

2 **SHB 2840 - H AMD 213 FAILED 2-13-96**

3 By Representatives Dellwo and Appelwick

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. (1) The claimant's attorney shall file the  
8 certificate specified in subsection (2) of this section within ninety  
9 days of filing or service, whichever occurs later, of any action for  
10 damages arising out of the negligence of a person licensed, registered,  
11 or certified under Title 18 RCW or a health care facility as defined in  
12 RCW 48.43.005. The court may, for good cause shown, extend the period  
13 of time within which filing of the certificate is required.

14 (2) The certificate issued by the claimant's attorney shall  
15 declare:

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

17 (b) That the attorney has consulted with at least one qualified  
18 expert who the attorney reasonably believes is knowledgeable in the  
19 relevant issues involved in the particular action and who has expertise  
20 in those areas requiring expert testimony in an action against a health  
21 care facility or health care professional;

22 (c) That the expert is willing and available to testify to  
23 admissible facts or opinions; and

24 (d) That the attorney has concluded on the basis of such review and  
25 consultation that there is reasonable and meritorious cause for the  
26 filing of such action.

27 (3) Where a certificate is required under this section, and where  
28 there are multiple defendants, the certificate or certificates must  
29 state the attorney's conclusion that on the basis of review and expert  
30 consultation, there is reasonable and meritorious cause for the filing  
31 of such action as to each defendant.

32 (4) The provisions of sections 2 through 5 of this act apply to  
33 persons who appear on their own behalf.

34 (5) If a named defendant seeks to apportion fault against a  
35 nonparty entity under RCW 4.22.070, the defendant shall file a  
36 certificate of merit as specified in subsection (2) of this section

1 that there is reasonable and meritorious cause for joining the nonparty  
2 entity and shall be required to join the nonparty entity as a party to  
3 the action.

4 (6) Violation of this section shall be grounds for either dismissal  
5 of the case or sanctions against the attorney, or both, as the court  
6 deems appropriate.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Defendant" means a person, including a corporation,  
10 association, partnership, or firm or government entity, against whom a  
11 litigation is brought or maintained or sought to be brought or  
12 maintained.

13 (2) "Litigation" means a civil action, or proceeding, commenced,  
14 maintained, or pending in a state or federal court.

15 (3) "Plaintiff" means the person who commences, institutes,  
16 maintains a litigation or causes it to be commenced, instituted, or  
17 maintained, including an attorney at law acting on the attorney's own  
18 behalf.

19 (4) "Security" means an undertaking to assure payment, to the party  
20 for whose benefit the undertaking is required to be furnished of the  
21 party's reasonable expenses, including attorneys' fees and not limited  
22 to taxable costs, incurred in or in connection with a litigation  
23 instituted, caused to be instituted, or maintained or caused to be  
24 maintained by a vexatious litigant.

25 (5) "Vexatious litigant" means a person who meets any of the  
26 following criteria:

27 (a) In the immediately preceding seven-year period has commenced,  
28 prosecuted, or maintained on the person's own behalf at least five  
29 litigations other than in a small claims court that have been finally  
30 determined adversely to the person;

31 (b) After a litigation has been finally determined against the  
32 person, repeatedly relitigates or attempts to relitigate, acting on the  
33 person's own behalf, either: (i) The validity of the determination  
34 against the same defendant or defendants as to whom the litigation was  
35 finally determined; or (ii) the cause of action, claim, controversy, or  
36 any of the issues of fact or law, determined or concluded by the final  
37 determination against the same defendant or defendants as to whom the  
38 litigation was finally determined;

1 (c) In litigation while acting on the person's own behalf,  
2 repeatedly files frivolous motions, pleadings, or other papers,  
3 repeatedly conducts unnecessary discovery, or engages in other tactics  
4 that are frivolous or solely intended to cause unnecessary delay; or

5 (d) Has previously been declared to be a vexatious litigant by a  
6 state or federal court of record in an action or proceeding based upon  
7 the same or substantially similar facts, transaction, or occurrence.

8 NEW SECTION. **Sec. 3.** In litigation pending in a court of this  
9 state, at any time until final judgment is entered, a defendant may  
10 move the court, upon notice and hearing, for an order requiring the  
11 plaintiff to furnish security. The motion must be based upon the  
12 ground, and supported by a showing, that the plaintiff is a vexatious  
13 litigant and that there is not a reasonable probability that the  
14 plaintiff will prevail in the litigation against the moving defendant.

15 NEW SECTION. **Sec. 4.** When a motion under section 3 of this act is  
16 filed before trial, the litigation is stayed and the moving defendant  
17 need not plead, until ten days after the motion is denied or, if  
18 granted, until ten days after the required security has been furnished  
19 and the moving defendant given written notice that the security has  
20 been furnished. When a motion under section 3 of this act is made at  
21 any time thereafter, the litigation is stayed for such a period after  
22 the denial of the motion or the furnishing of the required security as  
23 the court determines.

24 NEW SECTION. **Sec. 5.** (1) In addition to other relief provided in  
25 this title, the court may, on its own motion or the motion of a party,  
26 enter a prefiling order that prohibits a vexatious litigant from filing  
27 new litigation in the courts of this state acting on the litigant's own  
28 behalf without first presenting a certificate of merit and obtaining  
29 leave of the presiding judge of the court where the litigation is  
30 proposed to be filed. Disobedience of the order by a vexatious  
31 litigant may be punished as a contempt of court.

32 (2) The presiding judge shall permit the filing of litigation under  
33 subsection (1) of this section only if it appears that the litigation  
34 has merit and has not been filed for the purposes of harassment or  
35 delay. The presiding judge may condition the filing of the litigation

1 upon the furnishing of security for the benefit of the defendant as  
2 provided in section 3 of this act.

3 (3) The clerk may not file litigation presented by a vexatious  
4 litigant subject to a prefiling order unless the vexatious litigant  
5 first obtains an order from the presiding judge permitting the filing.  
6 If the clerk mistakenly files the litigation without the order, a party  
7 may file with the clerk and serve on the plaintiff and other parties a  
8 notice stating the plaintiff is a vexatious litigant subject to a  
9 prefiling order as set forth in subsection (1) of this section. The  
10 filing of the notice automatically stays the litigation. The  
11 litigation must be automatically dismissed unless the plaintiff within  
12 ten days of the filing of the notice obtains an order from the  
13 presiding judge permitting the filing of the litigation as set forth in  
14 subsection (2) of this section. If the presiding judge issues an order  
15 permitting the filing, the stay of the litigation remains in effect,  
16 and the defendants need not plead, until ten days after the defendants  
17 are served with a copy of the order.

18 (4) The clerk of the court shall provide the office of the  
19 administrator for the courts a copy of a prefiling order issued under  
20 subsection (1) of this section. The administrator for the courts shall  
21 maintain a record of vexatious litigants subject to the prefiling  
22 orders and shall annually disseminate a list of the persons to the  
23 clerks of the courts of this state.

24 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each  
25 added to chapter 4.24 RCW.

26 NEW SECTION. **Sec. 7.** Section 1 of this act applies to all actions  
27 for damages filed on or after July 1, 1996."

28 **SHB 2840** - H AMD  
29 By Representative

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31 On page 1, line 2 of the title, after "suits;" strike the remainder  
32 of the title and insert "adding new sections to chapter 4.24 RCW; and  
33 creating a new section."

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