

E3SHB 1873 - S AMD 342

By Senator Rockefeller

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that the state
4 and local governmental entities engage in diverse and widespread
5 activities touching virtually every aspect of life within the state
6 rendering the state and local governmental entities inherently
7 different from private tort feasers. Unlike private persons who can
8 choose to avoid activities with a risk of liability, the state and
9 local governmental entities must engage in activities that are unique
10 to government and carry inherent risks of injury. It is in the public
11 interest to encourage timely efforts to eliminate or reduce such risks
12 in order to prevent injury. Based on the public interest as stated in
13 this section, and the inherent differences between public and private
14 liability, and pursuant to Article II, section 26 of the state
15 Constitution, in any action created by this act, the liability of the
16 state or any local governmental entity that is party to such proceeding
17 shall be joint and several, except that upon a demonstration by the
18 state or local governmental entity satisfactory to the court that risks
19 inherent to its activity have been identified and actions taken to
20 prevent, eliminate, or reduce such risks, as specified in this act, the
21 liability of the state or any local governmental entity shall be
22 several only.

23 **Sec. 2.** RCW 4.20.020 and 2007 c 156 s 29 are each amended to read
24 as follows:

25 (1) Every ~~((such))~~ action under RCW 4.20.010 shall be for the
26 benefit of the ~~((wife, husband))~~ spouse, state registered domestic
27 partner, ~~((child))~~ or children, including stepchildren, of the person
28 whose death shall have been so caused. If there ~~((be))~~ is no ~~((wife,~~
29 ~~husband))~~ spouse, state registered domestic partner, or ~~((such))~~ child

1 ~~((or children, such)), the~~ action may be maintained for the benefit of:
2 (a) The parents((τ)) of a deceased adult child if the parents are
3 financially dependent upon the adult child for support or if the
4 parents have had significant involvement in the adult child's life; or
5 (b) an individual who is the sole beneficiary of the decedent's life
6 insurance and has had significant involvement in the decedent's life.
7 If there is no spouse, state registered domestic partner, child,
8 parent, or such life insurance beneficiary, the action may be
9 maintained for the benefit of sisters((τ)) or brothers((τ)) who ((may
10 be)) are financially dependent upon the deceased person for support((τ
11 and who are resident within the United States at the time of his
12 death)).

13 In every such action the jury may ~~((give such))~~ award economic and
14 noneconomic damages as((τ)) under all circumstances of the case((τ))
15 may to them seem just.

16 (2)(a) Except as provided in (b) of this subsection, the liability
17 of state or local governmental entities named as parties to a wrongful
18 death action in which the deceased person was not at fault shall be
19 joint and several with all other defendants in accordance with RCW
20 4.22.070.

21 (b)(i) In an action brought on behalf of a beneficiary under
22 subsection (1)(a) or (b) of this section in which the deceased person
23 was not at fault, the state or local governmental entity may raise as
24 an affirmative defense that its liability for damages be limited to its
25 proportional share as determined by the trier of fact. The court
26 shall, as part of the judgment, limit the state or local governmental
27 entity's liability for damages to its proportional share if, before the
28 incident resulting in a death occurred, the trier of fact concludes
29 that the state or local governmental entity recognized the risk or
30 risks inherent to the activity or condition causing death and acted in
31 good faith to eliminate or reduce the inherent risk or risks.

32 (ii) Evidence of action to eliminate or reduce the inherent risk or
33 risks includes, but is not limited to, adoption of a risk management
34 policy designed to prevent, eliminate, or reduce the inherent risk or
35 risks, combined with significant steps taken to address the inherent
36 risk or risks.

37 (3) For the purposes of this section:

1 (a) "Financially dependent for support" means substantial
2 dependence based on the receipt of services that have an economic or
3 monetary value, or substantial dependence based on actual monetary
4 payments or contributions;

5 (b) "Significant involvement" means demonstrated support of an
6 emotional, psychological, or financial nature within the relationship,
7 at or reasonably near the time of death, or at or reasonably near the
8 time of the incident causing death; and

9 (c) "Local governmental entity" has the same meaning as in RCW
10 4.96.010.

11 **Sec. 3.** RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as
12 follows:

13 (1) All causes of action by a person or persons against another
14 person or persons shall survive to the personal representatives of the
15 former and against the personal representatives of the latter, whether
16 such actions arise on contract or otherwise, and whether or not such
17 actions would have survived at the common law or prior to the date of
18 enactment of this section(~~PROVIDED, HOWEVER, That~~).

19 (2) In addition to recovering economic losses, the personal
20 representative (~~shall only be~~) is entitled to recover on behalf of
21 those beneficiaries identified under RCW 4.20.020 any noneconomic
22 damages for pain and suffering, anxiety, emotional distress, or
23 humiliation, personal to and suffered by ((a)) the deceased (~~on behalf~~
24 of those beneficiaries enumerated in RCW 4.20.020, and such)) in such
25 amounts as determined by a jury to be just under all the circumstances
26 of the case. Damages under this section are recoverable regardless of
27 whether or not the death was occasioned by the injury that is the basis
28 for the action.

29 (3) The liability of property of a husband and wife held by them as
30 community property and subject to execution in satisfaction of a claim
31 enforceable against such property so held shall not be affected by the
32 death of either or both spouses; and a cause of action shall remain an
33 asset as though both claiming spouses continued to live despite the
34 death of either or both claiming spouses.

35 ~~((+2))~~ (4) Where death or an injury to person or property,
36 resulting from a wrongful act, neglect or default, occurs
37 simultaneously with or after the death of a person who would have been

1 liable therefor if his death had not occurred simultaneously with such
2 death or injury or had not intervened between the wrongful act, neglect
3 or default and the resulting death or injury, an action to recover
4 damages for such death or injury may be maintained against the personal
5 representative of such person.

6 **Sec. 4.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
7 as follows:

8 (1) No action for a personal injury to any person occasioning death
9 shall abate, nor shall such right of action ((determine)) terminate, by
10 reason of ((such)) the death((τ)) if ((such)) the person has a
11 surviving ((spouse, state registered domestic partner, or child living,
12 including stepchildren, or leaving no surviving spouse, state
13 registered domestic partner, or such children, if there is dependent
14 upon the deceased for support and resident within the United States at
15 the time of decedent's death, parents, sisters, or brothers; but such
16 action may be prosecuted, or commenced and prosecuted, by the executor
17 or administrator)) beneficiary in whose favor the action may be brought
18 under subsection (2) of this section.

19 (2) An action under this section shall be brought by the personal
20 representative of the deceased((τ)) in favor of ((such)) the surviving
21 spouse or state registered domestic partner, ((or in favor of the
22 surviving spouse or state registered domestic partner)) and ((such))
23 children((τ , or if)). If there is no surviving spouse ((or)), state
24 registered domestic partner, ((in favor of such child)) or children,
25 ((or if no surviving spouse, state registered domestic partner, or such
26 child or children, then)) the action shall be brought in favor of the
27 decedent's: (a) Parents((τ)) if the parents are financially dependent
28 upon the decedent for support or if the parents have had significant
29 involvement in the decedent's life; or (b) sole beneficiary under a
30 life insurance policy, if the beneficiary is an individual who had a
31 significant involvement in the decedent's life. If there is no
32 surviving spouse, state registered domestic partner, child, parent, or
33 such life insurance beneficiary, the action shall be brought in favor
34 of the decedent's sisters((τ)) or brothers who ((may be)) are
35 financially dependent upon ((such person)) the decedent for support((τ
36 and resident in the United States at the time of decedent's death)).

37 (3) In addition to recovering economic losses, the persons

1 identified in subsection (2) of this section are entitled to recover
2 any noneconomic damages personal to and suffered by the decedent
3 including, but not limited to, damages for the decedent's pain and
4 suffering, anxiety, emotional distress, or humiliation, in such amounts
5 as determined by a jury to be just under all the circumstances of the
6 case.

7 (4) For the purposes of this section:

8 (a) "Financially dependent for support" means substantial
9 dependence based on the receipt of services that have an economic or
10 monetary value, or substantial dependence based on actual monetary
11 payments or contributions;

12 (b) "Significant involvement" means demonstrated support of an
13 emotional, psychological, or financial nature within the relationship,
14 at or reasonably near the time of death, or at or reasonably near the
15 time of the incident causing death; and

16 (c) "Local governmental entity" has the same meaning as in RCW
17 4.96.010.

18 (5)(a) Except as provided in (b) of this subsection, the liability
19 of state or local governmental entities named as parties to a wrongful
20 death action in which the deceased person was not at fault shall be
21 joint and several with all other defendants in accordance with RCW
22 4.22.070.

23 (b)(i) In an action brought on behalf of a beneficiary under
24 subsection (2)(a) or (b) of this section in which the deceased person
25 was not at fault, the state or local governmental entity may raise as
26 an affirmative defense that its liability for damages be limited to its
27 proportional share as determined by the trier of fact. The court
28 shall, as part of the judgment, limit the state or local governmental
29 entity's liability for damages to its proportional share if, before the
30 incident resulting in a death occurred, the trier of fact concludes
31 that the state or local governmental entity recognized the risk or
32 risks inherent to the activity or condition causing death and acted in
33 good faith to eliminate or reduce the inherent risk or risks.

34 (ii) Evidence of action to eliminate or reduce the inherent risk or
35 risks includes, but is not limited to, adoption of a risk management
36 policy designed to prevent, eliminate, or reduce the inherent risk or
37 risks, combined with significant steps taken to address the inherent
38 risk or risks.

1 **Sec. 5.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
2 as follows:

3 (1) A ((mother or father, or both,)) parent who has regularly
4 contributed to the support of his or her minor child, ~~((and the mother~~
5 ~~or father, or both, of a child on whom either, or both, are))~~ or a
6 parent who is financially dependent on a child for support or who has
7 had significant involvement in a child's life may maintain or join ~~((as~~
8 ~~a party))~~ an action as plaintiff for the injury or death of the child.

9 (2) Each parent, separately from the other parent, is entitled to
10 recover for his or her own loss regardless of marital status, even
11 though this section creates only one cause of action~~((, but if the~~
12 ~~parents of the child are not married, are separated, or not married to~~
13 ~~each other damages may be awarded to each plaintiff separately, as the~~
14 ~~trier of fact finds just and equitable))~~.

15 (3) If one parent brings an action under this section and the other
16 parent is not named as a plaintiff, notice of the institution of the
17 suit, together with a copy of the complaint, shall be served upon the
18 other parent: PROVIDED, That notice shall be required only if
19 parentage has been duly established.

20 Such notice shall be in compliance with the statutory requirements
21 for a summons. Such notice shall state that the other parent must join
22 as a party to the suit within twenty days or the right to recover
23 damages under this section shall be barred. Failure of the other
24 parent to timely appear shall bar such parent's action to recover any
25 part of an award made to the party instituting the suit.

26 (4) In ((such)) an action under this section, in addition to
27 damages for medical, hospital, medication expenses, and loss of
28 services and support, damages may be recovered for the loss of love and
29 companionship of the child and for injury to or destruction of the
30 parent-child relationship in such amount as, under all the
31 circumstances of the case, may be just.

32 (5) For the purposes of this section:

33 (a) "Financially dependent for support" means substantial
34 dependence based on the receipt of services that have an economic or
35 monetary value, or substantial dependence based on actual monetary
36 payments or contributions;

37 (b) "Significant involvement" means demonstrated support of an

1 emotional, psychological, or financial nature within the relationship,
2 at or reasonably near the time of death, or at or reasonably near the
3 time of the incident causing death; and

4 (c) "Local governmental entity" has the same meaning as in RCW
5 4.96.010.

6 (6)(a) Except as provided in (b) of this subsection, the liability
7 of state or local governmental entities named as parties to a wrongful
8 death action in which the deceased person was not at fault shall be
9 joint and several with all other defendants in accordance with RCW
10 4.22.070.

11 (b)(i) In an action under this section brought by a parent of a
12 deceased adult child in which the deceased person was not at fault, the
13 state or local governmental entity may raise as an affirmative defense
14 that its liability for damages be limited to its proportional share as
15 determined by the trier of fact. The court shall, as part of the
16 judgment, limit the state or local governmental entity's liability for
17 damages to its proportional share if, before the incident resulting in
18 a death occurred, the trier of fact concludes that the state or local
19 governmental entity recognized the risk or risks inherent to the
20 activity or condition causing death and acted in good faith to
21 eliminate or reduce the inherent risk or risks.

22 (ii) Evidence of action to eliminate or reduce the inherent risk or
23 risks includes, but is not limited to, adoption of a risk management
24 policy designed to prevent, eliminate, or reduce the inherent risk or
25 risks, combined with significant steps taken to address the inherent
26 risk or risks.

27 **Sec. 6.** RCW 4.22.030 and 1986 c 305 s 402 are each amended to read
28 as follows:

29 Except as otherwise provided in RCW 4.22.070, 4.20.020, 4.20.060,
30 and 4.24.010, if more than one person is liable to a claimant on an
31 indivisible claim for the same injury, death or harm, the liability of
32 such persons shall be joint and several.

33 NEW SECTION. **Sec. 7.** This act applies to all causes of action
34 filed on or after the effective date of this act.

1 NEW SECTION. **Sec. 8.** (1) On December 1, 2009, and every December
2 1st thereafter, the risk management division within the office of
3 financial management shall report to the house appropriations
4 committee, the house state government and tribal affairs committee, the
5 senate ways and means committee, and the senate government operations
6 and elections committee, or successor committees, on the incidents
7 covered by this act that involve state agencies.

8 (2) On December 1, 2009, and every December 1st thereafter, each
9 local government risk pool or local government risk management
10 division, or the equivalent in local governments, shall report to the
11 legislative body of the local government on the incidents covered by
12 this act that involve the local government.

13 (3) This section expires December 2, 2014."

E3SHB 1873 - S AMD
By Senator

14 On page 1, line 1 of the title, after "death;" strike the remainder
15 of the title and insert "amending RCW 4.20.020, 4.20.046, 4.20.060,
16 4.24.010, and 4.22.030; creating new sections; and providing an
17 expiration date."

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