

Chapter 4.22 RCW
CONTRIBUTORY FAULT—EFFECT—IMPUTATION—CONTRIBUTION—SETTLEMENT
AGREEMENTS

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Preamble—1981 c 27: See note following RCW 7.72.010.

Product liability actions: Chapter 7.72 RCW.

RCW 4.22.005 Effect of contributory fault. In an action based on fault seeking to recover damages for injury or death to person or harm to property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery. This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrines, such as last clear chance. [1981 c 27 § 8.]

RCW 4.22.015 "Fault" defined. "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 4.22.060 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. [1981 c 27 § 9.]

RCW 4.22.020 Imputation of contributory fault—Spouse, domestic partner, or minor child of spouse or domestic partner—Wrongful death actions. The contributory fault of one spouse or one domestic partner shall not be imputed to the other spouse or other domestic partner or the minor child of the spouse or domestic partner to diminish recovery

in an action by the other spouse or other domestic partner or the minor child of the spouse or other domestic partner, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property, whether separate or community, of the spouse or domestic partner. In an action brought for wrongful death or loss of consortium, the contributory fault of the decedent or injured person shall be imputed to the claimant in that action. [2008 c 6 § 401; 1987 c 212 § 801; 1981 c 27 § 10; 1973 1st ex.s. c 138 § 2.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Wrongful death actions: Chapter 4.20 RCW.

RCW 4.22.030 Nature of liability. Except as otherwise provided in RCW 4.22.070, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several. [1986 c 305 § 402; 1981 c 27 § 11.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

RCW 4.22.040 Right of contribution—Indemnity. (1) A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution among liable persons is the comparative fault of each such person. However, the court may determine that two or more persons are to be treated as a single person for purposes of contribution.

(2) Contribution is available to a person who enters into a settlement with a claimant only (a) if the liability of the person against whom contribution is sought has been extinguished by the settlement and (b) to the extent that the amount paid in settlement was reasonable at the time of the settlement.

(3) The common law right of indemnity between active and passive tort feasers is abolished: PROVIDED, That the common law right of indemnity between active and passive tort feasers is not abolished in those cases to which a right of contribution by virtue of RCW 4.22.920(2) does not apply. [1982 c 100 § 1; 1981 c 27 § 12.]

Severability—1982 c 100: "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." [1982 c 100 § 4.]

RCW 4.22.050 Enforcement of contribution. (1) If the comparative fault of the parties to a claim for contribution has been established previously by the court in the original action, a party

paying more than that party's equitable share of the obligation, upon motion, may recover judgment for contribution.

(2) If the comparative fault of the parties to the claim for contribution has not been established by the court in the original action, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(3) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (a) discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action against him or her and commenced the action for contribution within one year after payment, or (b) agreed while the action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and commenced an action for contribution. [2011 c 336 § 92; 1981 c 27 § 13.]

RCW 4.22.060 Effect of settlement agreement. (1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

(2) A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

(3) A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement. [1987 c 212 § 1901; 1981 c 27 § 14.]

RCW 4.22.070 Percentage of fault—Determination—Exception—Limitations. (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 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 who have been released by 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 [claimant's] total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (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. [1993 c 496 § 1; 1986 c 305 § 401.]

Effective date—1993 c 496: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 496 § 3.]

Application—1993 c 496: "This act applies to all causes of action that the parties have not settled or in which judgment has not been entered prior to July 1, 1993." [1993 c 496 § 4.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

RCW 4.22.900 Effective date—1973 1st ex.s. c 138. This act takes effect as of 12:01 a.m. on April 1, 1974. [1973 1st ex.s. c 138 § 3.]

RCW 4.22.920 Applicability—1981 c 27. (1) Chapter 27, Laws of 1981 shall apply to all claims arising on or after July 26, 1981.
(2) Notwithstanding subsection (1) of this section, RCW 4.22.040, 4.22.050, and 4.22.060 shall also apply to all actions in which trial on the underlying action has not taken place prior to July 26, 1981, except that there is no right of contribution in favor of or against any party who has, prior to July 26, 1981, entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant. [1982 c 100 § 2; 1981 c 27 § 15.]

Severability—1982 c 100: See note following RCW 4.22.040.

RCW 4.22.925 Applicability—1981 c 27 § 17. In accordance with section 15(1), chapter 27, Laws of 1981, the repeal of RCW 4.22.010 by section 17, chapter 27, Laws of 1981 applies only to claims arising on or after July 26, 1981. RCW 4.22.010 shall continue to apply to claims arising prior to July 26, 1981. [1982 c 100 § 3.]

Severability—1982 c 100: See note following RCW 4.22.040.