

2SHB 2292 - S AMD to S COMM AMD (S5455.1) **169**
By Senator Benson

NOT ADOPTED 2/22/2006

1 On page 60, after line 19, insert the following:

2 "Sec. 317. RCW 4.22.070 and 1993 c 496 s 1 are each amended to
3 read as follows:

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

22 ~~---~~(a))a party shall be responsible for the fault of another person
23 or for payment of the proportionate share of another party where both
24 were acting in concert or when a person was acting as an agent or
25 servant of the party.

26 ~~((b) If the trier of fact determines that the claimant or party
27 suffering bodily injury or incurring property damages was not at fault,
28 the defendants against whom judgment is entered shall be jointly and
29 severally liable for the sum of their proportionate shares of the
30 claimants [claimant's] total damages.))~~

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

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

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

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

15 **Sec. 318.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read
16 as follows:

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

25 A comparison of fault for any purpose under RCW 4.22.005 through
26 (~~4.22.060~~)4.22.070 shall involve consideration of both the nature of
27 the conduct of the parties to the action and the extent of the causal
28 relation between such conduct and the damages."

29 Renumber the sections consecutively and correct any internal
30 references accordingly.

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4 On page 61, line 15 of the title amendment, after "7.70.100,"
5 strike "and 7.70.080" and insert "7.70.080, 4.22.070, and 4.22.015"

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EFFECT: A defendant is responsible for only his or her share of fault unless defendants were acting in concert.