
SENATE BILL 6215

State of Washington 59th Legislature 2006 Regular Session

By Senators Kline and Johnson; by request of Attorney General

Read first time 01/09/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to the liability of public entities for tortious
2 conduct; amending RCW 4.92.075, 26.44.060, and 70.124.060; adding new
3 sections to chapter 4.92 RCW; creating a new section; and repealing RCW
4 4.24.470, 4.92.090, and 4.96.010.

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

6 NEW SECTION. **Sec. 1.** In 1961, the legislature enacted a waiver of
7 immunity without defining government activities which were subject to
8 liability and without providing limitations on liability. States that
9 waived immunity after Washington did not follow the Washington model.
10 Other states generally adopted statutes that specified the nature of
11 government conduct deemed tortious and the extent of liability for
12 various government activities.

13 The lack of statutory definition of government conduct which is
14 subject to liability in Washington has left public liability to be
15 judicially determined on a case-by-case basis. This process has
16 fostered continuing uncertainty and controversy about the appropriate
17 boundaries for government liability. The result of Washington's waiver
18 of immunity has been broad liability for functions uniquely
19 governmental. This liability has been costly to taxpayers and

1 difficult to insure and manage. The legislature believes that the
2 public interest would be better served, and claim and legal costs would
3 be reduced, by statutes defining which conduct of state and local
4 government is subject to liability. This act establishes those
5 appropriate definitions of liability.

6 The legislature recognizes that some government functions are
7 comparable to private activities. The legislature intends that public
8 funds be used to pay reasonable compensation for injuries caused by the
9 tortious actions of government in performing functions comparable to
10 private activities.

11 The legislature also recognizes that many government functions have
12 no private counterparts. These are governmental functions whose
13 purpose is to improve general welfare but not to protect the interests
14 of each citizen individually. Unique governmental functions, such as
15 regulation, law enforcement, social welfare programs, and public
16 facility design, involve policy issues, decision processes, and risks
17 that are unlike those in private activities. The legislature intends
18 that public funds not be used to pay for claims resulting from the
19 exercise of governmental functions that have no private counterpart.

20 This act is an implementation of the authority granted to the
21 legislature by Article 2, section 26 of the Washington state
22 Constitution. All of the provisions of this act should be construed
23 with a view to carrying out the intent expressed in this section.

24 NEW SECTION. **Sec. 2.** The state of Washington, and all of its
25 local and special purpose governments, shall be liable in tort for
26 damages to the extent that their activities are comparable to private
27 activities for which private persons may be liable in tort.

28 NEW SECTION. **Sec. 3.** The definitions in this section apply
29 throughout sections 1 through 8 and 12 of this act.

30 (1) "Volunteer" means a person, business entity, or organization
31 that provides services for government, at the request of government,
32 without receiving compensation for those services. Compensation does
33 not include reimbursement for expenses, stipends, and other limited
34 payments that facilitate a volunteer's service to the government but
35 are not payment for the actual value of the service provided.

1 (2) "Agent" means a person, business entity, or organization that
2 has consent or authority from government to perform a governmental
3 function on behalf of government.

4 NEW SECTION. **Sec. 4.** A government, a public officer, or a
5 government employee, agent, or volunteer, shall not be liable for:

6 (1) The exercise of a legislative, quasi-legislative, judicial,
7 quasi-judicial, prosecutorial, or quasi-prosecutorial function;

8 (2) Executive decisions involving the determination or
9 implementation of policy;

10 (3) A decision that is discretionary because it requires the
11 exercise of judgment in the application of laws, rules, policies, or
12 operating procedures to facts in a particular situation or case;

13 (4) Actions taken to implement governmental programs, or failure to
14 take actions, when such actions or inaction are related to risks that
15 are unique to the governmental program and are an inherent result of
16 the decision to have the program. For purposes of this subsection,
17 governmental programs are government functions involving the exercise
18 of police power, including, but not limited to, programs for:
19 Regulation of conduct; investigation of misconduct; licensing and
20 permitting of individuals, businesses, or facilities; assumption of
21 custody of adults or children under civil law; and release or
22 supervision of criminal offenders or involuntary patients and wards.

23 NEW SECTION. **Sec. 5.** (1) A government or a public employee,
24 officer, agent, or volunteer, shall not be liable for:

25 (a) Actions or inactions related to the licensing or regulation of
26 any person or activity, including inspections of property or conditions
27 and investigations of conduct alleged to be in violation of law or
28 regulatory requirements;

29 (b) Failure to enforce laws, apprehend persons violating laws, or
30 discover conduct that violates laws; or

31 (c) The assessment of the level of funding and the kind of services
32 for which beneficiaries of government financial assistance programs are
33 eligible, including but not limited to, medicaid assistance, chore or
34 home assistance programs for elderly or others, and assistance for
35 persons with developmental disabilities.

1 (2) The limitations on liability in subsection (1) of this section
2 do not apply in the following circumstances:

3 (a) The legislature has expressly provided that specific public
4 agencies or employees are obligated to enforce a statute for the
5 benefit of a narrow group of persons rather than for the overall
6 improvement of public welfare and has expressly provided that tort
7 liability may arise from the failure to enforce such a statute for the
8 benefit of those particular persons; or

9 (b) There was direct contact between a public employee and an
10 injured person and the public employee gave express assurances of
11 protection or action upon which the injured person reasonably relied to
12 his or her detriment; or

13 (c) An injured person is within the class protected by a statute
14 when a public employee responsible for enforcing statutory
15 requirements:

16 (i) Had actual knowledge of a statutory violation that presented an
17 imminent risk of bodily harm to the injured person; and

18 (ii) Failed to take corrective action despite a mandatory statutory
19 duty to do so.

20 NEW SECTION. Sec. 6. (1) A government, or public officer,
21 employee, agent, or volunteer, shall not be liable for any injury
22 caused by a person released from criminal or mental health confinement,
23 or caused by a person under any form of community-based custody or
24 supervision, including work or prerelease programs.

25 (2) The limitation on liability in subsection (1) of this section
26 does not apply if:

27 (a) Any of the circumstances enumerated in section 5(2) of this act
28 are present; or

29 (b) The released or supervised person's ability to cause the injury
30 is the direct result of a specific affirmative act by a government or
31 a public employee, officer, agent, or volunteer.

32 NEW SECTION. Sec. 7. (1) A government, or public officer,
33 employee, agent, or volunteer, shall not be liable for any injury
34 arising out of:

35 (a) A design for construction or improvement of public facilities

1 if the design is in substantial conformity with design standards
2 generally accepted for public facilities at the time of construction or
3 improvement;

4 (b) A failure to make improvements to public facilities that were
5 constructed in substantial conformity with standards generally accepted
6 for public facilities at the time of construction;

7 (c) Use or failure to use signs, pavement markings, or warning
8 devices when existing signs, pavement markings, and warning devices
9 substantially comply with the laws requiring such signs, pavement
10 markings, or warning devices;

11 (d) A failure to perform maintenance on public facilities for which
12 funding has not been provided by the legislative authority; or

13 (e) The temporary condition of a public road that results from
14 weather.

15 (2) As used in this section, "public facility" includes roads,
16 sidewalks, and related structures, and all buildings and structures
17 that are attached to or installed beneath land.

18 NEW SECTION. **Sec. 8.** A government, or public officer, employee,
19 official, agent, or volunteer, shall not be liable for any
20 administrative decision, action, or inaction that has been or may be
21 reviewed in an administrative or judicial proceeding provided by
22 statute or required by the constitution to determine the correctness of
23 the decision, action, or inaction. The proceedings referenced in this
24 section include, but are not limited to: Proceedings related to
25 regulatory and public benefit programs; proceedings related to the
26 employment attributes of public employment; and proceedings that
27 determine if a person should be removed from the custody of another
28 person or placed in any kind of government care or confinement.

29 **Sec. 9.** RCW 4.92.075 and 1989 c 413 s 2 are each amended to read
30 as follows:

31 When a state officer, employee, or volunteer has been represented
32 by the attorney general pursuant to RCW 4.92.070, (~~and the body~~
33 ~~presiding over the action or proceeding has found that the officer,~~
34 ~~employee, or volunteer was acting within the scope of his or her~~
35 ~~official duties,~~) and a judgment has been entered against the officer,
36 employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec.

1 1981 et seq., thereafter the judgment creditor shall seek satisfaction
2 only from the state, and the judgment shall not become a lien upon any
3 property of such officer, employee, or volunteer.

4 **Sec. 10.** RCW 26.44.060 and 2004 c 37 s 1 are each amended to read
5 as follows:

6 (1)(a) Except as provided in (b) of this subsection, any person
7 participating in good faith in the making of a report pursuant to this
8 chapter or testifying as to alleged child abuse or neglect in a
9 judicial proceeding shall in so doing be immune from any liability
10 arising out of such reporting or testifying under any law of this state
11 or its political subdivisions.

12 (b) A person convicted of a violation of subsection (4) of this
13 section shall not be immune from liability under (a) of this
14 subsection.

15 (2) An administrator of a hospital or similar institution or any
16 physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a
17 child into custody pursuant to RCW 26.44.056 shall not be subject to
18 criminal or civil liability for such taking into custody.

19 (3) Conduct conforming with the reporting requirements of this
20 chapter shall not be deemed a violation of the confidential
21 communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and
22 18.83.110. ~~((Nothing in this chapter shall be construed as to
23 supersede or abridge remedies provided in chapter 4.92 RCW.))~~

24 (4) A person who, intentionally and in bad faith or maliciously,
25 knowingly makes a false report of alleged abuse or neglect shall be
26 guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

27 (5) A person who, in good faith and without gross negligence,
28 cooperates in an investigation arising as a result of a report made
29 pursuant to this chapter, shall not be subject to civil liability
30 arising out of his or her cooperation. This subsection does not apply
31 to a person who caused or allowed the child abuse or neglect to occur.

32 **Sec. 11.** RCW 70.124.060 and 1999 c 176 s 24 are each amended to
33 read as follows:

34 (1) A person other than a person alleged to have committed the
35 abuse or neglect participating in good faith in the making of a report
36 pursuant to this chapter, or testifying as to alleged patient abuse or

1 neglect in a judicial proceeding, is, in so doing, immune from any
2 liability, civil or criminal, arising out of such reporting or
3 testifying under any law of this state or its political subdivisions,
4 and if such person is an employee of a state hospital it is an unfair
5 practice under chapter 49.60 RCW for the employer to discharge, expel,
6 or otherwise discriminate against the employee for such reporting
7 activity.

8 (2) Conduct conforming with the reporting requirements of this
9 chapter is not a violation of the confidential communication privilege
10 of RCW 5.60.060 (3) or (4) or 18.83.110. (~~Nothing in this chapter~~
11 ~~supersedes or abridges remedies provided in chapter 4.92 RCW.~~)

12 NEW SECTION. **Sec. 12.** None of the provisions in this act may be
13 construed as creating any new or additional liability. This act shall
14 be reconciled with other statutes related to government liability in
15 the following manner:

16 (1) If another statute specifically creates a cause of action for
17 an alleged tort related to a particular government agency or function,
18 that statute governs liability for such agency or function, rather than
19 this act.

20 (2) If another statute provides an immunity or limitation on
21 liability for a government agency or function, the provisions of this
22 act shall apply in addition to the existing immunity or limitation on
23 liability.

24 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
25 each repealed:

26 (1) RCW 4.24.470 (Liability of officials and members of governing
27 body of public agency--Definitions) and 1987 c 212 s 401;

28 (2) RCW 4.92.090 (Tortious conduct of state--Liability for damages)
29 and 1963 c 159 s 2 & 1961 c 136 s 1; and

30 (3) RCW 4.96.010 (Tortious conduct of local governmental entities--
31 Liability for damages) and 2001 c 119 s 1, 1993 c 449 s 2, & 1967 c 164
32 s 1.

33 NEW SECTION. **Sec. 14.** Sections 1 through 8 and 12 of this act are
34 each added to chapter 4.92 RCW.

1 NEW SECTION. **Sec. 15.** This act applies to all claims pending on
2 the effective date of this act.

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