgment that
26 exceeds these amounts may be reported to the local legislative
27 authority, but may be paid in part or in whole only by further act of
28 the local legislative authority. Notwithstanding the limited waiver of
29 sovereign immunity provided in this section, the local government
30 entities, officers, employees, or volunteers may agree, within the
31 limits of insurance coverage provided, to settle a claim made or a
32 judgment rendered against it without further action by the local
33 legislative authority, but the local government entities, officers,
34 employees, or volunteers have not waived any defense of sovereign
35 immunity or increased the limits of its liability as a result of its
36 obtaining insurance coverage for tortious acts in excess of the waiver
37 provided in this section.

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

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

6 (3) Unless the context clearly requires otherwise, for the purposes
7 of this chapter, "local governmental entity" means a county, city,
8 town, special district, municipal corporation as defined in RCW
9 39.50.010, quasi-municipal corporation, or public hospital.

10 (~~(3)~~) (4) For the purposes of this chapter, "volunteer" is
11 defined according to RCW 51.12.035.

12 **Sec. 6.** RCW 4.92.040 and 2002 c 332 s 11 are each amended to read
13 as follows:

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

15 (2) Whenever a final judgment against the state is obtained in an
16 action on a claim arising out of tortious conduct, the claim shall be
17 paid from the liability account, subject to the limitations of RCW
18 4.92.090.

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

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

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

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

34 (5) All claims, other than judgments, made to the legislature
35 against the state of Washington for money or property, shall be
36 accompanied by a statement of the facts on which such claim is based
37 and such evidence as the claimant intends to offer in support of the

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

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

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

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

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

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

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

1 **Sec. 7.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
2 as follows:

3 The state of Washington, whether acting in its governmental or
4 proprietary capacity, shall be liable for damages arising out of its
5 tortious conduct to the same extent as if it were a private person or
6 corporation, subject to the limitations provided in this section.

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

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

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

33 **Sec. 8.** RCW 4.92.130 and 2002 c 332 s 14 are each amended to read
34 as follows:

35 A liability account in the custody of the treasurer is hereby
36 created as a nonappropriated account to be used solely and exclusively
37 for the payment of liability settlements and judgments against the

1 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of
2 its officers, employees, and volunteers and all related legal defense
3 costs. Legislative appropriation is required for expenditures from the
4 liability account to the extent specified in RCW 4.92.090.

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

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

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

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

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

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

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

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

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

35 (8) The liability account shall not exceed fifty percent of the
36 actuarial value of the outstanding liability as determined annually by
37 the risk management division. If the account exceeds the maximum
38 amount specified in this section, premiums may be adjusted by the risk

1 management division in order to maintain the account balance at the
2 maximum limits. If, after adjustment of premiums, the account balance
3 remains above the limits specified, the excess amount shall be prorated
4 back to the appropriate funds.

5 NEW SECTION. **Sec. 9.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 10.** This act applies to all claims that have
10 not been reduced to judgment on the effective date of this act.

11 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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