
Judiciary Committee

HB 2506

Title: An act relating to liability for exemplary damages.

Brief Description: Concerning liability for exemplary damages.

Sponsors: Representatives Sawyer, Kilduff, Ormsby and Appleton.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides that in a tort action for damages, a person may be liable for exemplary damages arising out of his or her willful or wanton misconduct.<ul style="list-style-type: none">• Exempts the state and local governmental entities from such liability.
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Hearing Date: 1/17/18

Staff: Cece Clynch (786-7195).

Background:

Torts and Damages.

A tort action is a civil case in which the plaintiff seeks monetary compensation for damages to the plaintiff's person or property. Tort law was created by common law; however, over the years some of tort law has been incorporated into statutory law, and today it exists in both the common law and statutory law.

In a tort action, a prevailing plaintiff is entitled to recover compensatory damages, including both economic and noneconomic damages. Like the name implies, compensatory damages are designed to make the plaintiff whole and fully compensate him or her for all of the losses sustained. Economic damages are objectively verifiable monetary losses, and may include such things as medical expenses, loss of earnings, loss of use of property, cost of replacement or repair, cost of obtaining substitute services, and loss of business or employment opportunities. Noneconomic damages include such things as the nature and extent of injuries sustained, disability, disfigurement, loss of enjoyment of life, and pain and suffering.

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.

By contrast, exemplary damages (or punitive damages, as they are sometimes called) are awarded not to compensate the plaintiff but as a penalty or punishment. The general rule in Washington is that exemplary damages are not available unless expressly authorized in statute. The Washington Supreme Court first enunciated this general rule in 1891. Subsequent case law has adhered to this general rule and made clear that statutory authorization to make punitive damages available must be unambiguous.

There are a variety of specific state statutes in which exemplary damages have been authorized. In addition, exemplary damages may be available with respect to federal claims brought in Washington courts, where the federal statute allows for such damages.

Sovereign Immunity.

At common law, states were immune from tort liability under a doctrine known as sovereign immunity. The Washington Constitution, in Article 2, section 26, provides that the Legislature shall direct in statute the manner in which the state may be sued. The Legislature adopted a broad waiver of state governmental immunity in 1961 and local governmental immunity in 1967. These statutes provide that a governmental entity may be sued to the same extent as if it were a private person or corporation.

Summary of Bill:

In a tort action for damages, a person may be liable for exemplary damages arising out of his or her willful or wanton misconduct. The state of Washington and local governmental entities are exempted from such liability.

The following terms are defined:

- "Exemplary damages" includes punitive damages and means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages.
- "Wanton misconduct" is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has a duty to do, in reckless disregard of the consequences and under such surrounding circumstances and conditions that a reasonable person would know, or should know, that such conduct would, in a high degree of probability, result in substantial harm to another.
- "Willful misconduct" is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has the duty to do when one has actual knowledge of the peril that will be created and intentionally fails to avert injury or actually intends to cause harm.

A severability clause is included.

Appropriation: None.

Fiscal Note: Not requested.

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