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HOUSE BILL 1862

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2005 Regular Session

By Representatives Lantz, Flannigan, Morrell, Springer, Kirby, Cody, Williams, Miloscia, Upthegrove, Linville, O'Brien, Campbell and Kagi

Read first time 02/08/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to parties liable for damages in actions under  
2 chapter 7.70 RCW; and amending RCW 4.22.070, 70.105.112, and 7.70.080.

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

4 **Sec. 1.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
5 as follows:

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

1 prevailed on any other individual defense against the claimant in an  
2 amount which represents that party's proportionate share of the  
3 claimant's total damages. The liability of each defendant shall be  
4 several only and shall not be joint except:

5 (a) A party shall be responsible for the fault of another person or  
6 for payment of the proportionate share of another party where both were  
7 acting in concert or when a person was acting as an agent or servant of  
8 the party.

9 (b)(i) Except as provided in (b)(ii) of this subsection, if the  
10 trier of fact determines that the claimant or party suffering bodily  
11 injury or incurring property damages was not at fault, the defendants  
12 against whom judgment is entered shall be jointly and severally liable  
13 for the sum of their proportionate shares of the ((claimants  
14 {claimant's}) claimant's total damages.

15 (ii) Subsection (b)(i) of this subsection does not apply to health  
16 care providers as defined in RCW 7.70.020, in all cases governed by  
17 chapter 7.70 RCW with respect to judgments for noneconomic damages. In  
18 all cases governed by chapter 7.70 RCW, the liability of health care  
19 providers for noneconomic damages is several only. For the purposes of  
20 this section, "noneconomic damages" has the meaning given in RCW  
21 4.56.250.

22 (2) In all actions for damages under chapter 7.70 RCW, the entities  
23 to whom fault may be attributed shall be limited to the claimants,  
24 defendants, and third-party defendants who are parties to the action,  
25 any entities released by the claimant, and entities immune from  
26 liability to the claimant.

27 (3) If a defendant is jointly and severally liable under one of the  
28 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
29 defendant's rights to contribution against another jointly and  
30 severally liable defendant, and the effect of settlement by either such  
31 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
32 4.22.060.

33 ((+3+)) (4)(a) Nothing in this section affects any cause of action  
34 relating to hazardous wastes or substances or solid waste disposal  
35 sites.

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

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

5 **Sec. 2.** RCW 70.105.112 and 1987 c 528 s 9 are each amended to read  
6 as follows:

7 This chapter does not apply to special incinerator ash regulated  
8 under chapter 70.138 RCW except that, for purposes of RCW  
9 4.22.070(~~(+3+)~~) (4)(a), special incinerator ash shall be considered  
10 hazardous waste.

11 **Sec. 3.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each  
12 amended to read as follows:

13 Any party may present evidence to the trier of fact that the  
14 (~~(patient)~~) plaintiff has already been compensated for the injury  
15 complained of from any source except the assets of the (~~(patient, his)~~)  
16 plaintiff, the plaintiff's representative, or (~~(his)~~) the plaintiff's  
17 immediate family(~~(, or insurance purchased with such assets)~~). In the  
18 event such evidence is admitted, the plaintiff may present evidence of  
19 an obligation to repay such compensation and evidence of any amount  
20 paid by the plaintiff, or his or her representative or immediate  
21 family, to secure the right to the compensation. (~~(Insurance bargained~~  
22 ~~for or provided on behalf of an employee shall be considered insurance~~  
23 ~~purchased with the assets of the employee.)~~) Compensation as used in  
24 this section shall mean payment of money or other property to or on  
25 behalf of the patient, rendering of services to the patient free of  
26 charge to the patient, or indemnification of expenses incurred by or on  
27 behalf of the patient. Notwithstanding this section, evidence of  
28 compensation by a defendant health care provider may be offered only by  
29 that provider.

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