

2 **E2SSB 5304** - H AMD TO REV COMM AMD (H-2235.7/93) **000362 WITHDRAWN**  
3 **4-8-93**

4 By Representative Vance and Tate

5

6 On page 109, after line 25 of the amendment, insert the following:

7 "Sec. 411. RCW 4.56.250 and 1986 c 305 s 301 are each amended to  
8 read as follows:

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

11 (a) "Economic damages" means objectively verifiable monetary  
12 losses, including medical expenses, loss of earnings, burial costs,  
13 loss of use of property, cost of replacement or repair, cost of  
14 obtaining substitute domestic services, loss of employment, and loss of  
15 business or employment opportunities.

16 (b) "Noneconomic damages" means subjective, nonmonetary losses,  
17 including, but not limited to pain, suffering, inconvenience, mental  
18 anguish, disability or disfigurement incurred by the injured party,  
19 emotional distress, loss of society and companionship, loss of  
20 consortium, injury to reputation and humiliation, and destruction of  
21 the parent-child relationship.

22 (c) "Bodily injury" means physical injury, sickness, or disease,  
23 including death.

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

26 (2) In no action seeking damages for personal injury or death may  
27 a claimant recover a judgment for noneconomic damages exceeding an  
28 amount determined by multiplying 0.43 by the average annual wage and by  
29 the life expectancy of the person incurring noneconomic damages, as the  
30 life expectancy is determined by the life expectancy tables adopted by  
31 the insurance commissioner. For purposes of determining the maximum  
32 amount allowable for noneconomic damages, a claimant's life expectancy  
33 shall not be less than fifteen years. The limitation contained in this  
34 subsection applies to all claims for noneconomic damages made by a  
35 claimant who incurred bodily injury. Claims for loss of consortium,  
36 loss of society and companionship, destruction of the parent-child  
37 relationship, and all other derivative claims asserted by persons who

1 did not sustain bodily injury are to be included within the limitation  
2 on claims for noneconomic damages arising from the same bodily injury.  
3 (3) If a case is tried to a jury, the jury shall ((not)) be  
4 informed of the limitation contained in subsection (2) of this  
5 section."

6 Renumber the remaining sections consecutively and correct internal  
7 references accordingly.

8 **E2SSB 5304** - H AMD TO REV COMM AMD (H-2235.7/93)  
9 By Representative Dyer

10

11 On page 113, after line 38 of the amendment, insert the following:

12 "NEW SECTION. **Sec. 416.** CERTIFICATE OF MERIT REQUIRED. (1) The  
13 claimant's attorney shall file the certificate specified in subsection  
14 (2) of this section within thirty days of filing or service, whichever  
15 occurs later, for any action for damages arising out of injuries  
16 resulting from health care by a health care provider, as defined in RCW  
17 7.70.020.

18 (2) The certificate issued by the claimant's attorney shall  
19 declare:

20 (a) That the attorney has reviewed the facts of the case;

21 (b) That the attorney has consulted with at least one qualified  
22 expert who holds a license, certificate, or registration issued by this  
23 state or another state in the same profession as that of the defendant,  
24 who practices in the same specialty or subspecialty as the defendant,  
25 and whom the attorney reasonably believes is knowledgeable in the  
26 relevant issues involved in the particular action;

27 (c) The identity of the expert and the expert's license,  
28 certification, or registration;

29 (d) That the expert is willing and available to testify to  
30 admissible facts or opinions; and

31 (e) That the attorney has concluded on the basis of such review and  
32 consultation that there is reasonable and meritorious cause for the  
33 filing of such action.

34 (3) Where a certificate is required under this section, and where  
35 there are multiple defendants, the certificate or certificates must

1 state the attorney's conclusion that on the basis of review and expert  
2 consultation, there is reasonable and meritorious cause for the filing  
3 of such action as to each defendant.

4 (4) The provisions of this section are not applicable to a  
5 plaintiff who is not represented by an attorney.

6 (5) Violation of this section is grounds for either dismissal of  
7 the case or sanctions against the attorney, which may include an order  
8 to pay to the defendant or defendants the amount of reasonable expense  
9 incurred including a reasonable attorneys' fee, or both, as the court  
10 deems appropriate."

11 Renumber the remaining sections consecutively and correct internal  
12 references accordingly.

13 EFFECT: Responds to Sofie v. Fibreboard Corp., 112 Wn.2d 636  
14 (1989) by permitting the jury to be informed about the noneconomic  
15 damage formula; establishes a certificate of merit process.

--- END ---