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**SUBSTITUTE SENATE BILL 5271**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Wagoner, Pedersen, and Dhingra)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to amending the necessary elements of proof of  
2 injury during the state of emergency declared due to the COVID-19  
3 pandemic; amending RCW 7.70.040; creating a new section; and  
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
7 COVID-19 pandemic, a public health crisis, has placed an oversized  
8 burden on Washington's health care providers and health care  
9 facilities, as they care for communities and families.

10 (2) The legislature further finds that during the pandemic, the  
11 law should accurately reflect the realities of the challenging  
12 practice conditions. It is fair and appropriate to give special  
13 consideration to the challenges arising during the pandemic, such as  
14 evolving and sometimes conflicting direction from health officials  
15 regarding treatment for COVID-19 infected patients, supply chain  
16 shortages of personal protective equipment and testing supplies, and  
17 a proclamation on nonurgent procedures resulting in delayed or missed  
18 health screenings and diagnoses.

19 (3) The legislature intends, during the period of the declared  
20 state of emergency due to the COVID-19 pandemic, to amend the current

1 standard of care law governing health care providers to give special  
2 consideration to additional relevant factors.

3 **Sec. 2.** RCW 7.70.040 and 2011 c 336 s 251 are each amended to  
4 read as follows:

5 (1) The following shall be necessary elements of proof that  
6 injury resulted from the failure of the health care provider to  
7 follow the accepted standard of care:

8 ~~((1))~~ (a) The health care provider failed to exercise that  
9 degree of care, skill, and learning expected of a reasonably prudent  
10 health care provider at that time in the profession or class to which  
11 he or she belongs, in the state of Washington, acting in the same or  
12 similar circumstances;

13 ~~((2))~~ (b) Such failure was a proximate cause of the injury  
14 complained of.

15 (2)(a) The following shall be necessary elements of proof that  
16 injury resulted from the failure of a health care provider to follow  
17 the accepted standard of care in acting or failing to act following  
18 the proclamation of a state of emergency in all counties in the state  
19 of Washington by the governor in response to the COVID-19 pandemic on  
20 February 29, 2020, and until the state of emergency is terminated:

21 (i) The health care provider failed to exercise that degree of  
22 care, skill, and learning expected of a reasonably prudent health  
23 care provider at that time in the profession or class to which he or  
24 she belongs, in the state of Washington, acting in the same or  
25 similar circumstances, taking into account whether the act or  
26 omission:

27 (A) Was in good faith based upon guidance, direction, or  
28 recommendations, including in interim or preliminary form, published  
29 by the federal government, the state of Washington or departments,  
30 divisions, agencies, or agents thereof, or local governments in the  
31 state of Washington or departments, divisions, agencies, or agents  
32 thereof, in response to the COVID-19 pandemic and applicable to such  
33 health care provider; or

34 (B) Was due to a lack of resources including, but not limited to,  
35 available facility capacity, staff, and supplies, directly  
36 attributable to the COVID-19 pandemic;

37 (ii) Such failure was a proximate cause of the injury complained  
38 of.

1       (b) The provisions in (a) of this subsection apply only if  
2 relevant to the determination of whether the health care provider  
3 followed the standard of care, as determined by the court.

4       (c) If any health care provider presents evidence described in  
5 (a) of this subsection, the injured patient or the patient's  
6 representative is permitted to present rebuttal evidence, so long as  
7 such evidence is otherwise admissible.

8       NEW SECTION.   **Sec. 3.**   This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and takes  
11 effect immediately.

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