

2ESSB 6508 - H AMD TO WAYS COMM AMD (H-5513.1/10) **1483**

By Representative Priest

NOT ADOPTED 3/04/2010

1 On page 5, after line 12 of the striking amendment, insert the  
2 following:

3  
4 "NEW SECTION. **Sec. 5.** A new section is added to chapter 4.20 RCW  
5 to read as follows:

6 The definitions in this section apply throughout sections 6  
7 through 11 of this act unless the context clearly requires otherwise.

8 (1) "Allegedly responsible party" means a person or entity alleged  
9 by the claimant to be responsible for damages in an action under RCW  
10 4.20.010, 4.20.020, 4.20.046, or 4.20.060, that is based on a parent's  
11 significant involvement in a child's life.

12 (2) "Amount recovered" means the total compensation, including the  
13 reasonable value of nonmonetary compensation, that an attorney has  
14 obtained on behalf of a claimant through settlement, arbitration, or  
15 judgment, minus the reasonable costs and expenses incurred by the  
16 attorney in prosecuting or settling the claim.

17 (3) "Claimant" means any natural person who, in his or her own  
18 right, or vicariously, is seeking compensation in connection with a  
19 claim under RCW 4.20.010, 4.20.020, 4.20.046, or 4.20.060, that is  
20 based on a parent's significant involvement in a child's life.

21 (4) "Collateral source" means compensation or benefits paid or  
22 payable to the claimant or on the claimant's behalf, to compensate the  
23 claimant for the injury complained of, regardless of the right of  
24 recoupment of any other entity, through subrogation, trust agreement,  
25 lien, or otherwise.

26 (5) "Contingent fee" means compensation, however calculated, that  
27 is payable only if an amount is recovered.

1 (6) "Early settlement offer" means a settlement offer made in  
2 accordance with section 6 of this act.

3 (7) "Economic damages" has the meaning provided in RCW 4.56.250.

4 (8) "Entity" includes an individual or person.

5 (9) "Noneconomic damages" has the meaning provided in RCW  
6 4.56.250.

7

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 4.20 RCW  
9 to read as follows:

10 (1) In any civil action for damages brought under RCW 4.20.010,  
11 4.20.020, 4.20.046, or 4.20.060, that is based on a parent's  
12 significant involvement in a child's life, an allegedly responsible  
13 party may make an early settlement offer at any time prior to one  
14 hundred twenty days after the claim is filed with a court. To qualify  
15 as an early settlement offer, the offer must include a good faith  
16 offer to compensate the claimant for the claimant's current and future  
17 economic damages suffered as a result of the allegedly responsible  
18 party's act or omission, less collateral source benefits available to  
19 the claimant, and for reasonable hourly attorneys' fees for the  
20 claimant. The early settlement offer must be in writing and  
21 communicated to the claimant by certified mail. The offer must remain  
22 open for acceptance for a minimum of thirty days from the date the  
23 offer is received by the claimant.

24 (2) An allegedly responsible party may amend or issue an  
25 additional early settlement offer prior to one hundred twenty days  
26 after the action is commenced. The claimant may extend the time for  
27 receiving the offer beyond this period.

28 (3) An attorney who receives an early settlement offer shall  
29 provide a true and complete copy of the offer to his or her client.

30 (4) A claimant who agrees in writing to an early settlement offer  
31 may not bring or continue a civil action, based on the same alleged  
32 negligence, against the allegedly responsible party who made the early  
33 settlement offer or any other allegedly responsible parties who joined  
34 in the early settlement offer under subsection (5) of this section.

1 (5) An offer under subsection (1) of this section may include  
2 other allegedly responsible parties who were involved in the events  
3 that gave rise to the civil action, regardless of the theory of  
4 liability on which the claim is based, with their consent. If, after  
5 an early settlement offer is made and accepted, the participants in  
6 the offer dispute their relative contributions to the payments to be  
7 made to the claimant, such disputes shall be resolved through binding  
8 arbitration in accordance with chapter 7.04 RCW.

9 (6) The claimant may reject an offer of compensation made under  
10 subsection (1) of this section and elect to bring or maintain a civil  
11 action for damages. Upon rejection of an offer of compensation that  
12 complies with the requirements of subsection (1) of this section, the  
13 claimant may recover damages in the civil action only if the claimant  
14 proves by clear and convincing evidence that the allegedly responsible  
15 party caused the injury by reckless, willful, or wanton conduct.

16  
17 NEW SECTION. **Sec. 7.** A new section is added to chapter 4.20 RCW  
18 to read as follows:

19 (1) An attorney who represents a person in an action under RCW  
20 4.20.010, 4.20.020, 4.20.046, or 4.20.060, that is based on a parent's  
21 significant involvement in a child's life, and who represents the  
22 person on a contingent-fee basis, shall send a demand for compensation  
23 by certified mail to each allegedly responsible party prior to  
24 commencing a court action. In the event that multiple allegedly  
25 responsible parties are known to the attorney, a demand must be sent  
26 on the same date to each party. The demand must specify the amount of  
27 compensation sought and must set forth the material facts, documentary  
28 evidence, and other information relevant to the demand, including:

29 (a) The name and address of the claimant or of the person on whose  
30 behalf the claim is being made;

31 (b) A brief description of how the injury or loss occurred;

32 (c) The names and, if known, the addresses and telephone numbers  
33 of all known witnesses to the injury or loss;

34

1 (d) Copies of photographs in the claimant's possession which  
2 relate to the injury or loss;

3 (e) The basis for claiming that the party to whom the demand is  
4 addressed is responsible or partially responsible for the injury or  
5 loss;

6 (f) A description of the nature of the injury or loss, including  
7 the dates and nature of the care or services provided, and the names  
8 and addresses of all physicians and other health care providers that  
9 provided medical care or services to the claimant or injured party;

10 (g) Medical records relating to the injury, including those  
11 involving a prior injury or preexisting medical condition which would  
12 be discoverable by the allegedly responsible party during the course  
13 of litigation or, in lieu thereof, executed releases authorizing the  
14 allegedly responsible party to obtain the records directly from those  
15 health care providers who provided treatment to the claimant; and

16 (h) Documentation of any medical expenses, lost wages, personal  
17 losses, and other economic and noneconomic damages suffered as a  
18 consequence of the injury or loss.

19 (2) The attorney shall mail copies of each demand to the claimant  
20 and to each allegedly responsible party.

21 (3) A claimant's attorney who learns of an additional allegedly  
22 responsible party after making a demand for compensation under  
23 subsection (1) of this section shall send a demand for compensation to  
24 the newly discovered allegedly responsible party and simultaneously  
25 mail a copy of the demand to each of the other allegedly responsible  
26 parties and to the claimant.

27 (4) In the event that a claimant's attorney learns of an  
28 additional allegedly responsible party more than ninety days after  
29 making a demand for compensation under subsection (1) of this section,  
30 the attorney shall not be required to send a demand to that party nor  
31 do the fee limitations imposed under section 510 (1) and (2) of this  
32 act apply with regard to an amount recovered from that party, except  
33 as provided by this subsection. An attorney who fails as a result of  
34 a breach of the standard of care to learn of an additional allegedly

1 responsible party within ninety days of sending a demand for  
2 compensation to another allegedly responsible party shall not collect  
3 a fee in excess of that allowed under section 9 of this act with  
4 respect to an amount recovered from the additional allegedly  
5 responsible party.

6

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 4.20 RCW  
8 to read as follows:

9 An allegedly responsible party is under no obligation to issue a  
10 response to a demand for compensation made under section 7 of this  
11 act. The fact that a demand for compensation was or was not made, the  
12 fact that an early settlement offer was or was not made, and the  
13 amount of any demand or settlement offer made are inadmissible at a  
14 trial arising from the injury or loss.

15

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 4.20 RCW  
17 to read as follows:

18 (1) An attorney who represents a claimant who has accepted an  
19 early settlement offer under section 6 of this act shall not collect  
20 an amount as compensation for the attorney's services that is more  
21 than the attorney's reasonable hourly fees for the services performed.

22 (2) An attorney who represents a claimant who has rejected or  
23 failed to accept an early settlement offer shall not collect a  
24 contingent fee that is greater than twenty percent of the amount of  
25 the early settlement offer plus the percentage of the amount recovered  
26 in excess of the early settlement offer as was agreed to by the  
27 claimant and the attorney.

28 (3) A claimant's attorney who has failed to make a demand for  
29 compensation under section 7 of this act, or who has omitted from the  
30 demand any information required under section 7 of this act of a  
31 material nature which the attorney had in his or her possession, or  
32 which was readily available to him or her, or of which the attorney  
33 had knowledge, shall not collect a contingent fee greater than twenty  
34 percent of the amount recovered.

1 (4) A claimant's attorney who has failed to provide his or her  
2 client a true and complete copy of an early settlement offer received  
3 by the attorney, as required under section 6 of this act, shall not  
4 collect a contingent fee greater than twenty percent of the amount  
5 recovered.

6 (5) An attorney shall disclose, plainly and in writing, to  
7 claimants whom the attorney proposes to represent on a contingent-fee  
8 basis: (a) The fee limitations imposed by this section; and (b) the  
9 fact that such limitations are maximum limits and that the attorney  
10 and claimant may negotiate a lower fee.

11 The attorney shall also provide to each claimant a copy of  
12 sections 5 through 11 of this act.

13 (6) The fee limitations imposed by this section may not be waived.

14 (7) This section applies to all attorneys practicing in this  
15 state, including attorneys prosecuting claims filed in federal court,  
16 to the maximum extent permitted by federal law.

17

18 NEW SECTION. **Sec. 10.** A new section is added to chapter 4.20  
19 RCW to read as follows:

20 A fiduciary relationship applies with respect to a fee agreement  
21 between an attorney and a claimant in an action under RCW 4.20.010,  
22 4.20.020, 4.20.046, or 4.20.060, that is based on a parent's  
23 significant involvement in a child's life.

24

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 4.20  
26 RCW to read as follows:

27 (1) The court shall, in any action under RCW 4.20.010, 4.20.020,  
28 4.20.046, or 4.20.060, that is based on a parent's significant  
29 involvement in a child's life, determine the reasonableness of each  
30 party's attorneys fees. The court shall take into consideration the  
31 following:

32 (a) The time and labor required, the novelty and difficulty of the  
33 questions involved, and the skill requisite to perform the legal  
34 service properly;

1 (b) The likelihood, if apparent to the client, that the acceptance  
2 of the particular employment will preclude other employment by the  
3 lawyer;

4 (c) The fee customarily charged in the locality for similar legal  
5 services;

6 (d) The amount involved and the results obtained;

7 (e) The time limitations imposed by the client or by the  
8 circumstances;

9 (f) The nature and length of the professional relationship with  
10 the client;

11 (g) The experience, reputation, and ability of the lawyer or  
12 lawyers performing the services;

13 (h) Whether the fee is fixed or contingent.

14 (2) An attorney's contingency fee is limited to the maximum  
15 permissible fee allowed under section 9 of this act."

16  
17 Renumber the remaining sections consecutively and correct internal  
18 references accordingly.

19

**EFFECT:** Establishes an early settlement offer procedure for actions under the wrongful death and survival statutes that are based on a parent's significant involvement in a child's life. If the claimant rejects an early settlement offer, the claimant may recover damages in a civil suit only if the claimant proves by clear and convincing evidence that the allegedly responsible party engaged in reckless, willful, or wanton conduct.

Establishes a requirement for claimants' attorneys in these cases to file a demand for compensation on allegedly responsible parties before filing suit. Requires the demand for compensation to contain specified information relating to the claim.

Places limitations on attorneys' fees that may be recovered in these actions based on early settlement offer outcomes and violations of the demand for compensation requirements.

- If a claimant accepts an early settlement offer, the claimant's attorney may not collect a fee that is more than the attorney's reasonable hourly fees for the services performed.

- If the claimant rejects the early settlement offer, the claimant's attorney may collect a fee no greater than 20 percent of the offer, plus the percentage of the amount recovered in excess of the offer as agreed to by the claimant and the attorney.
- A claimant's attorney who fails to make the required demand for compensation in a materially complete fashion, or who fails to provide the claimant with a copy of an early settlement offer, may collect a fee no greater than 20 percent of the amount the claimant recovers.

--- END ---