
HOUSE BILL 3207

State of Washington

58th Legislature

2004 Regular Session

By Representatives Carrell, Bailey, McMahan, Bush, Hinkle, Cairnes, Kristiansen, Talcott, Crouse, Delvin, Orcutt, Sump, Pearson, Mielke, Condotta, Benson, Roach, Boldt, Shabro, Newhouse, Holmquist, Priest, Ahern, Alexander, Chandler, Armstrong, Clements, Skinner, Buck, Woods, Nixon, McDonald, Cox, Schindler, Schoesler and Rodne

Read first time 02/27/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to civil liability reform; amending RCW 4.22.070,
2 4.22.015, 4.56.115, 4.56.110, 19.52.025, 4.56.250, 7.70.070, 7.70.100,
3 4.16.350, 7.70.080, 7.70.060, 4.24.250, 43.70.510, 70.41.200,
4 43.70.110, 43.70.250, 51.24.035, 4.16.300, 46.61.688, 4.92.005,
5 4.96.010, 4.92.040, 4.92.090, and 4.92.130; adding new sections to
6 chapter 4.24 RCW; adding new sections to chapter 4.56 RCW; adding a new
7 section to chapter 7.04 RCW; adding new sections to chapter 7.70 RCW;
8 adding new sections to chapter 43.70 RCW; adding new sections to
9 chapter 7.72 RCW; creating new sections; and providing for submission
10 of this act to a vote of the people.

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

12 PART 1

13 JOINT AND SEVERAL

14 NEW SECTION. **Sec. 101.** The legislature finds that counties,
15 cities, other governmental entities, professionals, health care
16 providers, businesses, individuals, and nonprofit organizations are
17 finding it increasingly difficult to find affordable liability
18 insurance. One of the drivers increasing the cost of liability

1 insurance is the potential liability beyond one's proportionate share
2 of fault that a defendant must be insured against. Therefore, it is
3 the intent of the legislature to enact reforms that create a more
4 equitable distribution of liability based upon one's proportionate
5 share of fault.

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

20 **Sec. 102.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
21 as follows:

22 (1) In all actions involving fault of more than one entity, the
23 trier of fact shall determine the percentage of the total fault which
24 is attributable to every entity which caused the claimant's damages
25 except entities immune from liability to the claimant under Title 51
26 RCW. The sum of the percentages of the total fault attributed to at-
27 fault entities shall equal one hundred percent. The entities whose
28 fault shall be determined include the claimant or person suffering
29 personal injury or incurring property damage, defendants, third-party
30 defendants, entities (~~((released by))~~) who have entered into a release,
31 covenant not to sue, covenant not to enforce judgment, or similar
32 agreement with the claimant, entities with any other individual defense
33 against the claimant, and entities immune from liability to the
34 claimant, but shall not include those entities immune from liability to
35 the claimant under Title 51 RCW. Judgment shall be entered against
36 each defendant except those entities who have (~~((been released by))~~)
37 entered into a release, covenant not to sue, covenant not to enforce

1 judgment, or similar agreement with the claimant or are immune from
2 liability to the claimant or have prevailed on any other individual
3 defense against the claimant in an amount which represents that party's
4 proportionate share of the claimant's total damages. The liability of
5 each defendant shall be several only and shall not be joint except(~~(+~~
6 ~~(a)~~)) a party shall be responsible for the fault of another person
7 or for payment of the proportionate share of another party where both
8 were acting in concert or when a person was acting as an agent or
9 servant of the party.

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

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

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

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

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

29 **Sec. 103.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read
30 as follows:

31 "Fault" includes acts or omissions, including misuse of a product,
32 that are in any measure negligent or reckless toward the person or
33 property of the actor or others, or that subject a person to strict
34 tort liability or liability on a product liability claim. The term
35 also includes breach of warranty, unreasonable assumption of risk, and
36 unreasonable failure to avoid an injury or to mitigate damages. Legal

1 requirements of causal relation apply both to fault as the basis for
2 liability and to contributory fault.

3 A comparison of fault for any purpose under RCW 4.22.005 through
4 (~~4.22.060~~) 4.22.070 shall involve consideration of both the nature of
5 the conduct of the parties to the action and the extent of the causal
6 relation between such conduct and the damages.

7 **PART 2**

8 **EMPLOYER IMMUNITY FOR GOOD FAITH JOB REFERENCES**

9 NEW SECTION. **Sec. 201.** The legislature finds that employers are
10 becoming increasingly discouraged from disclosing job reference
11 information by unclear laws and uncertain standards of liability. The
12 legislature further finds that full good faith disclosure of job
13 reference information will increase productivity, enhance the safety of
14 the workplace, and provide greater opportunities to disadvantaged
15 groups who may not have the educational background or resumes of other
16 workers.

17 NEW SECTION. **Sec. 202.** A new section is added to chapter 4.24 RCW
18 to read as follows:

19 (1) An employer who discloses information about a former or current
20 employee's job performance, conduct, or other work-related information
21 to a prospective employer, or employment agency as defined by RCW
22 49.60.040, at the specific request of that individual employer or
23 employment agency, is immune from civil liability for such disclosure
24 or its consequences when such disclosure is made in good faith. For
25 purposes of this section, an employer's disclosure of work-related
26 information at the specific request of another employer or employment
27 agency is presumed to be made in good faith. However, the presumption
28 of good faith may be rebutted upon a showing of clear, cogent, and
29 convincing evidence that the information disclosed by the employer was
30 knowingly false or deliberately misleading.

31 (2) For the purposes of this section, "employer" means a
32 corporation, firm, organization, or any other entity with one or more
33 employees and the employees and agents of the corporation, firm,
34 organization, or other entity when acting within the scope of their
35 employment or agency.

1 by the board of governors of the federal reserve system, of the average
2 bill rate for twenty-six week treasury bills as determined at the first
3 bill market auction conducted during the calendar month immediately
4 preceding the date of entry. In any case where a court is directed on
5 review to enter judgment on a verdict or in any case where a judgment
6 entered on a verdict is wholly or partly affirmed on review, interest
7 on the judgment or on that portion of the judgment affirmed shall date
8 back to and shall accrue from the date the verdict was rendered.

9 (4) Except as provided under subsections (1) (~~and~~), (2), and (3)
10 of this section, judgments shall bear interest from the date of entry
11 at the maximum rate permitted under RCW 19.52.020 on the date of entry
12 thereof(~~(: PROVIDED, That)~~). In any case where a court is directed on
13 review to enter judgment on a verdict or in any case where a judgment
14 entered on a verdict is wholly or partly affirmed on review, interest
15 on the judgment or on that portion of the judgment affirmed shall date
16 back to and shall accrue from the date the verdict was rendered. The
17 method for determining an interest rate prescribed by this subsection
18 is also the method for determining the "rate applicable to civil
19 judgments" for purposes of RCW 10.82.090.

20 NEW SECTION. Sec. 303. The rate of interest required by sections
21 301 and 302(3), chapter . . ., Laws of 2004 (sections 301 and 302(3) of
22 this act) applies to the accrual of interest as of the date of entry of
23 judgment with respect to a judgment that is entered on or after the
24 effective date of this section.

25 **Sec. 304.** RCW 19.52.025 and 1986 c 60 s 1 are each amended to read
26 as follows:

27 Each month the state treasurer shall compute the highest rate of
28 interest permissible under RCW 19.52.020(1), and the rate of interest
29 required by RCW 4.56.110(3) and 4.56.115, for the succeeding calendar
30 month. The treasurer shall file (~~(this rate)~~) these rates with the
31 state code reviser for publication in the next available issue of the
32 Washington State Register in compliance with RCW 34.08.020(8).

33 **PART 4**

34 **MEDICAL LIABILITY**

1 NEW SECTION. **Sec. 401.** The legislature finds that it is in the
2 best interest of the people of the state of Washington to contain the
3 significantly increasing costs of malpractice insurance for licensed
4 health care professionals and institutions and noninstitutional care
5 providers in order to ensure the continued availability and
6 affordability of health care services in this state by enacting further
7 reforms to the health care tort liability system.

8 The legislature finds that, notwithstanding the tort reform
9 measures it has enacted in the past, the amounts being paid out in
10 judgments and settlements have continued to increase inordinately, and
11 that as a result there have been dramatic increases in the cost of
12 health care professional liability insurance coverage. The legislature
13 further finds that the upward pressures on already high malpractice
14 insurance premiums threaten the publics' health by discouraging
15 physicians and other health care professionals from initiating or
16 continuing their practice in this state.

17 The legislature further finds that the state of California, largely
18 as a result of its enactment of the "medical injury compensation reform
19 act" in 1975, has been able to successfully stabilize the health care
20 professional liability insurance market, maintain access to affordable
21 quality health care services, and avert the kind of crisis now facing
22 the residents of Washington.

23 The legislature finds that such reforms are rationally related to
24 the legitimate goals of reducing the costs associated with the health
25 care tort liability system while ensuring adequate and appropriate
26 compensation for persons injured as a result of health care, ensuring
27 the continued availability and affordability of health care services in
28 this state, preventing the curtailment of health care services in this
29 state, stabilizing insurance and health care costs, preventing stale
30 health care liability claims, and protecting and preserving the public
31 health, safety, and welfare as a whole.

32 **Sec. 402.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to
33 read as follows:

34 (1) As used in this section, the following terms have the meanings
35 indicated unless the context clearly requires otherwise.

36 (a) "Economic damages" means objectively verifiable monetary
37 losses, including medical expenses, loss of earnings, burial costs,

1 loss of use of property, cost of replacement or repair, cost of
2 obtaining substitute domestic services, loss of employment, and loss of
3 business or employment opportunities.

4 (b) "Noneconomic damages" means subjective, nonmonetary losses,
5 including((~~τ~~)) but not limited to pain, suffering, inconvenience,
6 mental anguish, disability or disfigurement incurred by the injured
7 party, loss of ability to enjoy life, emotional distress, loss of
8 society and companionship, loss of consortium, injury to reputation and
9 humiliation, ((~~and~~)) destruction of the parent-child relationship, and
10 other nonpecuniary damages of any type.

11 (c) "Bodily injury" means physical injury, sickness, or disease,
12 including death.

13 (d) "Average annual wage" means the average annual wage in the
14 state of Washington as determined under RCW 50.04.355.

15 (2) In no action seeking damages for personal injury or death may
16 a claimant recover a judgment for noneconomic damages exceeding an
17 amount determined by multiplying 0.43 by the average annual wage and by
18 the life expectancy of the person incurring noneconomic damages, as the
19 life expectancy is determined by the life expectancy tables adopted by
20 the insurance commissioner. For purposes of determining the maximum
21 amount allowable for noneconomic damages, a claimant's life expectancy
22 shall not be less than fifteen years. The limitation contained in this
23 subsection applies to all claims for noneconomic damages made by a
24 claimant who incurred bodily injury. Claims for loss of consortium,
25 loss of society and companionship, destruction of the parent-child
26 relationship, and all other derivative claims asserted by persons who
27 did not sustain bodily injury are to be included within the limitation
28 on claims for noneconomic damages arising from the same bodily injury.

29 (3) If a case is tried to a jury, the jury shall not be informed of
30 the limitation contained in subsection (2) of this section.

31 NEW SECTION. Sec. 403. A new section is added to chapter 4.56 RCW
32 to read as follows:

33 (1) In an action or arbitration for damages for injury or death
34 occurring as a result of health care, or arranging for the provision of
35 health care, whether brought under chapter 7.70 RCW, or under RCW
36 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or

1 any combination thereof, the total amount of noneconomic damages may
2 not exceed two hundred fifty thousand dollars.

3 (2) The limitation on noneconomic damages contained in subsection
4 (1) of this section includes all noneconomic damages claimed by or on
5 behalf of the person whose injury or death occurred as a result of
6 health care or arranging for the provision of health care, as well as
7 all claims for loss of consortium, loss of society and companionship,
8 destruction of the parent-child relationship, and other derivative
9 claims asserted by or on behalf of others arising from the same injury
10 or death. If the jury's assessment of noneconomic damages exceeds the
11 limitation contained in subsection (1) of this section, nothing in RCW
12 4.44.450 precludes the court from entering a judgment that limits the
13 total amount of noneconomic damages to those limits provided in
14 subsection (1) of this section.

15 **Sec. 404.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
16 amended to read as follows:

17 (1) Except as set forth in subsection (2) of this section, the
18 court shall, in any action under this chapter, determine the
19 reasonableness of each party's attorneys' fees. The court shall take
20 into consideration the following:

21 ~~((1))~~ (a) The time and labor required, the novelty and difficulty
22 of the questions involved, and the skill requisite to perform the legal
23 service properly;

24 ~~((2))~~ (b) The likelihood, if apparent to the client, that the
25 acceptance of the particular employment will preclude other employment
26 by the lawyer;

27 ~~((3))~~ (c) The fee customarily charged in the locality for similar
28 legal services;

29 ~~((4))~~ (d) The amount involved and the results obtained;

30 ~~((5))~~ (e) The time limitations imposed by the client or by the
31 circumstances;

32 ~~((6))~~ (f) The nature and length of the professional relationship
33 with the client;

34 ~~((7))~~ (g) The experience, reputation, and ability of the lawyer
35 or lawyers performing the services;

36 ~~((8))~~ (h) Whether the fee is fixed or contingent.

1 (2)(a) An attorney may not contract for or collect a contingency
2 fee for representing a person in connection with an action for damages
3 against a health care provider based upon professional negligence in
4 excess of the following limits:

5 (i) Forty percent of the first fifty thousand dollars recovered;

6 (ii) Thirty-three and one-third percent of the next fifty thousand
7 dollars recovered;

8 (iii) Twenty-five percent of the next five hundred thousand dollars
9 recovered;

10 (iv) Fifteen percent of any amount in which the recovery exceeds
11 six hundred thousand dollars.

12 (b) The limitations in this section apply regardless of whether the
13 recovery is by judgment, settlement, arbitration, mediation, or other
14 form of alternative dispute resolution.

15 (c) If periodic payments are awarded to the plaintiff, the court
16 shall place a total value on these payments and include this amount in
17 computing the total award from which attorneys' fees are calculated
18 under this subsection.

19 (d) For purposes of this subsection, "recovered" means the net sum
20 recovered after deducting any disbursements or costs incurred in
21 connection with prosecution or settlement of the claim. Costs of
22 medical care incurred by the plaintiff and the attorneys' office
23 overhead costs or charges are not deductible disbursements or costs for
24 such purposes.

25 (3) This section applies to all agreements for attorneys' fees
26 entered into or modified after the effective date of this section.

27 **Sec. 405.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
28 read as follows:

29 (1) No action based upon a health care provider's professional
30 negligence may be commenced unless the defendant has been given at
31 least ninety days' notice of the intention to commence the action. If
32 the notice is served within ninety days of the expiration of the
33 applicable statute of limitations, the time for the commencement of the
34 action must be extended ninety days from the service of the notice.

35 (2) The provisions of subsection (1) of this section are not
36 applicable with respect to any defendant whose name is unknown to the

1 plaintiff at the time of filing the complaint and who is identified
2 therein by a fictitious name.

3 (3) After the filing of the ninety-day presuit notice, and before
4 a superior court trial, all causes of action, whether based in tort,
5 contract, or otherwise, for damages arising from injury occurring as a
6 result of health care provided after July 1, 1993, shall be subject to
7 mandatory mediation prior to trial.

8 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
9 implement mandatory mediation of actions under this chapter. The rules
10 shall require mandatory mediation without exception and address, at a
11 minimum:

12 (a) Procedures for the appointment of, and qualifications of,
13 mediators. A mediator shall have experience or expertise related to
14 actions arising from injury occurring as a result of health care, and
15 be a member of the state bar association who has been admitted to the
16 bar for a minimum of five years or who is a retired judge. The parties
17 may stipulate to a nonlawyer mediator. The court may prescribe
18 additional qualifications of mediators;

19 (b) Appropriate limits on the amount or manner of compensation of
20 mediators;

21 (c) The number of days following the filing of a claim under this
22 chapter within which a mediator must be selected;

23 (d) The method by which a mediator is selected. The rule shall
24 provide for designation of a mediator by the superior court if the
25 parties are unable to agree upon a mediator;

26 (e) The number of days following the selection of a mediator within
27 which a mediation conference must be held;

28 (f) A means by which mediation of an action under this chapter may
29 be waived by a mediator who has determined that the claim is not
30 appropriate for mediation; and

31 (g) Any other matters deemed necessary by the court.

32 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the
33 parties.

34 (6) The supreme court shall by rule also adopt procedures for the
35 parties to certify to the court the manner of mediation used by the
36 parties to comply with this section.

1 **Sec. 406.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
2 as follows:

3 (1) Any civil action for damages for injury or death occurring as
4 a result of health care which is provided after June 25, 1976, against:

5 ~~((1))~~ (a) A person licensed by this state to provide health care
6 or related services, including, but not limited to, a physician,
7 osteopathic physician, dentist, nurse, optometrist, podiatric physician
8 and surgeon, chiropractor, physical therapist, psychologist,
9 pharmacist, optician, physician's assistant, osteopathic physician's
10 assistant, nurse practitioner, or physician's trained mobile intensive
11 care paramedic, including, in the event such person is deceased, his
12 estate or personal representative;

13 ~~((2))~~ (b) An employee or agent of a person described in (a) of
14 this subsection ~~((1) of this section)~~, acting in the course and scope
15 of his or her employment, including, in the event such employee or
16 agent is deceased, his or her estate or personal representative; or

17 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or
18 institution employing one or more persons described in (a) of this
19 subsection ~~((1) of this section)~~, including, but not limited to, a
20 hospital, clinic, health maintenance organization, ~~((or))~~ nursing home,
21 or boarding home; or an officer, director, employee, or agent thereof
22 acting in the course and scope of his or her employment, including, in
23 the event such officer, director, employee, or agent is deceased, his
24 or her estate or personal representative;

25 based upon alleged professional negligence shall be commenced within
26 three years of the act or omission alleged to have caused the injury or
27 condition, or one year of the time the patient or his or her
28 representative or custodial parent or guardian discovered or reasonably
29 should have discovered that the injury or condition was caused by said
30 act or omission, whichever period ~~((expires later, except that in no~~
31 ~~event shall an action be commenced more than eight years after said act~~
32 ~~or omission: PROVIDED, That the time for commencement of an action is~~
33 ~~tolled upon proof of fraud, intentional concealment, or the presence of~~
34 ~~a foreign body not intended to have a therapeutic or diagnostic purpose~~
35 ~~or effect, until the date the patient or the patient's representative~~
36 ~~has actual knowledge of the act of fraud or concealment, or of the~~
37 ~~presence of the foreign body; the patient or the patient's~~

1 ~~representative has one year from the date of the actual knowledge in~~
2 ~~which to commence a civil action for damages.~~

3 ~~For purposes of this section, notwithstanding RCW 4.16.190, the~~
4 ~~knowledge of a custodial parent or guardian shall be imputed to a~~
5 ~~person under the age of eighteen years, and such imputed knowledge~~
6 ~~shall operate to bar the claim of such minor to the same extent that~~
7 ~~the claim of an adult would be barred under this section. Any action~~
8 ~~not commenced in accordance with this section shall be barred.~~

9 ~~For purposes of this section, with respect to care provided after~~
10 ~~June 25, 1976, and before August 1, 1986, the knowledge of a custodial~~
11 ~~parent or guardian shall be imputed as of April 29, 1987, to persons~~
12 ~~under the age of eighteen years)) occurs first.~~

13 (2) In no event may an action be commenced more than three years
14 after the act or omission alleged to have caused the injury or
15 condition except:

16 (a) Upon proof of fraud, intentional concealment, or the presence
17 of a foreign body not intended to have a therapeutic or diagnostic
18 purpose or effect, in which case the patient or the patient's
19 representative has one year from the date the patient or the patient's
20 representative or custodial parent or guardian has actual knowledge of
21 the act of fraud or concealment or of the presence of the foreign body
22 in which to commence a civil action for damages.

23 (b) In the case of a minor, for any period during minority, but
24 only for such period during minority in which the minor's custodial
25 parent or guardian and the defendant or the defendant's insurer have
26 committed fraud or collusion in the failure to bring an action on
27 behalf of the minor.

28 (c) In the case of a minor under the full age of six years, in
29 which case the action on behalf of the minor must be commenced within
30 three years or prior to the minor's eighth birthday, whichever provides
31 a longer period.

32 (3) Any action not commenced in accordance with this section is
33 barred.

34 (4) For purposes of this section, the tolling provisions of RCW
35 4.16.190 do not apply.

36 (5) This section does not apply to a civil action based on
37 intentional conduct brought against those individuals or entities

1 specified in this section by a person for recovery of damages for
2 injury occurring as a result of childhood sexual abuse as defined in
3 RCW 4.16.340(5).

4 **Sec. 407.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
5 amended to read as follows:

6 (1) Any party may present evidence to the trier of fact that the
7 ((patient)) plaintiff has already been, or will be, compensated for the
8 injury complained of from ((any source except the assets of the
9 patient, his representative, or his immediate family, or insurance
10 purchased with such assets. In the event such evidence is admitted,
11 the plaintiff may present evidence of an obligation to repay such
12 compensation. Insurance bargained for or provided on behalf of an
13 employee shall be considered insurance purchased with the assets of the
14 employee)) a collateral source. In the event the evidence is admitted,
15 the other party may present evidence of any amount that was paid or
16 contributed to secure the right to any compensation. Compensation as
17 used in this section shall mean payment of money or other property to
18 or on behalf of the patient, rendering of services to the patient free
19 of charge to the patient, or indemnification of expenses incurred by or
20 on behalf of the patient. Notwithstanding this section, evidence of
21 compensation by a defendant health care provider may be offered only by
22 that provider.

23 (2) Unless otherwise provided by statute, there is no right of
24 subrogation or reimbursement from a plaintiff's tort recovery with
25 respect to compensation covered in subsection (1) of this section.

26 **NEW SECTION. Sec. 408.** A new section is added to chapter 7.04 RCW
27 to read as follows:

28 (1) A contract for health care services that contains a provision
29 for arbitration of a dispute as to professional negligence of a health
30 care provider under chapter 7.70 RCW must have the provision as the
31 first article of the contract and must be expressed in the following
32 language:

33 "It is understood that any dispute as to medical malpractice that
34 is as to whether any medical services rendered under this contract were
35 unnecessary or unauthorized or were improperly, negligently, or
36 incompetently rendered, will be determined by submission to arbitration

1 as provided by Washington law, and not by a lawsuit or resort to court
2 process except as Washington law provides for judicial review of
3 arbitration proceedings. Both parties to this contract, by entering
4 into it, are giving up their constitutional right to have such a
5 dispute decided in a court of law before a jury, and instead are
6 accepting the use of arbitration."

7 (2) Immediately before the signature line provided for the
8 individual contracting for the medical services, there must appear the
9 following in at least ten-point bold red type:

10 "NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY
11 ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE
12 GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE ONE OF THIS
13 CONTRACT."

14 (3) Once signed, such a contract governs all subsequent open-book
15 account transactions for medical services for which the contract was
16 signed until or unless rescinded by written notice within thirty days
17 of signature. Written notice of such rescission may be given by a
18 guardian or other legal representative of the patient if the patient is
19 incapacitated or a minor.

20 (4) Where the contract is one for medical services to a minor, it
21 may not be disaffirmed if signed by the minor's parent or legal
22 guardian.

23 (5) Such a contract is not a contract of adhesion, nor
24 unconscionable, nor otherwise improper, where it complies with
25 subsections (1) through (3) of this section.

26 (6) Subsections (1) through (3) of this section do not apply to any
27 health benefit plan contract offered by an organization regulated under
28 Title 48 RCW that has been negotiated to contain an arbitration
29 agreement with subscribers and enrollees under such a contract.

30 NEW SECTION. **Sec. 409.** A new section is added to chapter 7.70 RCW
31 to read as follows:

32 RCW 7.70.100, 7.70.110, 7.70.120, and 7.70.130 do not apply if
33 there is a contract for binding arbitration under section 408 of this
34 act.

35 NEW SECTION. **Sec. 410.** A new section is added to chapter 7.70 RCW
36 to read as follows:

1 (1) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

3 (a) "Future damages" includes damages for future medical treatment,
4 care or custody, loss of future earnings, loss of bodily function, or
5 future pain and suffering of the judgment creditor.

6 (b) "Periodic payments" means the payment of money or delivery of
7 other property to the judgment creditor at regular intervals.

8 (2) In any action for damages for injury occurring as a result of
9 health care, the court shall, at the request of either party, enter a
10 judgment ordering that money damages or its equivalent for future
11 damages of the judgment creditor be paid in whole or in part by
12 periodic payments rather than by a lump-sum payment if the award equals
13 or exceeds fifty thousand dollars in future damages. In entering a
14 judgment ordering the payment of future damages by periodic payments,
15 the court shall make a specific finding as to the dollar amount of
16 periodic payments which will compensate the judgment creditor for such
17 future damages. As a condition to authorizing periodic payments of
18 future damages, the court shall require the judgment debtor who is not
19 adequately insured to post security adequate to ensure full payment of
20 such damages awarded by the judgment. Upon termination of periodic
21 payments of future damages, the court shall order the return of this
22 security, or so much as remains, to the judgment debtor.

23 (3)(a) The judgment ordering the payment of future damages by
24 periodic payments must specify the recipient or recipients of the
25 payments, the dollar amount of the payments, the interval between
26 payments, and the number of payments or the period of time over which
27 payments must be made. The payments are only subject to modification
28 in the event of the death of the judgment creditor.

29 (b) In the event that the court finds that the judgment debtor has
30 exhibited a continuing pattern of failing to make the payments, as
31 specified in (a) of this subsection, the court shall find the judgment
32 debtor in contempt of court and, in addition to the required periodic
33 payments, shall order the judgment debtor to pay the judgment creditor
34 all damages caused by the failure to make such periodic payments,
35 including court costs and attorneys' fees.

36 (4) However, money damages awarded for loss of future earnings may
37 not be reduced or payments terminated by reason of the death of the
38 judgment creditor, but must be paid to persons to whom the judgment

1 creditor owed a duty of support, as provided by law, immediately prior
2 to his or her death. In such cases the court that rendered the
3 original judgment, may, upon petition of any party in interest, modify
4 the judgment to award and apportion the unpaid future damages in
5 accordance with this subsection (4).

6 (5) Following the occurrence or expiration of all obligations
7 specified in the periodic payment judgment, any obligation of the
8 judgment debtor to make further payments ceases and any security given
9 under subsection (2) of this section reverts to the judgment debtor.

10 (6) For purposes of this section, the provisions of RCW 4.56.250 do
11 not apply.

12 (7) It is the intent of the legislature in enacting this section to
13 authorize, in actions for damages for injury occurring as a result of
14 health care, the entry of judgments that provide for the payment of
15 future damages through periodic payments rather than lump-sum payments.
16 By authorizing periodic payment judgments, it is the further intent of
17 the legislature that the courts will utilize such judgments to provide
18 compensation sufficient to meet the needs of an injured plaintiff and
19 those persons who are dependent on the plaintiff for whatever period is
20 necessary while eliminating the potential windfall from a lump-sum
21 recovery that was intended to provide for the care of an injured
22 plaintiff over an extended period who then dies shortly after the
23 judgment is paid, leaving the balance of the judgment award to persons
24 and purposes for which it was not intended. It is also the intent of
25 the legislature that all elements of the periodic payment program be
26 specified with certainty in the judgment ordering such payments and
27 that the judgment not be subject to modification at some future time
28 that might alter the specifications of the original judgment.

29 NEW SECTION. **Sec. 411.** A new section is added to chapter 4.56 RCW
30 to read as follows:

31 In the event that the Washington state supreme court or other court
32 of competent jurisdiction rules or affirms that section 403 of this act
33 is unconstitutional, then the prescribed cap on noneconomic damages
34 takes effect upon the ratification of a state constitutional amendment
35 that empowers the legislature to place limits on the amount of
36 noneconomic damages recoverable in any or all civil causes of action.

1 **Sec. 412.** RCW 7.70.060 and 1975-'76 2nd ex.s. c 56 s 11 are each
2 amended to read as follows:

3 If a patient while legally competent, or his or her representative
4 if he or she is not competent, signs a consent form which sets forth
5 the following, the signed consent form shall constitute prima facie
6 evidence that the patient gave his or her informed consent to the
7 treatment administered and the patient has the burden of rebutting this
8 by ((a ~~preponderance of the~~)) clear, cogent, and convincing evidence:

9 (1) A description, in language the patient could reasonably be
10 expected to understand, of:

11 (a) The nature and character of the proposed treatment;

12 (b) The anticipated results of the proposed treatment;

13 (c) The recognized possible alternative forms of treatment; and

14 (d) The recognized serious possible risks, complications, and
15 anticipated benefits involved in the treatment and in the recognized
16 possible alternative forms of treatment, including nontreatment;

17 (2) Or as an alternative, a statement that the patient elects not
18 to be informed of the elements set forth in subsection (1) of this
19 section.

20 Failure to use a form shall not be admissible as evidence of
21 failure to obtain informed consent.

22 **Sec. 413.** RCW 4.24.250 and 1981 c 181 s 1 are each amended to read
23 as follows:

24 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
25 as now existing or hereafter amended who, in good faith, files charges
26 or presents evidence against another member of their profession based
27 on the claimed incompetency or gross misconduct of such person before
28 a regularly constituted review committee or board of a professional
29 society or hospital whose duty it is to evaluate the competency and
30 qualifications of members of the profession, including limiting the
31 extent of practice of such person in a hospital or similar institution,
32 or before a regularly constituted committee or board of a hospital
33 whose duty it is to review and evaluate the quality of patient care,
34 shall be immune from civil action for damages arising out of such
35 activities. The proceedings, reports, and written records of such
36 committees or boards, or of a member, employee, staff person, or
37 investigator of such a committee or board, shall not be subject to

1 subpoena or discovery proceedings in any civil action, except actions
2 arising out of the recommendations of such committees or boards
3 involving the restriction or revocation of the clinical or staff
4 privileges of a health care provider as defined above.

5 (2) A coordinated quality improvement program maintained in
6 accordance with RCW 43.70.510 or 70.41.200 may share information and
7 documents, including complaints and incident reports, created
8 specifically for, and collected and maintained by a coordinated quality
9 improvement committee or committees or boards under subsection (1) of
10 this section, with one or more other coordinated quality improvement
11 programs for the improvement of the quality of health care services
12 rendered to patients and the identification and prevention of medical
13 malpractice. Information and documents disclosed by one coordinated
14 quality improvement program to another coordinated quality improvement
15 program and any information and documents created or maintained as a
16 result of the sharing of information and documents shall not be subject
17 to the discovery process and confidentiality shall be respected as
18 required by subsection (1) of this section and by RCW 43.70.510(4) and
19 70.41.200(3).

20 **Sec. 414.** RCW 43.70.510 and 1995 c 267 s 7 are each amended to
21 read as follows:

22 (1)(a) Health care institutions and medical facilities, other than
23 hospitals, that are licensed by the department, professional societies
24 or organizations, health care service contractors, health maintenance
25 organizations, health carriers approved pursuant to chapter 48.43 RCW,
26 and any other person or entity providing health care coverage under
27 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
28 any state agency or any subdivision thereof may maintain a coordinated
29 quality improvement program for the improvement of the quality of
30 health care services rendered to patients and the identification and
31 prevention of medical malpractice as set forth in RCW 70.41.200.

32 (b) All such programs shall comply with the requirements of RCW
33 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to
34 reflect the structural organization of the institution, facility,
35 professional societies or organizations, health care service
36 contractors, health maintenance organizations, health carriers, or any
37 other person or entity providing health care coverage under chapter

1 48.42 RCW that is subject to the jurisdiction and regulation of any
2 state agency or any subdivision thereof, unless an alternative quality
3 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
4 developed. All such programs, whether complying with the requirement
5 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
6 program, must be approved by the department before the discovery
7 limitations provided in subsections (3) and (4) of this section and the
8 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
9 shall apply. In reviewing plans submitted by licensed entities that
10 are associated with physicians' offices, the department shall ensure
11 that the exemption under RCW 42.17.310(1)(hh) and the discovery
12 limitations of this section are applied only to information and
13 documents related specifically to quality improvement activities
14 undertaken by the licensed entity.

15 (2) Health care provider groups of (~~ten~~) five or more providers
16 may maintain a coordinated quality improvement program for the
17 improvement of the quality of health care services rendered to patients
18 and the identification and prevention of medical malpractice as set
19 forth in RCW 70.41.200. All such programs shall comply with the
20 requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h)
21 as modified to reflect the structural organization of the health care
22 provider group. All such programs must be approved by the department
23 before the discovery limitations provided in subsections (3) and (4) of
24 this section and the exemption under RCW 42.17.310(1)(hh) and
25 subsection (5) of this section shall apply.

26 (3) Any person who, in substantial good faith, provides information
27 to further the purposes of the quality improvement and medical
28 malpractice prevention program or who, in substantial good faith,
29 participates on the quality improvement committee shall not be subject
30 to an action for civil damages or other relief as a result of such
31 activity.

32 (4) Information and documents, including complaints and incident
33 reports, created specifically for, and collected, and maintained by a
34 quality improvement committee are not subject to discovery or
35 introduction into evidence in any civil action, and no person who was
36 in attendance at a meeting of such committee or who participated in the
37 creation, collection, or maintenance of information or documents
38 specifically for the committee shall be permitted or required to

1 testify in any civil action as to the content of such proceedings or
2 the documents and information prepared specifically for the committee.
3 This subsection does not preclude: (a) In any civil action, the
4 discovery of the identity of persons involved in the medical care that
5 is the basis of the civil action whose involvement was independent of
6 any quality improvement activity; (b) in any civil action, the
7 testimony of any person concerning the facts that form the basis for
8 the institution of such proceedings of which the person had personal
9 knowledge acquired independently of such proceedings; (c) in any civil
10 action by a health care provider regarding the restriction or
11 revocation of that individual's clinical or staff privileges,
12 introduction into evidence information collected and maintained by
13 quality improvement committees regarding such health care provider; (d)
14 in any civil action challenging the termination of a contract by a
15 state agency with any entity maintaining a coordinated quality
16 improvement program under this section if the termination was on the
17 basis of quality of care concerns, introduction into evidence of
18 information created, collected, or maintained by the quality
19 improvement committees of the subject entity, which may be under terms
20 of a protective order as specified by the court; (e) in any civil
21 action, disclosure of the fact that staff privileges were terminated or
22 restricted, including the specific restrictions imposed, if any and the
23 reasons for the restrictions; or (f) in any civil action, discovery and
24 introduction into evidence of the patient's medical records required by
25 rule of the department of health to be made regarding the care and
26 treatment received.

27 (5) Information and documents created specifically for, and
28 collected and maintained by a quality improvement committee are exempt
29 from disclosure under chapter 42.17 RCW.

30 (6) A coordinated quality improvement program may share information
31 and documents, including complaints and incident reports, created
32 specifically for, and collected and maintained by a quality improvement
33 committee or a peer review committee under RCW 4.24.250 with one or
34 more other coordinated quality improvement programs maintained in
35 accordance with this section or with RCW 70.41.200, for the improvement
36 of the quality of health care services rendered to patients and the
37 identification and prevention of medical malpractice. Information and
38 documents disclosed by one coordinated quality improvement program to

1 another coordinated quality improvement program and any information and
2 documents created or maintained as a result of the sharing of
3 information and documents shall not be subject to the discovery process
4 and confidentiality shall be respected as required by subsection (4) of
5 this section and RCW 4.24.250.

6 (7) The department of health shall adopt rules as are necessary to
7 implement this section.

8 **Sec. 415.** RCW 70.41.200 and 2000 c 6 s 3 are each amended to read
9 as follows:

10 (1) Every hospital shall maintain a coordinated quality improvement
11 program for the improvement of the quality of health care services
12 rendered to patients and the identification and prevention of medical
13 malpractice. The program shall include at least the following:

14 (a) The establishment of a quality improvement committee with the
15 responsibility to review the services rendered in the hospital, both
16 retrospectively and prospectively, in order to improve the quality of
17 medical care of patients and to prevent medical malpractice. The
18 committee shall oversee and coordinate the quality improvement and
19 medical malpractice prevention program and shall ensure that
20 information gathered pursuant to the program is used to review and to
21 revise hospital policies and procedures;

22 (b) A medical staff privileges sanction procedure through which
23 credentials, physical and mental capacity, and competence in delivering
24 health care services are periodically reviewed as part of an evaluation
25 of staff privileges;

26 (c) The periodic review of the credentials, physical and mental
27 capacity, and competence in delivering health care services of all
28 persons who are employed or associated with the hospital;

29 (d) A procedure for the prompt resolution of grievances by patients
30 or their representatives related to accidents, injuries, treatment, and
31 other events that may result in claims of medical malpractice;

32 (e) The maintenance and continuous collection of information
33 concerning the hospital's experience with negative health care outcomes
34 and incidents injurious to patients, patient grievances, professional
35 liability premiums, settlements, awards, costs incurred by the hospital
36 for patient injury prevention, and safety improvement activities;

1 (f) The maintenance of relevant and appropriate information
2 gathered pursuant to (a) through (e) of this subsection concerning
3 individual physicians within the physician's personnel or credential
4 file maintained by the hospital;

5 (g) Education programs dealing with quality improvement, patient
6 safety, medication errors, injury prevention, staff responsibility to
7 report professional misconduct, the legal aspects of patient care,
8 improved communication with patients, and causes of malpractice claims
9 for staff personnel engaged in patient care activities; and

10 (h) Policies to ensure compliance with the reporting requirements
11 of this section.

12 (2) Any person who, in substantial good faith, provides information
13 to further the purposes of the quality improvement and medical
14 malpractice prevention program or who, in substantial good faith,
15 participates on the quality improvement committee shall not be subject
16 to an action for civil damages or other relief as a result of such
17 activity.

18 (3) Information and documents, including complaints and incident
19 reports, created specifically for, and collected, and maintained by a
20 quality improvement committee are not subject to discovery or
21 introduction into evidence in any civil action, and no person who was
22 in attendance at a meeting of such committee or who participated in the
23 creation, collection, or maintenance of information or documents
24 specifically for the committee shall be permitted or required to
25 testify in any civil action as to the content of such proceedings or
26 the documents and information prepared specifically for the committee.
27 This subsection does not preclude: (a) In any civil action, the
28 discovery of the identity of persons involved in the medical care that
29 is the basis of the civil action whose involvement was independent of
30 any quality improvement activity; (b) in any civil action, the
31 testimony of any person concerning the facts which form the basis for
32 the institution of such proceedings of which the person had personal
33 knowledge acquired independently of such proceedings; (c) in any civil
34 action by a health care provider regarding the restriction or
35 revocation of that individual's clinical or staff privileges,
36 introduction into evidence information collected and maintained by
37 quality improvement committees regarding such health care provider; (d)
38 in any civil action, disclosure of the fact that staff privileges were

1 terminated or restricted, including the specific restrictions imposed,
2 if any and the reasons for the restrictions; or (e) in any civil
3 action, discovery and introduction into evidence of the patient's
4 medical records required by regulation of the department of health to
5 be made regarding the care and treatment received.

6 (4) Each quality improvement committee shall, on at least a
7 semiannual basis, report to the governing board of the hospital in
8 which the committee is located. The report shall review the quality
9 improvement activities conducted by the committee, and any actions
10 taken as a result of those activities.

11 (5) The department of health shall adopt such rules as are deemed
12 appropriate to effectuate the purposes of this section.

13 (6) The medical quality assurance commission or the board of
14 osteopathic medicine and surgery, as appropriate, may review and audit
15 the records of committee decisions in which a physician's privileges
16 are terminated or restricted. Each hospital shall produce and make
17 accessible to the commission or board the appropriate records and
18 otherwise facilitate the review and audit. Information so gained shall
19 not be subject to the discovery process and confidentiality shall be
20 respected as required by subsection (3) of this section. Failure of a
21 hospital to comply with this subsection is punishable by a civil
22 penalty not to exceed two hundred fifty dollars.

23 (7) The department, the joint commission on accreditation of health
24 care organizations, and any other accrediting organization may review
25 and audit the records of a quality improvement committee or peer review
26 committee in connection with their inspection and review of hospitals.
27 Information so obtained shall not be subject to the discovery process,
28 and confidentiality shall be respected as required by subsection (3) of
29 this section. Each hospital shall produce and make accessible to the
30 department the appropriate records and otherwise facilitate the review
31 and audit.

32 (8) A coordinated quality improvement program may share information
33 and documents, including complaints and incident reports, created
34 specifically for, and collected and maintained by a quality improvement
35 committee or a peer review committee under RCW 4.24.250 with one or
36 more other coordinated quality improvement programs maintained in
37 accordance with this section or with RCW 43.70.510, for the improvement
38 of the quality of health care services rendered to patients and the

1 identification and prevention of medical malpractice. Information and
2 documents disclosed by one coordinated quality improvement program to
3 another coordinated quality improvement program and any information and
4 documents created or maintained as a result of the sharing of
5 information and documents shall not be subject to the discovery process
6 and confidentiality shall be respected as required by subsection (3) of
7 this section and RCW 4.24.250.

8 (9) Violation of this section shall not be considered negligence
9 per se.

10 **Sec. 416.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended
11 to read as follows:

12 (1) The secretary shall charge fees to the licensee for obtaining
13 a license. After June 30, 1995, municipal corporations providing
14 emergency medical care and transportation services pursuant to chapter
15 18.73 RCW shall be exempt from such fees, provided that such other
16 emergency services shall only be charged for their pro rata share of
17 the cost of licensure and inspection, if appropriate. The secretary
18 may waive the fees when, in the discretion of the secretary, the fees
19 would not be in the best interest of public health and safety, or when
20 the fees would be to the financial disadvantage of the state.

21 (2) Except as provided in section 418 of this act, fees charged
22 shall be based on, but shall not exceed, the cost to the department for
23 the licensure of the activity or class of activities and may include
24 costs of necessary inspection.

25 (3) Department of health advisory committees may review fees
26 established by the secretary for licenses and comment upon the
27 appropriateness of the level of such fees.

28 **Sec. 417.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to
29 read as follows:

30 It shall be the policy of the state of Washington that the cost of
31 each professional, occupational, or business licensing program be fully
32 borne by the members of that profession, occupation, or business. The
33 secretary shall from time to time establish the amount of all
34 application fees, license fees, registration fees, examination fees,
35 permit fees, renewal fees, and any other fee associated with licensing
36 or regulation of professions, occupations, or businesses administered

1 by the department. In fixing (~~said~~) such fees, the secretary shall
2 set the fees for each program at a sufficient level to defray the costs
3 of administering that program and the patient safety fee established in
4 section 418 of this act. All such fees shall be fixed by rule adopted
5 by the secretary in accordance with the provisions of the
6 administrative procedure act, chapter 34.05 RCW.

7 NEW SECTION. **Sec. 418.** A new section is added to chapter 43.70
8 RCW to read as follows:

9 (1) The secretary shall increase the licensing fee established
10 under RCW 43.70.110 by two dollars per year for the health care
11 professionals designated in subsection (2) of this section and by two
12 dollars per licensed bed per year for the health care facilities
13 designated in subsection (2) of this section. Proceeds of the patient
14 safety fee must be deposited into the patient safety account in section
15 422 of this act and dedicated to patient safety and medical error
16 reduction efforts that have been proven to improve, or have a
17 substantial likelihood of improving, the quality of care provided by
18 health care professionals and facilities.

19 (2) Health care professionals and facilities subject to the one
20 percent patient safety fee are:

21 (a) The following health care professionals licensed under Title 18
22 RCW:

23 (i) Advanced registered nurse practitioners, registered nurses, and
24 licensed practical nurses licensed under chapter 18.79 RCW;

25 (ii) Chiropractors licensed under chapter 18.25 RCW;

26 (iii) Dentists licensed under chapter 18.32 RCW;

27 (iv) Midwives licensed under chapter 18.50 RCW;

28 (v) Naturopaths licensed under chapter 18.36A RCW;

29 (vi) Nursing home administrators licensed under chapter 18.52 RCW;

30 (vii) Optometrists licensed under chapter 18.53 RCW;

31 (viii) Osteopathic physicians licensed under chapter 18.57 RCW;

32 (ix) Osteopathic physicians' assistants licensed under chapter
33 18.57A RCW;

34 (x) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

35 (xi) Physicians licensed under chapter 18.71 RCW;

36 (xii) Physician assistants licensed under chapter 18.71A RCW;

37 (xiii) Podiatrists licensed under chapter 18.22 RCW; and

- 1 (xiv) Psychologists licensed under chapter 18.83 RCW; and
- 2 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric
- 3 hospitals licensed under chapter 71.12 RCW.

4 NEW SECTION. **Sec. 419.** A new section is added to chapter 7.70 RCW
5 to read as follows:

6 (1) One percent of the present value of the settlement or verdict
7 in any action for damages based upon injuries resulting from health
8 care shall be deducted from the settlement or verdict as a patient
9 safety set aside. Proceeds of the patient safety set aside shall be
10 distributed by the department of health in the form of grants, loans,
11 or other appropriate arrangements to support strategies that have been
12 proven to reduce medical errors and enhance patient safety as provided
13 in section 418 of this act.

14 (2) Patient safety set asides shall be transmitted to the secretary
15 of the department of health for deposit into the patient safety account
16 established in section 422 of this act.

17 (3) The supreme court shall by rule adopt procedures to implement
18 this section.

19 NEW SECTION. **Sec. 420.** A new section is added to chapter 43.70
20 RCW to read as follows:

21 (1) Patient safety fee and set aside proceeds shall be administered
22 by the department, after seeking input from health care providers
23 engaged in direct patient care activities, health care facilities, and
24 other interested parties. In developing criteria for the award of
25 grants, loans, or other appropriate arrangements under this section,
26 the department shall rely primarily upon evidence-based practices to
27 improve patient safety that have been identified and recommended by
28 governmental and private organizations, including, but not limited to:

- 29 (a) The federal agency for health care quality and research;
- 30 (b) The federal institute of medicine;
- 31 (c) The joint commission on accreditation of health care
- 32 organizations; and
- 33 (d) The national quality forum.

34 (2) Projects that have been proven to reduce medical errors and
35 enhance patient safety shall receive priority for funding over those
36 that are not proven, but have a substantial likelihood of reducing

1 medical errors and enhancing patient safety. All project proposals
2 must include specific performance and outcome measures by which to
3 evaluate the effectiveness of the project. Project proposals that do
4 not propose to use a proven patient safety strategy must include, in
5 addition to performance and outcome measures, a detailed description of
6 the anticipated outcomes of the project based upon any available
7 related research and the steps for achieving those outcomes.

8 (3) The department may use a portion of the patient safety fee
9 proceeds for the costs of administering the program.

10 NEW SECTION. **Sec. 421.** A new section is added to chapter 43.70
11 RCW to read as follows:

12 The secretary may solicit and accept grants or other funds from
13 public and private sources to support patient safety and medical error
14 reduction efforts under this act. Any grants or funds received may be
15 used to enhance these activities as long as program standards
16 established by the secretary are maintained.

17 NEW SECTION. **Sec. 422.** A new section is added to chapter 43.70
18 RCW to read as follows:

19 The patient safety account is created in the custody of the state
20 treasurer. All receipts from contributions authorized in sections 418
21 and 419 of this act must be deposited into the account. Expenditures
22 from the account may be used only for the purposes of this act. Only
23 the secretary or the secretary's designee may authorize expenditures
24 from the account. The account is subject to allotment procedures under
25 chapter 43.88 RCW, but an appropriation is not required for
26 expenditures.

27 NEW SECTION. **Sec. 423.** A new section is added to chapter 43.70
28 RCW to read as follows:

29 By December 1, 2007, the department shall report the following
30 information to the governor and the health policy and fiscal committees
31 of the legislature:

32 (1) The amount of patient safety fees and set asides deposited to
33 date in the patient safety account;

34 (2) The criteria for distribution of grants, loans, or other
35 appropriate arrangements under this act; and

1 (3) A description of the medical error reduction and patient safety
2 grants and loans distributed to date, including the stated performance
3 measures, activities, timelines, and detailed information regarding
4 outcomes for each project.

5 NEW SECTION. **Sec. 424.** It is the intent of the legislature by
6 enacting sections 425 and 426 of this act that health care providers
7 should remain personally liable for their own negligent or wrongful
8 acts or omissions in connection with the provision of health care
9 services, but that their vicarious liability for the negligent or
10 wrongful acts or omissions of others should be curtailed. To that end,
11 it is the intent of the legislature that *Adamski v. Tacoma General*
12 *Hospital*, 20 Wn. App. 98, 579 P.2d 970 (1978), and its holding that
13 hospitals may be held liable for a physician's acts or omissions under
14 so-called "apparent agency" or "ostensible agency" theories should be
15 reversed, so that hospitals will not be liable for the act or omission
16 of a health care provider granted hospital privileges unless the health
17 care provider is an actual agent or employee of the hospital. It is
18 further the intent of the legislature that, notwithstanding any
19 generally applicable principle of vicarious liability to the contrary,
20 individual health care professionals will not be liable for the
21 negligent or wrongful acts of others, except those who were acting
22 under their direct supervision and control.

23 NEW SECTION. **Sec. 425.** A new section is added to chapter 7.70 RCW
24 to read as follows:

25 A public or private hospital shall be liable for an act or omission
26 of a health care provider granted privileges to provide health care at
27 the hospital only if the health care provider is an actual agent or
28 employee of the hospital and the act or omission of the health care
29 provider occurred while the health care provider was acting within the
30 course and scope of the health care provider's agency or employment
31 with the hospital.

32 NEW SECTION. **Sec. 426.** A new section is added to chapter 7.70 RCW
33 to read as follows:

34 A person who is a health care provider under RCW 7.70.020 (1) or
35 (2) shall not be personally liable for any act or omission of any other

1 health care provider who was not the person's actual agent or employee
2 or who was not acting under the person's direct supervision and control
3 at the time of the act or omission.

4 NEW SECTION. **Sec. 427.** Unless otherwise provided in sections 401
5 through 412 of this act, sections 401 through 412 of this act apply to
6 all causes of action filed on or after the effective date of this
7 section.

8 **PART 5**
9 **CONSTRUCTION LIABILITY**

10 **Sec. 501.** RCW 51.24.035 and 1987 c 212 s 1801 are each amended to
11 read as follows:

12 (1) Notwithstanding RCW 51.24.030(1), the injured worker or
13 beneficiary may not seek damages (~~(against a design professional who is~~
14 ~~a third person and who has been retained to perform professional~~
15 ~~services on a construction project, or any employee of a design~~
16 ~~professional who is assisting or representing the design professional~~
17 ~~in the performance of professional services on the site of the~~
18 ~~construction project, unless responsibility for safety practices is~~
19 ~~specifically assumed by contract, the provisions of which were mutually~~
20 ~~negotiated, or the design professional actually exercised control over~~
21 ~~the portion of the premises where the worker was injured)) for an
22 injury or occupational disease occurring in the course of employment at
23 the site of a construction project, whether accomplished by a single
24 contract or by multiple contracts, against the owner or developer of
25 the project or against any person or entity performing work, furnishing
26 materials, or providing services to or for the construction project
27 including, but not limited to, design professionals, construction
28 managers, general or prime contractors, suppliers, subcontractors of
29 any tier, and any employee of a design professional, construction
30 manager, general or prime contractor, supplier, or subcontractor of any
31 tier.~~

32 (2) The immunity provided by this section does not extend to any
33 person or entity who injures a worker by deliberate intention as
34 defined in RCW 51.24.020, and it is against public policy to seek

1 indemnification in construction contracts against such liability. Such
2 contractual clauses are void and unenforceable.

3 (3) The immunity provided by this section does not extend to
4 manufacturers and product sellers for product liability actions as
5 defined in chapter 7.72 RCW.

6 (4) The immunity provided by this section does not apply to the
7 negligent preparation of design plans and specifications by a design
8 professional.

9 ~~((3))~~ (5) For the purposes of this section, "design professional"
10 means an architect, professional engineer, land surveyor, or landscape
11 architect, who is licensed or authorized by law to practice such
12 profession, or any corporation organized under chapter 18.100 RCW or
13 authorized under RCW 18.08.420 or 18.43.130 to render design services
14 through the practice of one or more of such professions.

15 **Sec. 502.** RCW 4.16.300 and 1986 c 305 s 703 are each amended to
16 read as follows:

17 RCW 4.16.300 through 4.16.320 shall apply to all claims or causes
18 of action of any kind against any person, arising from such person
19 having constructed, altered or repaired any improvement upon real
20 property, or having performed or furnished any design, planning,
21 surveying, architectural or construction or engineering services, or
22 supervision or observation of construction, or administration of
23 construction contracts for any construction, alteration or repair of
24 any improvement upon real property. This section is specifically
25 intended to benefit ~~((only those persons referenced herein))~~ persons
26 having performed work for which the persons must be registered or
27 licensed under RCW 18.08.310, 18.27.020, 18.43.040, 18.96.020, or
28 19.28.041, and shall not apply to claims or causes of action against
29 ~~((manufacturers))~~ persons not required to be so registered or licensed.

30 **PART 6**
31 **SEATBELT DEFENSE**

32 **Sec. 601.** RCW 46.61.688 and 2003 c 353 s 4 are each amended to
33 read as follows:

34 (1) For the purposes of this section, the term "motor vehicle"
35 includes:

1 (a) "Buses," meaning motor vehicles with motive power, except
2 trailers, designed to carry more than ten passengers;

3 (b) "Multipurpose passenger vehicles," meaning motor vehicles with
4 motive power, except trailers, designed to carry ten persons or less
5 that are constructed either on a truck chassis or with special features
6 for occasional off-road operation;

7 (c) "Neighborhood electric vehicle," meaning a self-propelled,
8 electrically powered four-wheeled motor vehicle whose speed attainable
9 in one mile is more than twenty miles per hour and not more than
10 twenty-five miles per hour and conforms to federal regulations under
11 Title 49 C.F.R. Part 571.500;

12 (d) "Passenger cars," meaning motor vehicles with motive power,
13 except multipurpose passenger vehicles, motorcycles, or trailers,
14 designed for carrying ten passengers or less; and

15 (e) "Trucks," meaning motor vehicles with motive power, except
16 trailers, designed primarily for the transportation of property.

17 (2) This section only applies to motor vehicles that meet the
18 manual seat belt safety standards as set forth in federal motor vehicle
19 safety standard 208 and to neighborhood electric vehicles. This
20 section does not apply to a vehicle occupant for whom no safety belt is
21 available when all designated seating positions as required by federal
22 motor vehicle safety standard 208 are occupied.

23 (3) Every person sixteen years of age or older operating or riding
24 in a motor vehicle shall wear the safety belt assembly in a properly
25 adjusted and securely fastened manner.

26 (4) No person may operate a motor vehicle unless all child
27 passengers under the age of sixteen years are either: (a) Wearing a
28 safety belt assembly or (b) are securely fastened into an approved
29 child restraint device.

30 (5) A person violating this section shall be issued a notice of
31 traffic infraction under chapter 46.63 RCW. A finding that a person
32 has committed a traffic infraction under this section shall be
33 contained in the driver's abstract but shall not be available to
34 insurance companies or employers.

35 (6) Failure to comply with ~~((the))~~ any requirements of this section
36 ~~((does not constitute negligence, nor may failure to wear a safety belt~~
37 ~~assembly))~~ may be admissible as evidence of negligence in any civil
38 action.

1 (7) This section does not apply to an operator or passenger who
2 possesses written verification from a licensed physician that the
3 operator or passenger is unable to wear a safety belt for physical or
4 medical reasons.

5 (8) The state patrol may adopt rules exempting operators or
6 occupants of farm vehicles, construction equipment, and vehicles that
7 are required to make frequent stops from the requirement of wearing
8 safety belts.

9 **PART 7**

10 **GOVERNMENTAL ACTIVITIES**

11 NEW SECTION. **Sec. 701.** While the common law doctrine of sovereign
12 immunity declares that the state is immune from liability for the
13 tortious conduct of its employees and officers, Article II, section 26
14 of the state Constitution allows the legislature to waive its immunity
15 and specify by statute "in what manner, and in what courts, suit may be
16 brought against the state." In the granting or withholding of
17 sovereign immunity, there are limitations, gradations, and competing
18 interests to be balanced by the legislature, including fairness to the
19 citizens of the state, the preservation of proper and essential
20 functions of government, and the conservation of scarce public
21 resources.

22 In balancing these competing interests, the legislature must also
23 balance the traditional role of the jury in determining damages in
24 civil cases and the legislature's constitutional mandate under Article
25 VIII, section 4 of the state Constitution to protect the state treasury
26 through the appropriation process.

27 The legislature finds that these constitutional principles are not
28 adequately served by either complete sovereign immunity or the complete
29 waiver of sovereign immunity. Pursuant to the express authority of
30 Article II, section 26 of the state Constitution, the purpose of
31 sections 701 through 707 of this act is to recognize and implement
32 these fundamental constitutional principles while providing a fair and
33 equitable means of recovery against governmental entities for the
34 negligent acts of their employees and officers.

35 The legislature further finds that government agencies administer
36 programs, in the exercise of their constitutional, statutory, and moral

1 obligations, that inherently create a significant risk of tort
2 liability in the absence of sovereign immunity. This potential
3 liability is unique to the governmental function. As a result, state
4 and local governments are not similarly situated to individual and
5 private organizations, who are not under legal or moral obligations to
6 provide for the public health, safety, and welfare. For these reasons,
7 the legislature finds it necessary and appropriate to distinguish
8 between the civil liability of private entities and governmental
9 agencies.

10 **Sec. 702.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read
11 as follows:

12 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,
13 (~~4.92.140~~)) and 4.92.150, volunteer is defined in RCW 51.12.035.

14 **Sec. 703.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
15 as follows:

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

27 (2)(a) Neither local government entities, nor their officers,
28 employees, or volunteers are liable to pay a claim or a judgment for
29 noneconomic damages as defined in RCW 4.56.250 by any one person that
30 exceeds the sum of one million dollars or any claim or judgment, or
31 portions thereof, that, when totaled with all other claims or judgments
32 paid by the local government entities, officers, employees, or
33 volunteers arising out of the same incident or occurrence, exceeds the
34 sum of two million dollars. However, a judgment or judgments may be
35 claimed and rendered in excess of these amounts and may be settled and
36 paid under this section up to one million dollars or two million

1 dollars, as the case may be, and that portion of the judgment that
2 exceeds these amounts may be reported to the local legislative
3 authority, but may be paid in part or in whole only by further act of
4 the local legislative authority. Notwithstanding the limited waiver of
5 sovereign immunity provided in this section, the local government
6 entities, officers, employees, or volunteers may agree, within the
7 limits of insurance coverage provided, to settle a claim made or a
8 judgment rendered against it without further action by the local
9 legislative authority, but the local government entities, officers,
10 employees, or volunteers have 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 (b) The liability of the local government entities, officers,
15 employees, or volunteers is several only and is not joint.

16 (c) 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 (d) Subsection (2)(a) of this section does not apply in cases in
20 which the local government entity or its officers, employees, or
21 volunteers are held liable for civil damages resulting from any
22 negligent act or omission in the rendering of community placement,
23 community supervision, community custody, parole supervision, probation
24 supervision, or supervision of suspended sentences if (i) the offender
25 under supervision has ever been convicted of the crime of first or
26 second degree rape, first or second degree rape of a child, or first or
27 second degree homicide, and (ii) the civil damages resulted from the
28 subsequent commission of one of these specified offenses.

29 (3) Unless the context clearly requires otherwise, for the purposes
30 of this chapter, "local governmental entity" means a county, city,
31 town, special district, municipal corporation as defined in RCW
32 39.50.010, quasi- municipal corporation, or public hospital.

33 ((+3+)) (4) For the purposes of this chapter, "volunteer" is
34 defined according to RCW 51.12.035.

35 **Sec. 704.** RCW 4.92.040 and 2002 c 332 s 11 are each amended to
36 read as follows:

37 (1) No execution shall issue against the state on any judgment.

1 (2) Whenever a final judgment against the state is obtained in an
2 action on a claim arising out of tortious conduct, the claim shall be
3 paid from the liability account, subject to the limitations of RCW
4 4.92.090.

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

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

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

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

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

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

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

10 (b) An estimate by the risk management division of the value of the
11 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. 705.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
25 as follows:

26 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 (1) Neither the state nor its agencies, institutions, officers,
31 employees, or volunteers are liable to pay a claim or a judgment for
32 noneconomic damages as defined in RCW 4.56.250 by any one person that
33 exceeds the sum of one million dollars or any claim or judgment, or
34 portions thereof, that, when totaled with all other claims or judgments
35 paid by the state or its agencies, institutions, officers, employees,
36 or volunteers arising out of the same incident or occurrence, exceeds
37 the sum of two million dollars. However, a judgment or judgments may

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

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

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

20 (4) Subsection (1) of this section does not apply in cases in which
21 the state or its agencies, institutions, officers, employees, or
22 volunteers are held liable for civil damages resulting from any
23 negligent act or omission in the rendering of community placement,
24 community supervision, community custody, parole supervision, probation
25 supervision, or supervision of suspended sentences if (a) the offender
26 under supervision has ever been convicted of the crime of first or
27 second degree rape, first or second degree rape of a child, or first or
28 second degree homicide, and (b) the civil damages resulted from the
29 subsequent commission of one of these specified offenses.

30 **Sec. 706.** RCW 4.92.130 and 2002 c 332 s 14 are each amended to
31 read as follows:

32 A liability account in the custody of the treasurer is hereby
33 created as a nonappropriated account to be used solely and exclusively
34 for the payment of liability settlements and judgments against the
35 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of
36 its officers, employees, and volunteers and all related legal defense

1 costs. Legislative appropriation is required for expenditures from the
2 liability account to the extent specified in RCW 4.92.090.

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

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

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

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

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

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

24 (5) Annual premium levels shall be determined by the risk manager,
25 with the consultation and advice of the risk management advisory
26 committee. An actuarial study shall be conducted to assist in
27 determining the appropriate level of funding.

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

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

33 (8) The liability account shall not exceed fifty percent of the
34 actuarial value of the outstanding liability as determined annually by
35 the risk management division. If the account exceeds the maximum
36 amount specified in this section, premiums may be adjusted by the risk
37 management division in order to maintain the account balance at the

1 maximum limits. If, after adjustment of premiums, the account balance
2 remains above the limits specified, the excess amount shall be prorated
3 back to the appropriate funds.

4 NEW SECTION. **Sec. 707.** Sections 701 through 706 of this act apply
5 to all claims that have not been reduced to judgment on the effective
6 date of this section.

7 **PART 8**
8 **CERTIFICATE OF MERIT**

9 NEW SECTION. **Sec. 801.** A new section is added to chapter 4.24 RCW
10 to read as follows:

11 (1) A certificate of merit shall be filed by the claimant's
12 attorney as specified in subsection (2) of this section within ninety
13 days of filing or service, whichever occurs later, of any action
14 asserting a claim, cross-claim, counter-claim, or third party claim for
15 damages arising out of: The failure to comply with the standard of
16 care by a person licensed, registered, or certified under Title 18 RCW;
17 the negligence of a health care facility as defined in RCW 48.43.005;
18 or a product liability claim under chapter 7.72 RCW. The court may,
19 for good cause shown, extend the period of time within which filing of
20 the certificate is required. In no event shall the period of time for
21 filing the certificate of merit exceed one hundred twenty days from the
22 date of filing or service, whichever occurs later.

23 (2) The certificate filed by the claimant's attorney shall consist
24 of the declaration of a qualified expert. The declaration shall
25 include:

26 (a) The name, address, and credentials of claimant's expert;

27 (b) The expert's statement that the expert has reviewed the facts
28 of the case, is knowledgeable of the relevant issues involved, and who:

29 (i) Holds a license, certificate, or registration issued by this
30 state or another state in the same profession as that of the person
31 against whom the claim is filed, and who practices in the same
32 specialty or subspecialty as the person against whom the claim is
33 filed; or

34 (ii) Has expertise in those areas requiring expert testimony in a
35 product liability claim or in an action against a health care facility;

1 (c) The expert's statement of willingness and availability to
2 testify to admissible facts, standard of care, or opinions regarding
3 the case; and

4 (d) The expert's statement that on the basis of preliminary review
5 and consultation, that there is reasonable and meritorious cause for
6 the filing of the action.

7 (3) Where a certificate is required under this section, and where
8 there are claims against multiple persons or entities, separate
9 certificates must be filed for each party qualified under subsection
10 (1) of this section. As appropriate, the same expert may file multiple
11 declarations provided that each declaration meets the requirements of
12 subsection (2) of this section.

13 (4) Persons identified in subsection (1) of this section against
14 whom a claim has been asserted are not required to file an answer to
15 that claim until thirty days after filing the certificate required in
16 subsection (2) of this section.

17 (5) The provisions of this section are not applicable to a pro se
18 claimant until such a time as an attorney appears on the claimant's
19 behalf.

20 (6) A violation of this section is grounds for dismissal of the
21 action; and a court of competent jurisdiction may sanction the claimant
22 or the claimant's attorney for violating this section.

23 NEW SECTION. **Sec. 802.** Section 801 of this act applies to all
24 actions for damages filed on or after July 1, 2004.

25 **PART 9**

26 **GOVERNMENT STANDARDS DEFENSE**

27 NEW SECTION. **Sec. 901.** A new section is added to chapter 7.70 RCW
28 to read as follows:

29 In a products liability action alleging that an injury was caused
30 by a failure to provide adequate warnings or information with regard to
31 a pharmaceutical product, the defendant or defendants shall not be
32 liable with respect to such allegations if the warnings or information
33 that accompanied the product in its distribution were those required by
34 the United States food and drug administration for a product approved
35 pursuant to the federal food, drug, and cosmetic act (21 U.S.C. Sec.

1 321, et seq.) or section 351 of the public health service act (42
2 U.S.C. Sec. 262), or the warnings provided were those set forth in
3 monographs developed by the United States food and drug administration
4 for pharmaceutical products that may be distributed without an approved
5 new drug application.

6 **PART 10**

7 **MANUFACTURER DISTRIBUTION LIABILITY**

8 NEW SECTION. **Sec. 1001.** A new section is added to chapter 7.72
9 RCW to read as follows:

10 A manufacturer of goods is not liable for harm caused by defects in
11 goods attributed to such a manufacturer where the goods have been
12 purchased through a chain of distribution that does not establish the
13 manufacturer as the lawful source of the defective product. This
14 section does not apply where the harm is caused by:

- 15 (1) Willful or wanton acts of negligence by the manufacturer;
16 (2) Conscious indifference or reckless disregard for the safety of
17 others by the manufacturer; or
18 (3) Intentional conduct on the part of the manufacturer.

19 **PART 11**

20 **OBESITY LAWSUITS**

21 NEW SECTION. **Sec. 1101.** A new section is added to chapter 7.72
22 RCW to read as follows:

23 (1) Any manufacturer, distributor, or seller of a food or
24 nonalcoholic beverage intended for human consumption shall not be
25 subject to civil liability for personal injury or wrongful death based
26 on an individual's consumption of food or nonalcoholic beverages in
27 cases where liability is premised upon the individual's weight gain,
28 obesity, or a health condition related to weight gain or obesity and
29 resulting from the individual's long-term consumption of a food or
30 nonalcoholic beverage.

31 (2) For the purposes of this section, the term "long-term
32 consumption" means the cumulative effect of the consumption of food or
33 nonalcoholic beverages, and not the effect of a single instance of
34 consumption.

