HOUSE BILL 2287

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State of Washington   **60th Legislature**   **2007 Regular Session**

By Representative Williams

Read first time 02/16/2007. Referred to Committee on Judiciary.

1   AN ACT Relating to the effect of settlement agreements; amending
2   RCW 4.22.060 and 4.22.070; and creating a new section.

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

4   **Sec. 1.** RCW 4.22.060 and 1987 c 212 s 1901 are each amended to
5   read as follows:
6   (1) A party prior to entering into a release, covenant not to sue,
7   covenant not to enforce judgment, or similar agreement with a claimant
8   shall give five days' written notice of such intent to all other
9   parties and the court. The court may for good cause authorize a
10 shorter notice period. The notice shall contain a copy of the proposed
11 agreement. A hearing shall be held on the issue of the reasonableness
12 of the amount to be paid with all parties afforded an opportunity to
13 present evidence. A determination by the court that the amount to be
14 paid is reasonable must be secured. If an agreement was entered into
15 prior to the filing of the action, a hearing on the issue of the
16 reasonableness of the amount paid at the time it was entered into may
17 be held at any time prior to final judgment upon motion of a party.
18   The burden of proof regarding the reasonableness of the settlement
19 offer shall be on the party requesting the settlement.

1   (2) A release, covenant not to sue, covenant not to enforce
2 judgment, or similar agreement entered into by a claimant and a person
3 liable discharges that person from all liability for contribution, but
4 it does not discharge any other persons liable upon the same claim
5 unless it so provides. However, the claim of the releasing person
6 against other persons is reduced by the amount paid pursuant to the
7 agreement unless the amount paid was unreasonable at the time of the
8 agreement in which case the claim shall be reduced by an amount
9 determined by the court to be reasonable.
10   (((3) A determination that the amount paid for a release, covenant
11 not to sue, covenant not to enforce judgment, or similar agreement was
12 unreasonable shall not affect the validity of the agreement between the
13 released and releasing persons nor shall any adjustment be made in the
14 amount paid between the parties to the agreement.))

15   **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
16 as follows:
17   (1) In all actions involving fault of more than one entity, the
18 trier of fact shall determine the percentage of the total fault which
19 is attributable to every entity which caused the claimant's damages
20 except entities immune from liability to the claimant under Title 51
21 RCW. The sum of the percentages of the total fault attributed to at-
22 fault entities shall equal one hundred percent. The entities whose
23 fault shall be determined include the claimant or person suffering
24 personal injury or incurring property damage, defendants, third-party
25 defendants, entities released by the claimant, entities with any other
26 individual defense against the claimant, and entities immune from
27 liability to the claimant, but shall not include those entities immune
28 from liability to the claimant under Title 51 RCW. Judgment shall be
29 entered against each defendant except those who have been released by
30 the claimant or are immune from liability to the claimant or have
31 prevailed on any other individual defense against the claimant in an
32 amount which represents that party's proportionate share of the
33 claimant's total damages. The liability of each defendant shall be
34 several only and shall not be joint except:
35   (a) A party shall be responsible for the fault of another person or
36 for payment of the proportionate share of another party where both were

1   acting in concert or when a person was acting as an agent or servant of
2   the party.
3   (b) If the trier of fact determines that the claimant or party
4   suffering bodily injury or incurring property damages was not at fault,
5   the defendants against whom judgment is entered shall be jointly and
6   severally liable for the sum of their proportionate shares of the
7   ((claimants [claimant's])) claimant's total damages.
8   (2) If a defendant is jointly and severally liable under one of the
9   exceptions listed in subsections (1)(a) or (1)(b) of this section, such
10 defendant's rights to contribution against another jointly and
11 severally liable defendant, and the effect of settlement by either such
12 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
13 4.22.060.
14   (3)(a) Nothing in this section affects any cause of action relating
15 to hazardous wastes or substances or solid waste disposal sites.
16   (b) Nothing in this section shall affect a cause of action arising
17 from the tortious interference with contracts or business relations.
18   (c) Nothing in this section shall affect any cause of action
19 arising from the manufacture or marketing of a fungible product in a
20 generic form which contains no clearly identifiable shape, color, or
21 marking.
22   (4) If joint and several liability applies under one of the
23 exceptions listed in subsection (1)(a) or (b) or (3) of this section,
24 a settlement in the form of a covenant judgment, covenant not to
25 execute judgment, high-low trial agreement, or similar settlement
26 agreement shall not operate as a release or prevent judgment from being
27 entered against the settling defendant unless so stated in the
28 settlement agreement. A nonsettling defendant who is found jointly and
29 severally liable with a defendant who settled under a covenant
30 judgment, covenant not to execute, high-low trial agreement, or similar
31 settlement agreement shall be entitled to an offset against the total
32 judgment in an amount found by the judge to be reasonable pursuant to
33 RCW 4.22.060.

34   NEW SECTION. Sec. 3. This act applies to all causes of action
35 that the parties have not settled or in which judgment has not been

1   entered prior to the effective date of this act.

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