AN ACT Relating to civil liability reform; amending RCW 4.22.070 and 4.22.015; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that counties, cities, other governmental entities, professionals, health care providers, businesses, individuals, and nonprofit organizations are finding it increasingly difficult to find affordable liability insurance. One of the drivers increasing the cost of liability insurance is the potential liability beyond one's proportionate share of fault that a defendant must be insured against. Therefore, it is the intent of the legislature to enact reforms that create a more equitable distribution of liability based upon one's proportionate share of fault.

The legislature also finds, notwithstanding the tort reform measures it has enacted in the past, that in many instances defendants continue to pay more than their proportionate share of a claimant's total damages. The legislature in the 1986 tort reform act adopted as the policy of this state that several, or proportionate, liability is the general rule, subject to certain limited exceptions. This policy has been consistently recognized by the Washington state supreme court...
and most recently in Tegman v. Accident & Medical Investigations, 75 P.3d 497 (2003) when the court correctly stated "As we have consistently recognized, RCW 4.22.070 provides that several, or proportionate, liability is now intended to be the general rule." Tegman, 75 P.3d 499 (2003). The legislature now intends to limit further the exceptions to the general rule of several or proportionate liability.

Sec. 2. RCW 4.22.070 and 1993 c 496 s 1 are each amended to read as follows:

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities ((released by)) who have entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title 51 RCW. Judgment shall be entered against each defendant except those entities who have ((been released by)) entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except((: (a) a party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party. 

((b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault,
the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants' total damages.)

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

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

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

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

Sec. 3. RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as follows:

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

A comparison of fault for any purpose under RCW 4.22.005 through 4.22.070 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other
persons or circumstances is not affected.