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SENATE BILL 6458

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Schoesler, Haugen, Baumgartner, Hewitt, King, Becker, Zarelli, Hill, Carrell, Litzow, Swecker, Stevens, Fain, Honeyford, Morton, Hargrove, Ericksen, Shin, and Sheldon

Read first time 01/24/12. Referred to Committee on Judiciary.

1 AN ACT Relating to claims against public entities; amending RCW  
2 4.22.015, 4.22.070, 4.56.115, 4.92.005, 4.96.010, 4.92.040, 4.92.090,  
3 and 4.92.130; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** While the common law doctrine of sovereign  
6 immunity declares that the state is immune from liability for the  
7 tortious conduct of its employees and officers, Article II, section 26  
8 of the state Constitution allows the legislature to waive its immunity  
9 and specify by statute "in what manner and in what courts, suit may be  
10 brought against the state." In the granting or withholding of  
11 sovereign immunity, there are limitations, gradations, and competing  
12 interests to be balanced by the legislature, including fairness to the  
13 citizens of the state, the preservation of proper and essential  
14 functions of government, and the conservation of scarce public  
15 resources.

16 In balancing these competing interests, the legislature must also  
17 balance the traditional role of the jury in determining damages in  
18 civil cases and the legislature's constitutional mandate under Article

1 VIII, section 4 of the state Constitution to protect the state treasury  
2 through the appropriation process.

3 The legislature finds that these constitutional principles are not  
4 adequately served by either complete sovereign immunity or the complete  
5 waiver of sovereign immunity. Pursuant to the express authority of  
6 Article II, section 26 of the state Constitution, the purpose of this  
7 act is to recognize and implement these fundamental constitutional  
8 principles while providing a fair and equitable means of recovery  
9 against governmental entities for the negligent acts of their employees  
10 and officers.

11 **Sec. 2.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as  
12 follows:

13 "Fault" includes acts or omissions, including misuse of a product,  
14 that are in any measure negligent (~~(or)~~), reckless, or intentional  
15 toward the person or property of the actor or others, or that subject  
16 a person to strict tort liability or liability on a product liability  
17 claim. The term also includes breach of warranty, unreasonable  
18 assumption of risk, and unreasonable failure to avoid an injury or to  
19 mitigate damages. Legal requirements of causal relation apply both to  
20 fault as the basis for liability and to contributory fault.

21 A comparison of fault for any purpose under RCW 4.22.005 through  
22 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of  
23 the conduct of the parties to the action and the extent of the causal  
24 relation between such conduct and the damages.

25 **Sec. 3.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
26 as follows:

27 (1) In all actions involving fault of more than one entity, the  
28 trier of fact shall determine the percentage of the total fault which  
29 is attributable to every entity which caused the claimant's damages  
30 except entities immune from liability to the claimant under Title 51  
31 RCW. The sum of the percentages of the total fault attributed to at-  
32 fault entities shall equal one hundred percent. The entities whose  
33 fault shall be determined include the claimant or person suffering  
34 personal injury or incurring property damage, defendants, third-party  
35 defendants, entities released by the claimant, entities with any other  
36 individual defense against the claimant, and entities immune from

1 liability to the claimant, but shall not include those entities immune  
2 from liability to the claimant under Title 51 RCW. Judgment shall be  
3 entered against each defendant except those who have been released by  
4 the claimant or are immune from liability to the claimant or have  
5 prevailed on any other individual defense against the claimant in an  
6 amount which represents that party's proportionate share of the  
7 claimant's total damages. The liability of each defendant shall be  
8 several only and shall not be joint except:

9 (a) A party shall be responsible for the fault of another person or  
10 for payment of the proportionate share of another party where both were  
11 acting in concert or when a person was acting as an agent or servant of  
12 the party.

13 (b) If the trier of fact determines that the claimant or party  
14 suffering bodily injury or incurring property damages was not at fault,  
15 the defendants against whom judgment is entered shall be jointly and  
16 severally liable for the sum of their proportionate shares of the  
17 ~~((claimants [claimant's]))~~ claimant's total damages, except as provided  
18 in RCW 4.92.090(2) and 4.96.010(2).

19 (2) If a defendant is jointly and severally liable under one of the  
20 exceptions listed in subsection~~((s))~~ (1)(a) or ~~((1))~~(b) of this  
21 section, such defendant's rights to contribution against another  
22 jointly and severally liable defendant, and the effect of settlement by  
23 either such defendant, shall be determined under RCW 4.22.040,  
24 4.22.050, and 4.22.060.

25 (3)(a) Nothing in this section affects any cause of action relating  
26 to hazardous wastes or substances or solid waste disposal sites.

27 (b) Nothing in this section shall affect a cause of action arising  
28 from the tortious interference with contracts or business relations.

29 (c) Nothing in this section shall affect any cause of action  
30 arising from the manufacture or marketing of a fungible product in a  
31 generic form which contains no clearly identifiable shape, color, or  
32 marking.

33 **Sec. 4.** RCW 4.56.115 and 2004 c 185 s 1 are each amended to read  
34 as follows:

35 Judgments founded on the tortious conduct of the state of  
36 Washington or of the political subdivisions, municipal corporations,  
37 and quasi municipal corporations of the state, whether acting in their

1 governmental or proprietary capacities, shall bear interest from the  
2 date of entry at two percentage points above the equivalent coupon  
3 issue yield (as published by the board of governors of the federal  
4 reserve system) of the average bill rate for twenty-six week treasury  
5 bills as determined at the first bill market auction conducted during  
6 the calendar month immediately preceding the date of entry thereof. In  
7 any case where a court is directed on review to enter judgment on a  
8 verdict or in any case where a judgment entered on a verdict is wholly  
9 or partly affirmed on review, interest on the judgment or on that  
10 portion of the judgment affirmed shall date back to and shall accrue  
11 from the date the verdict was rendered.

12 Interest does not accrue on that portion of a judgment that is  
13 subject to appropriation by the legislature under RCW 4.92.090 or by a  
14 local legislative authority under RCW 4.96.010 until the appropriation  
15 has been made by the legislature or local legislative authority.

16 **Sec. 5.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read  
17 as follows:

18 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,  
19 (~~4.92.140~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

20 **Sec. 6.** RCW 4.96.010 and 2011 c 258 s 10 are each amended to read  
21 as follows:

22 (1) All local governmental entities, whether acting in a  
23 governmental or proprietary capacity, shall be liable for damages  
24 arising out of their tortious conduct, or the tortious conduct of their  
25 past or present officers, employees, or volunteers while performing or  
26 in good faith purporting to perform their official duties, to the same  
27 extent as if they were a private person or corporation, subject to the  
28 limitations provided in subsection (2) of this section. Filing a claim  
29 for damages within the time allowed by law shall be a condition  
30 precedent to the commencement of any action claiming damages. The laws  
31 specifying the content for such claims shall be liberally construed so  
32 that substantial compliance therewith will be deemed satisfactory.

33 (2)(a) Neither local government entities nor their officers,  
34 employees, or volunteers are liable to pay a claim or a judgment by any  
35 one person that exceeds the sum of one million dollars or any claim or  
36 judgment, or portions thereof, that, when totaled with all other claims

1 or judgments paid by the local government entities, officers,  
2 employees, or volunteers arising out of the same incident or  
3 occurrence, exceeds the sum of two million dollars. However, a  
4 judgment or judgments may be claimed and rendered in excess of these  
5 amounts and may be settled and paid under this section up to one  
6 million dollars or two million dollars, as the case may be, and that  
7 portion of the judgment that exceeds these amounts may be reported to  
8 the local legislative authority, but may be paid in part or in whole  
9 only by further act of the local legislative authority.  
10 Notwithstanding the limited waiver of sovereign immunity provided in  
11 this section, the local government entities, officers, employees, or  
12 volunteers may agree, within the limits of insurance coverage provided,  
13 to settle a claim made or judgment rendered against it without further  
14 action by the local legislative authority, but the local government  
15 entities, officers, employees, or volunteers have not waived any  
16 defense of sovereign immunity or increased the limits of its liability  
17 as a result of its obtaining insurance coverage for tortious acts in  
18 excess of the waiver provided in this section.

19 (b) The liability of the local government entities, officers,  
20 employees, or volunteers is several only and is not joint.

21 (c) No attorney may charge, demand, receive, or collect, for  
22 services rendered, fees in excess of twenty-five percent of any  
23 judgment or settlement under this section.

24 (3) Unless the context clearly requires otherwise, for the purposes  
25 of this chapter, "local governmental entity" means a county, city,  
26 town, special district, municipal corporation as defined in RCW  
27 39.50.010, quasi-municipal corporation, any joint municipal utility  
28 services authority, any entity created by public agencies under RCW  
29 39.34.030, or public hospital.

30 ((+3+)) (4) For the purposes of this chapter, "volunteer" is  
31 defined according to RCW 51.12.035.

32 **Sec. 7.** RCW 4.92.040 and 2011 1st sp.s. c 43 s 512 are each  
33 amended to read as follows:

- 34 (1) No execution shall issue against the state on any judgment.
- 35 (2) Whenever a final judgment against the state is obtained in an  
36 action on a claim arising out of tortious conduct, the claim shall be

1 paid from the liability account, subject to the limitations of RCW  
2 4.92.090.

3 (3) Whenever a final judgment against the state shall have been  
4 obtained in any other action, the clerk of the court shall make and  
5 furnish to the office of risk management a duly certified copy of such  
6 judgment; the office of risk management shall thereupon audit the  
7 amount of damages and costs therein awarded, and the same shall be paid  
8 from appropriations specifically provided for such purposes by law.

9 (4) Final judgments for which there are no provisions in state law  
10 for payment shall be transmitted by the office of risk management to  
11 the senate and house of representatives committees on ways and means as  
12 follows:

13 (a) On the first day of each session of the legislature, the office  
14 of risk management shall transmit judgments received and audited since  
15 the adjournment of the previous session of the legislature.

16 (b) During each session of legislature, the office of risk  
17 management shall transmit judgments immediately upon completion of  
18 audit.

19 (5) All claims, other than judgments, made to the legislature  
20 against the state of Washington for money or property, shall be  
21 accompanied by a statement of the facts on which such claim is based  
22 and such evidence as the claimant intends to offer in support of the  
23 claim and shall be filed with the office of risk management, which  
24 shall retain the same as a record. All claims of two thousand dollars  
25 or less shall be approved or rejected by the office of risk management,  
26 and if approved shall be paid from appropriations specifically provided  
27 for such purpose by law. Such decision, if adverse to the claimant in  
28 whole or part, shall not preclude the claimant from seeking relief from  
29 the legislature. If the claimant accepts any part of his or her claim  
30 which is approved for payment by the office of risk management, such  
31 acceptance shall constitute a waiver and release of the state from any  
32 further claims relating to the damage or injury asserted in the claim  
33 so accepted. The office of risk management shall submit to the house  
34 and senate committees on ways and means, at the beginning of each  
35 regular session, a comprehensive list of all claims paid pursuant to  
36 this subsection during the preceding year. For all claims not approved  
37 by the office of risk management, the office of risk management shall  
38 recommend to the legislature whether such claims should be approved or

1 rejected. Recommendations shall be submitted to the senate and house  
2 of representatives committees on ways and means not later than the  
3 thirtieth day of each regular session of the legislature. Claims which  
4 cannot be processed for timely submission of recommendations shall be  
5 held for submission during the following regular session of the  
6 legislature. The recommendations shall include, but not be limited to:

7 (a) A summary of the facts alleged in the claim, and a statement as  
8 to whether these facts can be verified by the office of risk  
9 management;

10 (b) An estimate by the office of risk management of the value of  
11 the loss or damage which was alleged to have occurred;

12 (c) An analysis of the legal liability, if any, of the state for  
13 the alleged loss or damage; and

14 (d) A summary of equitable or public policy arguments which might  
15 be helpful in resolving the claim.

16 (6) The legislative committees to whom such claims are referred  
17 shall make a transcript, recording, or statement of the substance of  
18 the evidence given in support of such a claim. If the legislature  
19 approves a claim the same shall be paid from appropriations  
20 specifically provided for such purpose by law.

21 (7) Subsections (3) through (6) of this section do not apply to  
22 judgments or claims against the state housing finance commission  
23 created under chapter 43.180 RCW.

24 **Sec. 8.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read  
25 as follows:

26 (1) The state of Washington, whether acting in its governmental or  
27 proprietary capacity, shall be liable for damages arising out of its  
28 tortious conduct to the same extent as if it were a private person or  
29 corporation, subject to the limitations provided in this section.

30 (2) Neither the state nor its agencies, institutions, officers,  
31 employees, or volunteers are liable to pay a claim or a judgment by any  
32 one person that exceeds the sum of one million dollars or any claim or  
33 judgment, or portions thereof, that, when totaled with all other claims  
34 or judgments paid by the state or its agencies, institutions, officers,  
35 employees, or volunteers arising out of the same incident or  
36 occurrence, exceeds the sum of two million dollars. However, a  
37 judgment or judgments may be claimed and rendered in excess of these

1 amounts and may be settled and paid under this section up to one  
2 million dollars or two million dollars, as the case may be, and that  
3 portion of the judgment that exceeds these amounts may be reported to  
4 the legislature, but may be paid in part or in whole only by further  
5 act of the legislature. Notwithstanding the limited waiver of  
6 sovereign immunity provided in this section, the state or an agency,  
7 institution, or any officer, employee, or volunteer may agree, within  
8 the limits of insurance coverage provided, to settle a claim made or a  
9 judgment rendered against it without further action by the legislature,  
10 but the state or agency has not waived any defense of sovereign  
11 immunity or increased the limits of its liability as a result of its  
12 obtaining insurance coverage for tortious acts in excess of the waiver  
13 provided in this section.

14 (3) The liability of the state, its agencies, and institutions is  
15 several only and is not joint.

16 (4) No attorney may charge, demand, receive, or collect, for  
17 services rendered, fees in excess of twenty-five percent of any  
18 judgment or settlement under this section.

19 **Sec. 9.** RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each  
20 amended to read as follows:

21 A liability account in the custody of the treasurer is hereby  
22 created as a nonappropriated account to be used solely and exclusively  
23 for the payment of liability settlements and judgments against the  
24 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of  
25 its officers, employees, and volunteers and all related legal defense  
26 costs. Legislative appropriation is required for expenditures from the  
27 liability account to the extent specified in RCW 4.92.090.

28 (1) The purpose of the liability account is to: (a) Expeditiously  
29 pay legal liabilities and defense costs of the state resulting from  
30 tortious conduct; (b) promote risk control through a cost allocation  
31 system which recognizes agency loss experience, levels of self-  
32 retention, and levels of risk exposure; and (c) establish an  
33 actuarially sound system to pay incurred losses, within defined limits.

34 (2) The liability account shall be used to pay claims for injury  
35 and property damages and legal defense costs exclusive of agency-  
36 retained expenses otherwise budgeted.

1 (3) No money shall be paid from the liability account, except for  
2 defense costs, unless all proceeds available to the claimant from any  
3 valid and collectible liability insurance shall have been exhausted and  
4 unless:

5 (a) The claim shall have been reduced to final judgment in a court  
6 of competent jurisdiction and legislative appropriation has been made  
7 to the extent required by RCW 4.92.090; or

8 (b) The claim has been approved for payment.

9 (4) The liability account shall be financed through annual premiums  
10 assessed to state agencies, based on sound actuarial principles, and  
11 shall be for liability coverage in excess of agency-budgeted self-  
12 retention levels.

13 (5) Annual premium levels shall be determined by the risk manager.  
14 An actuarial study shall be conducted to assist in determining the  
15 appropriate level of funding.

16 (6) Disbursements for claims from the liability account shall be  
17 made to the claimant, or to the clerk of the court for judgments, upon  
18 written request to the state treasurer from the risk manager.

19 (7) The director may direct agencies to transfer moneys from other  
20 funds and accounts to the liability account if premiums are delinquent.

21 (8) The liability account shall not exceed fifty percent of the  
22 actuarial value of the outstanding liability as determined annually by  
23 the office of risk management. If the account exceeds the maximum  
24 amount specified in this section, premiums may be adjusted by the  
25 office of risk management in order to maintain the account balance at  
26 the maximum limits. If, after adjustment of premiums, the account  
27 balance remains above the limits specified, the excess amount shall be  
28 prorated back to the appropriate funds.

29 NEW SECTION. **Sec. 10.** This act applies to all claims that have  
30 not been reduced to judgment on the effective date of this section.

31 NEW SECTION. **Sec. 11.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 12.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    immediately.

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