

ESHB 1928 - S COMM AMD

By Committee on Health & Long-Term Care

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

24 The legislature finds that such reforms are rationally related to
25 the legitimate goals of reducing the costs associated with the health
26 care tort liability system while ensuring adequate and appropriate
27 compensation for persons injured as a result of health care, ensuring
28 the continued availability and affordability of health care services in
29 this state, preventing the curtailment of health care services in this

1 state, stabilizing insurance and health care costs, preventing stale
2 health care liability claims, and protecting and preserving the public
3 health, safety, and welfare as a whole.

4 **Sec. 2.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read
5 as follows:

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

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

13 (b) "Noneconomic damages" means subjective, nonmonetary losses,
14 including(~~(7)~~) but not limited to pain, suffering, inconvenience,
15 mental anguish, disability or disfigurement incurred by the injured
16 party, loss of ability to enjoy life, emotional distress, loss of
17 society and companionship, loss of consortium, injury to reputation and
18 humiliation, (~~(and)~~) destruction of the parent-child relationship, and
19 other nonpecuniary damages of any type.

20 (c) "Bodily injury" means physical injury, sickness, or disease,
21 including death.

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

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

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.56 RCW
6 to read as follows:

7 (1) In an action or arbitration for damages for injury or death
8 occurring as a result of health care, or arranging for the provision of
9 health care, brought under chapter 7.70 RCW, the total amount of
10 noneconomic damages may not exceed three hundred fifty thousand
11 dollars.

12 (2) The limitation on noneconomic damages contained in subsection
13 (1) of this section includes all noneconomic damages claimed by or on
14 behalf of the person whose injury or death occurred as a result of
15 health care, or arranging for the provision of health care, as well as
16 all claims for loss of consortium, loss of society and companionship,
17 destruction of the parent-child relationship, and other derivative
18 claims asserted by or on behalf of others arising from the same injury
19 or death. If the jury's assessment of noneconomic damages exceeds the
20 limitation contained in subsection (1) of this section, nothing in RCW
21 4.44.450 precludes the court from entering a judgment that limits the
22 total amount of noneconomic damages to those limits provided in
23 subsection (1) of this section.

24 **Sec. 4.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
25 as follows:

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

28 ~~((1))~~ (a) A person licensed by this state to provide health care
29 or related services, including, but not limited to, a physician,
30 osteopathic physician, dentist, nurse, optometrist, podiatric physician
31 and surgeon, chiropractor, physical therapist, psychologist,
32 pharmacist, optician, physician's assistant, osteopathic physician's
33 assistant, nurse practitioner, or physician's trained mobile intensive
34 care paramedic, including, in the event such person is deceased, his
35 estate or personal representative;

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

5 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or
6 institution employing one or more persons described in (a) of this
7 subsection ~~((1) of this section)~~, including, but not limited to, a
8 hospital, clinic, health maintenance organization, or nursing home; or
9 an officer, director, employee, or agent thereof acting in the course
10 and scope of his or her employment, including, in the event such
11 officer, director, employee, or agent is deceased, his or her estate or
12 personal representative;

13 based upon alleged professional negligence shall be commenced within
14 three years of the act or omission alleged to have caused the injury or
15 condition, or one year of the time the patient or his or her
16 representative or custodial parent or guardian discovered or reasonably
17 should have discovered that the injury or condition was caused by said
18 act or omission, whichever period ~~((expires later, except that in no
19 event shall an action be commenced more than eight years after said act
20 or omission: PROVIDED, That the time for commencement of an action is
21 tolled upon proof of fraud, intentional concealment, or the presence of
22 a foreign body not intended to have a therapeutic or diagnostic purpose
23 or effect, until the date the patient or the patient's representative
24 has actual knowledge of the act of fraud or concealment, or of the
25 presence of the foreign body; the patient or the patient's
26 representative has one year from the date of the actual knowledge in
27 which to commence a civil action for damages.~~

28 ~~For purposes of this section, notwithstanding RCW 4.16.190, the
29 knowledge of a custodial parent or guardian shall be imputed to a
30 person under the age of eighteen years, and such imputed knowledge
31 shall operate to bar the claim of such minor to the same extent that
32 the claim of an adult would be barred under this section. Any action
33 not commenced in accordance with this section shall be barred.~~

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

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

4 (a) Upon proof of fraud, intentional concealment, or the presence
5 of a foreign body not intended to have a therapeutic or diagnostic
6 purpose or effect, in which case the patient or the patient's
7 representative has one year from the date the patient or the patient's
8 representative or custodial parent or guardian has actual knowledge of
9 the act of fraud or concealment or of the presence of the foreign body
10 in which to commence a civil action for damages.

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

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

20 (3) Any action not commenced in accordance with this section is
21 barred.

22 (4) For purposes of this section, the tolling provisions of RCW
23 4.16.190 do not apply.

24 (5) This section does not apply to a civil action based on
25 intentional conduct brought against those individuals or entities
26 specified in this section by a person for recovery of damages for
27 injury occurring as a result of childhood sexual abuse as defined in
28 RCW 4.16.340(5).

29 NEW SECTION. Sec. 5. 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 3 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. 6.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
2 as follows:

3 (1) All local governmental entities, whether acting in a
4 governmental or proprietary capacity, shall be liable for damages
5 arising out of their tortious conduct, or the tortious conduct of their
6 past or present officers, employees, or volunteers while performing or
7 in good faith purporting to perform their official duties, to the same
8 extent as if they were a private person or corporation, subject to the
9 limitations provided in subsection (2) of this section. Filing a claim
10 for damages within the time allowed by law shall be a condition
11 precedent to the commencement of any action claiming damages. The laws
12 specifying the content for such claims shall be liberally construed so
13 that substantial compliance therewith will be deemed satisfactory.

14 (2)(a) In an action or arbitration for damages for injury or death
15 occurring as a result of health care brought against a rural public
16 hospital district or its officers, employees, volunteers, or members of
17 its medical staff, brought under chapter 7.70 RCW, the total amount of
18 economic and noneconomic damages may not exceed five hundred thousand
19 dollars.

20 (b) The limitation on economic and noneconomic damages contained in
21 (a) of this subsection includes all damages claimed by or on behalf of
22 the person whose injury or death occurred as a result of health care or
23 arranging for the provision of health care, as well as all claims for
24 loss of consortium, loss of society and companionship, destruction of
25 the parent-child relationship, and other derivative claims asserted by
26 or on behalf of others arising from the same injury or death. If the
27 jury's assessment of damages exceeds the limitation contained in (a) of
28 this subsection, nothing in RCW 4.44.450 precludes the court from
29 entering a judgment that limits the total amount of damages to those
30 provided in (a) of this subsection.

31 (c) Notwithstanding the limitation on damages contained in (a) of
32 this subsection, the board of commissioners of a rural public hospital
33 district may elect in its sole and absolute discretion to purchase
34 insurance coverage and settle or pay claims in amounts in excess of the
35 limit specified in (a) of this subsection. Neither the purchase of
36 insurance nor the settlement or payment of claims in amounts in excess

1 of the limit specified in (a) of this subsection shall be deemed to be
2 a waiver of the defense of sovereign immunity.

3 (d) The liability of rural public hospital districts, officers,
4 employees, volunteers, or members of its medical staff is several only
5 and is not joint.

6 (3) Unless the context clearly requires otherwise, for the purposes
7 of this chapter((7)):

8 (a) "Local governmental entity" means a county, city, town, special
9 district, municipal corporation as defined in RCW 39.50.010, quasi-
10 municipal corporation, or public hospital; and

11 (b) "Rural public hospital district" means a public hospital
12 district authorized under chapter 70.44 RCW whose geographic boundaries
13 do not include a city with a population greater than thirty thousand.

14 ((3)) (4) For the purposes of this chapter, "volunteer" is
15 defined according to RCW 51.12.035.

16 NEW SECTION. Sec. 7. A new section is added to chapter 7.70 RCW
17 to read as follows:

18 (1)(a) In an action or arbitration for damages for injury or death
19 occurring as a result of health care brought against a rural hospital
20 or its officers, employees, volunteers, or members of its medical
21 staff, brought under this chapter, the total amount of economic and
22 noneconomic damages may not exceed five hundred thousand dollars.

23 (b) The limitation on economic and noneconomic damages contained in
24 (a) of this subsection includes all damages claimed by or on behalf of
25 the person whose injury or death occurred as a result of health care or
26 arranging for the provision of health care, as well as all claims for
27 loss of consortium, loss of society and companionship, destruction of
28 the parent-child relationship, and other derivative claims asserted by
29 or on behalf of others arising from the same injury or death. If the
30 jury's assessment of damages exceeds the limitation contained in (a) of
31 this subsection, nothing in RCW 4.44.450 precludes the court from
32 entering a judgment that limits the total amount of damages to those
33 provided in (a) of this subsection.

34 (c) Notwithstanding the limitation on damages contained in (a) of
35 this subsection, a rural hospital may purchase insurance coverage and

1 settle or pay claims in amounts in excess of the limit specified in (a)
2 of this subsection.

3 (d) The liability of rural hospitals, officers, employees,
4 volunteers, or members of its medical staff is several only and not
5 joint.

6 (2) For the purposes of this section, "rural hospital" means a
7 hospital licensed under chapter 70.41 RCW in a city or town with a
8 population of less than fifteen thousand.

9 **Sec. 8.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
10 as follows:

11 (1) In all actions involving fault of more than one entity, the
12 trier of fact shall determine the percentage of the total fault which
13 is attributable to every entity which caused the claimant's damages
14 except entities immune from liability to the claimant under Title 51
15 RCW. The sum of the percentages of the total fault attributed to at-
16 fault entities shall equal one hundred percent. The entities whose
17 fault shall be determined include the claimant or person suffering
18 personal injury or incurring property damage, defendants, third-party
19 defendants, entities released by the claimant, entities with any other
20 individual defense against the claimant, and entities immune from
21 liability to the claimant, but shall not include those entities immune
22 from liability to the claimant under Title 51 RCW. Judgment shall be
23 entered against each defendant except those who have been released by
24 the claimant or are immune from liability to the claimant or have
25 prevailed on any other individual defense against the claimant in an
26 amount which represents that party's proportionate share of the
27 claimant's total damages. The liability of each defendant shall be
28 several only and shall not be joint except:

29 (a) A party shall be responsible for the fault of another person or
30 for payment of the proportionate share of another party where both were
31 acting in concert or when a person was acting as an agent or servant of
32 the party.

33 (b)(i) Except as provided in (b)(ii) of this subsection, if the
34 trier of fact determines that the claimant or party suffering bodily
35 injury or incurring property damages was not at fault, the defendants

1 against whom judgment is entered shall be jointly and severally liable
2 for the sum of their proportionate shares of the ((claimants
3 {claimant's})) claimant's total damages.

4 (ii) Subsection (b)(i) of this subsection does not apply to health
5 care providers as defined in RCW 7.70.020, in all cases governed by
6 chapter 7.70 RCW with respect to judgments for noneconomic damages. In
7 all cases governed by chapter 7.70 RCW, the liability of health care
8 providers for noneconomic damages is several only. For the purposes of
9 this section, "noneconomic damages" has the meaning given in RCW
10 4.56.250.

11 (2) If a defendant is jointly and severally liable under one of the
12 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
13 defendant's rights to contribution against another jointly and
14 severally liable defendant, and the effect of settlement by either such
15 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
16 4.22.060.

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

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

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

25 NEW SECTION. Sec. 9. It is the intent of the legislature that
26 health care providers should remain personally liable for their own
27 negligent or wrongful acts or omissions in connection with the
28 provision of health care services and that hospitals should remain
29 liable for their own negligent or wrongful acts or omissions in
30 connection with the provision of health care services, but that their
31 vicarious liability for the negligent or wrongful acts or omissions of
32 others should be curtailed. Consequently, it is the intent of the
33 legislature that the holding in *Adamski v. Tacoma General Hospital*, 20
34 Wn. App. 98, 579 P.2d 970 (1978), that hospitals may be held liable for
35 a physician's acts or omissions under so-called "apparent agency" or
36 "ostensible agency" theories be abrogated, so that, in the future,

1 hospitals may not be held liable for the act or omission of a health
2 care provider granted hospital privileges unless the health care
3 provider is an actual agent or employee of the hospital. However, it
4 is further the intent of the legislature that *Pedroza v. Bryant*, 101
5 Wn. 2d 226, 677 P.2d 166 (1984), and its holding that hospitals owe an
6 independent duty to their patients to exercise reasonable care in
7 granting and renewing credentials and practice privileges to a health
8 care provider, continue to be followed. It is further the intent of
9 the legislature that, notwithstanding any generally applicable
10 principle of vicarious liability to the contrary, individual health
11 care professionals will not be liable for the negligent or wrongful
12 acts of others, except those who were acting under their direct
13 supervision and control.

14 NEW SECTION. **Sec. 10.** A public or private hospital shall be
15 liable for an act or omission of a health care provider granted
16 privileges to provide health care at the hospital only if the health
17 care provider is an actual agent or employee of the hospital and the
18 act or omission of the health care provider occurred while the health
19 care provider was acting within the course and scope of the health care
20 provider's agency or employment with the hospital.

21 NEW SECTION. **Sec. 11.** A person who is a health care provider
22 under RCW 7.70.020 (1) or (2) shall not be personally liable for any
23 act or omission of any other health care provider who was not the
24 person's actual agent or employee or who was not acting under the
25 person's direct supervision and control at the time of the act or
26 omission. A health care provider shall remain personally liable for
27 the health care provider's own negligent or wrongful acts or omissions
28 in connection with the provision of health care services.

29 NEW SECTION. **Sec. 12.** Sections 10 and 11 of this act are each
30 added to chapter 7.70 RCW.

31 NEW SECTION. **Sec. 13.** Unless otherwise provided in this act, this
32 act applies to all causes of action filed on or after the effective
33 date of this section.

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

ESHB 1928 - S COMM AMD

By Committee on Health & Long-Term Care

5 On page 1, line 2 of the title, after "RCW;" strike the remainder
6 of the title and insert "amending RCW 4.56.250, 4.16.350, 4.96.010, and
7 4.22.070; adding new sections to chapter 4.56 RCW; adding new sections
8 to chapter 7.70 RCW; and creating new sections."

--- END ---