HOUSE BILL REPORT
SHB 1719

As Passed Legislature

Title: An act relating to limiting liability for unauthorized passengers in a vehicle.

Brief Description: Limiting liability for unauthorized passengers in a vehicle.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rodne, Schmick, Haler, Smith, Wilcox, Johnson, Klippert, Kristiansen, McCune, Short, Ross and Warnick).

Brief History:
Committee Activity:
Judiciary: 2/9/11, 2/17/11 [DPS].
Floor Activity:
Passed House: 3/1/11, 98-0.
Passed Senate: 4/5/11, 49-0.
Passed Legislature.

Brief Summary of Substitute Bill

- Makes state and local government employers, as well as private employers, immune from liability for injuries suffered by unauthorized third-party occupants of vehicles owned, leased, or rented by those employers.
- Offers employers immunity only when the injured, unauthorized third-party occupants are riding in or on a vehicle with an employee who has expressly acknowledged in writing the employer's policy on use of such vehicles.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Parker Howell (786-5793) and Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Sovereign Immunity.

The state has generally waived its sovereign immunity from suit by a statute enacted in 1961. The law makes the state and its political subdivisions generally liable for damages arising out of tortious conduct to the same extent as if the government were a private person or corporation.

Respondeat Superior.

The common-law theory of "respondeat superior" allows an employer, including state and local governments in Washington, to be held vicariously liable for an employee's tortious act under certain circumstances. Generally, the employee must commit tortious conduct in the scope of his or her employment, although Washington courts have held that an employer may be held liable for conduct that occurs when an employee does a mix of work and personal business.

The Washington Supreme Court held 6-3 in the case of *Rahman v. State*, No. 83428-8 (Jan. 20, 2011), that the state may be held vicariously liable for injuries suffered by a third-party passenger in a state vehicle driven by a state employee for work purposes. The plaintiff in *Rahman* was the wife of a state agency intern injured when her husband, Mohammad Shahidur Rahman, failed to negotiate a curve while driving from Olympia to Spokane. Although Rahman was driving for work purposes, state rules prohibited him from bringing non-employee passengers. The majority ruled that court precedents and sound policy weighed in favor of holding the state vicariously liable because Rahman was in the service of the state's business at the time of the accident.

The dissent argued that the state should not be liable because Rahman was not authorized to transport non-employees, and thus he acted outside the scope of his employment. Writing for the dissent, Justice Jim M. Johnson contended that the policy underlying respondeat superior — an employer's control over an employee — is absent when the employee is not acting with actual or apparent authority and the employer has no control over the employee.

Summary of Substitute Bill:

The Legislature intends to overrule the Washington Supreme Court's decision in *Rahman v. State* by modifying the application of the legal doctrine of respondeat superior.

State and local governments are not liable for injuries suffered by a third-party occupant of a vehicle owned, leased, or rented by the government if, at the time the injuries occurred, the third-party occupant was: (1) riding in or on the vehicle with a government employee who had explicitly acknowledged in writing the government's policy on use of such vehicles; and (2) not expressly authorized by the government to be an occupant of the vehicle. Third-party occupants are people who occupy a government vehicle who are not government officers, employees, or agents. Local governments include cities, counties, or other subdivisions of the state and any municipal corporations, quasi-municipal corporations, or special districts within the state.

A private employer is not liable for any injury suffered by a third-party occupant of a vehicle owned, leased, or rented by the employer when the third-party occupant was riding in or on the vehicle with an employee who had explicitly acknowledged in writing the employer's policy on use of such vehicles, unless: (1) the employer specifically and expressly authorized the occupancy; or (2) the third-party occupant was acting on behalf of or for the benefit of the employer, and the employer knew or impliedly approved or acquiesced. Third-party occupants are people who occupy an employer vehicle who are not officers, employees, agents, or authorized or constructive invitees of the private employer.

The bill's provisions apply to all causes of action accruing on or after the bill's effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Washington Supreme Court (Court) decided *Rahman v. State* incorrectly. The Court's holding would vastly expand the scope of liability for public and private employers at the same time that employers are under siege by the current economic conditions. The Court should have followed Washington court precedents by focusing on Rahman's unauthorized invitation to his wife to ride in the vehicle as the cause of her injuries. Instead, the Court focused on the general purpose of the trip as furthering the state's business. The policies supporting vicarious liability for employers do not apply in this situation. But the state was held liable for Rahman's actions, which is the antithesis of common sense. Under the *Rahman* decision, employers lack the ability to control their liability. For example, the agency already had in place three policies prohibiting unauthorized passengers. The agency that employed Rahman could not have done anything differently to protect itself.

(Opposed) The bill would have significant unintended consequences as drafted. Legislators should be cautious about taking away existing claims or acting based on a single instance. The bill does both, aiming to overrule a case unanimously decided by state appellate courts. The case law in this area centers on the purpose of a trip. The court evidence does not clearly show that the state policies were expressly conveyed to Rahman, other than perhaps in a lengthy employment manual. The bill might take away an innocent occupant's ability to receive compensation for injuries because under our current insurance laws, the victim will not have a claim under his or her own insurance or the negligent driver's insurance. The responsibility and consequences should not fall totally on an innocent third-party occupant who is hurt. The relationship that matters for purposes of respondeat superior is that between the employer and employee. The employer has control over the employee in the sense that it can make directives and impose consequences on the worker. The bill inappropriately focuses instead on the non-existent relationship between the employer and the third-party occupant.

Persons Testifying: (In support) Representatives Rodne, prime sponsor; and Michael Lynch, Washington State Office of the Attorney General.

(Opposed) Larry Shannon and John Budlong, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.