



1 personal injury or incurring property damage, defendants, third-party  
2 defendants, entities (~~((released by))~~) who have entered into a release,  
3 covenant not to sue, covenant not to enforce judgment, or similar  
4 agreement with the claimant, entities with any other individual defense  
5 against the claimant, and entities immune from liability to the  
6 claimant, but shall not include those entities immune from liability to  
7 the claimant under Title 51 RCW. Judgment shall be entered against  
8 each defendant except those entities who have (~~((been released by))~~)  
9 entered into a release, covenant not to sue, covenant not to enforce  
10 judgment, or similar agreement with the claimant or are immune from  
11 liability to the claimant or have prevailed on any other individual  
12 defense against the claimant in an amount which represents that party's  
13 proportionate share of the claimant's total damages. The liability of  
14 each defendant shall be several only and shall not be joint except:

15 (a) A party shall be responsible for the fault of another person or  
16 for payment of the proportionate share of another party where both were  
17 acting in concert or when a person was acting as an agent or servant of  
18 the party.

19 (b)(i) Except as provided in (b)(ii) of this subsection, if the  
20 trier of fact determines that the claimant or party suffering bodily  
21 injury or incurring property damages was not at fault, the defendants  
22 against whom judgment is entered shall be jointly and severally liable  
23 for the sum of their proportionate shares of the (~~(claimants~~  
24 [claimant's]) claimant's total damages.

25 (ii) (b)(i) of this subsection does not apply to a health care  
26 provider as defined in RCW 7.70.020 in an action for damages for injury  
27 or death occurring as a result of health care or related services, or  
28 the arranging for the provision of health care or related services,  
29 whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020,  
30 4.20.046, 4.24.010, or 48.43.545(1), any other applicable law, or any  
31 combination thereof, with respect to judgments for noneconomic damages.  
32 In all actions for damages for injury or death occurring as a result of  
33 health care or related services, or the arranging for the provision of  
34 health care or related services, the liability of a health care  
35 provider for noneconomic damages is several only. For the purposes of  
36 this subsection, "noneconomic damages" has the meaning given in RCW  
37 4.56.250.

1 (2) If a defendant is jointly and severally liable under one of the  
2 exceptions listed in subsection(~~(s)~~) (1)(a) or (~~(1)~~) (b) of this  
3 section, such defendant's rights to contribution against another  
4 jointly and severally liable defendant, and the effect of settlement by  
5 either such defendant, shall be determined under RCW 4.22.040,  
6 4.22.050, and 4.22.060.

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

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

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

15 **Sec. 102.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read  
16 as follows:

17 "Fault" includes acts or omissions, including misuse of a product,  
18 that are in any measure negligent or reckless toward the person or  
19 property of the actor or others, or that subject a person to strict  
20 tort liability or liability on a product liability claim. The term  
21 also includes breach of warranty, unreasonable assumption of risk, and  
22 unreasonable failure to avoid an injury or to mitigate damages. Legal  
23 requirements of causal relation apply both to fault as the basis for  
24 liability and to contributory fault.

25 A comparison of fault for any purpose under RCW 4.22.005 through  
26 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of  
27 the conduct of the parties to the action and the extent of the causal  
28 relation between such conduct and the damages.

### 29 **Noneconomic Damages**

30 **Sec. 103.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to  
31 read as follows:

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

34 (a) "Economic damages" means objectively verifiable monetary  
35 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(~~(7)~~) 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. 104. A new section is added to chapter 4.56 RCW  
32 to read as follows:

33 The prescribed cap on noneconomic damages in RCW 4.56.250 takes  
34 effect upon the earliest of the following events: (1) The Washington  
35 supreme court or other court of competent jurisdiction rules or affirms  
36 that RCW 4.56.250 is constitutional; or (2) the ratification of a state

1 constitutional amendment that empowers the legislature to place limits  
2 on the amount of noneconomic damages recoverable in any or all civil  
3 causes of action.

4 **Statute of Limitations Reform**

5 **Sec. 105.** RCW 4.16.350 and 2006 c 8 s 302 are each amended to read  
6 as follows:

7 (1) Any civil action or arbitration for damages for injury or death  
8 occurring as a result of health care or related services, or the  
9 arranging for the provision of health care or related services, which  
10 is provided after June 25, 1976, against(+)

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

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

23 ~~(3) An entity, whether or not incorporated, facility, or~~  
24 ~~institution employing one or more persons described in subsection (1)~~  
25 ~~of this section, including, but not limited to, a hospital, clinic,~~  
26 ~~health maintenance organization, or nursing home; or an officer,~~  
27 ~~director, employee, or agent thereof acting in the course and scope of~~  
28 ~~his employment, including, in the event such officer, director,~~  
29 ~~employee, or agent is deceased, his estate or personal~~  
30 ~~representative;))~~ a health care provider as defined in RCW 7.70.020, or

31 a health care institution, based upon alleged professional negligence  
32 shall be commenced within three years of the act or omission alleged to  
33 have caused the injury, death, or condition, or within one year of the  
34 time the patient or his or her representative or custodial parent or  
35 guardian discovered or reasonably should have discovered that the  
36 injury, death, or condition was caused by said act or omission,

1 whichever period (~~expires later, except that in no event shall an~~  
2 ~~action be commenced more than eight years after said act or omission:~~  
3 ~~PROVIDED, That the time for commencement of an action is tolled upon~~  
4 ~~proof of fraud, intentional concealment, or the presence of a foreign~~  
5 ~~body not intended to have a therapeutic or diagnostic purpose or~~  
6 ~~effect, until the date the patient or the patient's representative has~~  
7 ~~actual knowledge of the act of fraud or concealment, or of the presence~~  
8 ~~of the foreign body; the patient or the patient's representative has~~  
9 ~~one year from the date of the actual knowledge in which to commence a~~  
10 ~~civil action for damages.~~

11 For purposes of this section, notwithstanding RCW 4.16.190, the  
12 knowledge of a custodial parent or guardian shall be imputed to a  
13 person under the age of eighteen years, and such imputed knowledge  
14 shall operate to bar the claim of such minor to the same extent that  
15 the claim of an adult would be barred under this section. Any action  
16 not commenced in accordance with this section shall be barred.

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

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

24 (a) Upon proof of fraud, intentional concealment, or the presence  
25 of a foreign body not intended to have a therapeutic or diagnostic  
26 purpose or effect, in which case the patient or the patient's  
27 representative has one year from the date the patient or the patient's  
28 representative or custodial parent or guardian has actual knowledge of  
29 the act of fraud or concealment or of the presence of the foreign body  
30 within which to commence a civil action for damages.

31 (b) In the case of a minor, upon proof that the minor's custodial  
32 parent or guardian and the defendant or the defendant's insurer have  
33 committed fraud or collusion in the failure to bring an action on  
34 behalf of the minor, in which case the patient or the patient's  
35 representative has one year from the date the patient or the patient's  
36 representative other than the custodial parent or guardian who  
37 committed the fraud or collusion has actual knowledge of the fraud or

1 collusion, or one year from the date of the minor's eighteenth  
2 birthday, whichever provides a longer period.

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

7 (3) For purposes of this section, the tolling provisions of RCW  
8 4.16.190 do not apply.

9 (4) This section does not apply to a civil action based on  
10 intentional conduct brought against those individuals or entities  
11 specified in this section by a person for recovery of damages for  
12 injury occurring as a result of childhood sexual abuse as defined in  
13 RCW 4.16.340(5).

14 (5) This section applies to all causes of action for injury or  
15 death occurring as a result of health care or related services, or the  
16 arranging for the provision of health care or related services, filed  
17 on or after the effective date of this section. However, any action  
18 which, if filed on or after the effective date of this section, would  
19 have been timely under former law, but now would be barred under the  
20 chapter . . . , Laws of 2010 (this act) amendments contained in this  
21 section, may be brought within one year following the effective date of  
22 this section.

23 (6) Any action not commenced in accordance with this section is  
24 barred.

### 25 **Attorneys' Fees Upon Summary Judgment Dismissal**

26 **Sec. 106.** RCW 7.70.150 and 2006 c 8 s 304 are each amended to read  
27 as follows:

28 (1) In an action against (~~an individual~~) a health care provider  
29 under this chapter for personal injury or wrongful death (~~in which the~~  
30 ~~injury is alleged to have been caused by an act or omission that~~  
31 ~~violates the accepted standard of care, the plaintiff must file a~~  
32 ~~certificate of merit at the time of commencing the action. If the~~  
33 ~~action is commenced within forty five days prior to the expiration of~~  
34 ~~the applicable statute of limitations, the plaintiff must file the~~  
35 ~~certificate of merit no later than forty five days after commencing))  
36 the court shall award reasonable attorneys' fees to a health care~~

1 provider who obtains a summary judgment dismissal. The fees shall also  
2 be awarded to a health care provider who receives a voluntary dismissal  
3 after filing a motion for summary judgment. Reasonable attorneys' fees  
4 include all reasonable expenses incurred in defending the action.

5 ~~(2) ((The certificate of merit must be executed by a health care~~  
6 ~~provider who meets the qualifications of an expert in the action. If~~  
7 ~~there is more than one defendant in the action, the person commencing~~  
8 ~~the action must file a certificate of merit for each defendant.~~

9 ~~(3) The certificate of merit must contain a statement that the~~  
10 ~~person executing the certificate of merit believes, based on the~~  
11 ~~information known at the time of executing the certificate of merit,~~  
12 ~~that there is a reasonable probability that the defendant's conduct did~~  
13 ~~not follow the accepted standard of care required to be exercised by~~  
14 ~~the defendant.~~

15 ~~(4) Upon motion of the plaintiff, the court may grant an additional~~  
16 ~~period of time to file the certificate of merit, not to exceed ninety~~  
17 ~~days, if the court finds there is good cause for the extension.~~

18 ~~(5)(a) Failure to file a certificate of merit that complies with~~  
19 ~~the requirements of this section is grounds for dismissal of the case.~~

20 ~~(b)) If a ((case is dismissed for failure to file a certificate of~~  
21 ~~merit that complies with the requirements of)) health care provider~~  
22 ~~recovers attorneys' fees under this section, the filing of the~~  
23 ~~((claim)) action against the health care provider shall not be used~~  
24 ~~against the health care provider in professional liability insurance~~  
25 ~~rate setting, personal credit history, or professional licensing and~~  
26 ~~credentialing.~~

## 27 **Promoting Periodic Payments of Future Damages**

28 NEW SECTION. Sec. 107. (1) The definitions in this subsection  
29 apply throughout this section unless the context clearly requires  
30 otherwise.

31 (a) "Future damages" includes damages for future health care or  
32 related services, care or custody, loss of future earnings, loss of  
33 bodily function, or future pain and suffering of the judgment creditor.

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



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

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

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

31           (4) In the event of the death of the judgment creditor, the court,  
32 upon petition of any party in interest, shall modify the judgment to  
33 eliminate future periodic payments of damages awarded for future  
34 medical treatment, care or custody, loss of bodily function, or future  
35 pain and suffering of the judgment creditor. However, money damages  
36 awarded for loss of future earnings may not be reduced or payments  
37 terminated by reason of the death of the judgment creditor, but must be  
38 paid to persons to whom the judgment creditor owed a duty of support,

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

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

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

11 (7) It is intended in enacting this section to authorize, in  
12 actions for damages for injury occurring as a result of health care or  
13 related services, or the arranging for the provision of health care or  
14 related services, the entry of judgments that provide for the payment  
15 of future damages through periodic payments rather than lump-sum  
16 payments. By authorizing periodic payment judgments, it is further  
17 intended 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 intended that  
25 all elements of the periodic payment program be specified with  
26 certainty in the judgment ordering such payments and that the judgment  
27 not be subject to modification at some future time that might alter the  
28 specifications of the original judgment, except in the event of the  
29 death of the judgment creditor.

30 NEW SECTION. **Sec. 108.** A new section is added to chapter 7.04A  
31 RCW to read as follows:

32 (1) A contract for health care services that contains a provision  
33 for arbitration of a claim against a health care provider arising from  
34 the delivery of health care under chapter 7.70 RCW must have the  
35 provision as the first article of the contract and must be expressed in  
36 the following language:

1 "It is understood that any dispute as to medical malpractice that  
2 is as to whether any medical services rendered under this contract were  
3 unnecessary or unauthorized or were improperly, negligently, or  
4 incompetently rendered, will be determined by submission to arbitration  
5 as provided by Washington law, and not by a lawsuit or resort to court  
6 process except as Washington law provides for judicial review of  
7 arbitration proceedings. Both parties to this contract, by entering  
8 into it, are giving up their constitutional right to have such a  
9 dispute decided in a court of law before a jury, and instead are  
10 accepting the use of arbitration."

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

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

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

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

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

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

34 **Encouraging Early Settlement Offers**

35 NEW SECTION. **Sec. 109.** The definitions in this section apply

1 throughout sections 110 through 114 of this act unless the context  
2 clearly requires otherwise.

3 (1) "Allegedly responsible party" means a health care provider  
4 alleged by the claimant to be responsible for at least some portion of  
5 an injury to the claimant resulting from alleged professional  
6 negligence in the provision of health care.

7 (2) "Amount recovered" means the total compensation, including the  
8 reasonable value of nonmonetary compensation, that an attorney has  
9 obtained on behalf of a claimant through settlement, arbitration, or  
10 judgment, minus the reasonable costs and expenses incurred by the  
11 attorney in prosecuting or settling the claim.

12 (3) "Claimant" means any natural person who, in his or her own  
13 right, or vicariously, is seeking compensation in connection with a  
14 claim under this chapter for personal injury or wrongful death as a  
15 result of alleged professional negligence in the provision of health  
16 care.

17 (4) "Collateral source" means compensation or benefits paid or  
18 payable to the claimant or on the claimant's behalf, to compensate the  
19 claimant for the injury complained of, regardless of the right of  
20 recoupment of any other entity, through subrogation, trust agreement,  
21 lien, or otherwise.

22 (5) "Contingent fee" means compensation, however calculated, that  
23 is payable only if an amount is recovered.

24 (6) "Early settlement offer" means a settlement offer made in  
25 accordance with section 110 of this act.

26 (7) "Economic damages" has the meaning provided in RCW 4.56.250.

27 (8) "Entity" includes an individual or person.

28 (9) "Noneconomic damages" has the meaning provided in RCW 4.56.250.

29 NEW SECTION. **Sec. 110.** (1) In any civil action for damages  
30 brought under this chapter against a health care provider based on the  
31 provision of health care, an allegedly responsible party may make an  
32 early settlement offer at any time prior to one hundred twenty days  
33 after the claim is filed with a court. To qualify as an early  
34 settlement offer, the offer must include a good faith offer to  
35 compensate the claimant for the claimant's current and future economic  
36 damages suffered as a result of the allegedly responsible party's act  
37 or omission, less collateral source benefits available to the claimant,

1 and for reasonable hourly attorneys' fees for the claimant. The early  
2 settlement offer must be in writing and communicated to the claimant by  
3 certified mail. The offer must remain open for acceptance for a  
4 minimum of thirty days from the date the offer is received by the  
5 claimant.

6 (2) An allegedly responsible party may amend or issue an additional  
7 early settlement offer prior to one hundred twenty days after the  
8 action is commenced. The claimant may extend the time for receiving  
9 the offer beyond this period.

10 (3) An attorney who receives an early settlement offer shall  
11 provide a true and complete copy of the offer to his or her client.

12 (4) A claimant who agrees in writing to an early settlement offer  
13 may not bring or continue a civil action, based on the same alleged  
14 occurrence, against the allegedly responsible party who made the early  
15 settlement offer or any other allegedly responsible parties who joined  
16 in the early settlement offer under subsection (5) of this section.

17 (5) An offer under subsection (1) of this section may include other  
18 allegedly responsible parties who were involved in the events that gave  
19 rise to the civil action, regardless of the theory of liability on  
20 which the claim is based, with their consent. If, after an early  
21 settlement offer is made and accepted, the participants in the offer  
22 dispute their relative contributions to the payments to be made to the  
23 claimant, such disputes shall be resolved through binding arbitration  
24 in accordance with chapter 7.04A RCW.

25 (6) The claimant may reject an offer of compensation made under  
26 subsection (1) of this section and elect to bring or maintain a civil  
27 action for damages. Upon rejection of an offer of compensation that  
28 complies with the requirements of subsection (1) of this section, the  
29 claimant may recover damages in the civil action only if the claimant  
30 proves by clear and convincing evidence that the allegedly responsible  
31 party caused the injury by reckless, willful, or wanton conduct.

32 NEW SECTION. **Sec. 111.** (1) An attorney who represents a person  
33 alleging personal injury or death resulting from the provision of  
34 health care, and who represents the person on a contingent-fee basis,  
35 shall send a demand for compensation by certified mail to each  
36 allegedly responsible party prior to commencing a court action. In the  
37 event that multiple allegedly responsible parties are known to the

1 attorney, a demand must be sent on the same date to each party. The  
2 demand must specify the amount of compensation sought and must set  
3 forth the material facts, documentary evidence, and other information  
4 relevant to the demand, including:

5 (a) The name and address of the claimant or of the person on whose  
6 behalf the claim is being made;

7 (b) A brief description of how the injury or loss occurred;

8 (c) The names and, if known, the addresses and telephone numbers of  
9 all known witnesses to the injury or loss;

10 (d) Copies of photographs in the claimant's possession which relate  
11 to the injury or loss;

12 (e) The basis for claiming that the party to whom the demand is  
13 addressed is responsible or partially responsible for the injury or  
14 loss;

15 (f) A description of the nature of the injury or loss, including  
16 the dates and nature of the care or services provided, and the names  
17 and addresses of all physicians and other health care providers that  
18 provided medical care or services to the claimant or injured party;

19 (g) Medical records relating to the injury, including those  
20 involving a prior injury or preexisting medical condition which would  
21 be discoverable by the allegedly responsible party during the course of  
22 litigation or, in lieu thereof, executed releases authorizing the  
23 allegedly responsible party to obtain the records directly from those  
24 health care providers who provided treatment to the claimant; and

25 (h) Documentation of any medical expenses, lost wages, personal  
26 losses, and other economic and noneconomic damages suffered as a  
27 consequence of the injury or loss.

28 (2) The attorney shall mail copies of each demand to the claimant  
29 and to each allegedly responsible party.

30 (3) A claimant's attorney who learns of an additional allegedly  
31 responsible party after making a demand for compensation under  
32 subsection (1) of this section shall send a demand for compensation to  
33 the newly discovered allegedly responsible party and simultaneously  
34 mail a copy of the demand to each of the other allegedly responsible  
35 parties and to the claimant.

36 (4) In the event that a claimant's attorney learns of an additional  
37 allegedly responsible party more than ninety days after making a demand  
38 for compensation under subsection (1) of this section, the attorney

1 shall not be required to send a demand to that party nor do the fee  
2 limitations imposed under section 113 (1) and (2) of this act apply  
3 with regard to an amount recovered from that party, except as provided  
4 by this subsection. An attorney who fails as a result of a breach of  
5 the standard of care to learn of an additional allegedly responsible  
6 party within ninety days of sending a demand for compensation to  
7 another allegedly responsible party shall not collect a fee in excess  
8 of that allowed under section 113 (1) and (2) of this act with respect  
9 to an amount recovered from the additional allegedly responsible party.

10 NEW SECTION. **Sec. 112.** An allegedly responsible party is under no  
11 obligation to issue a response to a demand for compensation made under  
12 section 111 of this act. The fact that a demand for compensation was  
13 or was not made, the fact that an early settlement offer was or was not  
14 made, and the amount of any demand or settlement offer made are  
15 inadmissible at a trial arising from the injury or loss.

16 NEW SECTION. **Sec. 113.** (1) An attorney who represents a claimant  
17 who has accepted an early settlement offer under section 110 of this  
18 act shall not collect an amount as compensation for the attorney's  
19 services that is more than the attorney's reasonable hourly fees for  
20 the services performed.

21 (2) An attorney who represents a claimant who has rejected or  
22 failed to accept an early settlement offer shall not collect a  
23 contingent fee that is greater than twenty percent of the amount of the  
24 early settlement offer plus the percentage of the amount recovered in  
25 excess of the early settlement offer as was agreed to by the claimant  
26 and the attorney.

27 (3) A claimant's attorney who has failed to make a demand for  
28 compensation under section 111 of this act, or who has omitted from the  
29 demand any information required under section 111 of this act of a  
30 material nature which the attorney had in his or her possession, or  
31 which was readily available to him or her, or of which the attorney had  
32 knowledge, shall not collect a contingent fee greater than twenty  
33 percent of the amount recovered.

34 (4) A claimant's attorney who has failed to provide his or her  
35 client a true and complete copy of an early settlement offer received

1 by the attorney, as required under section 110 of this act, shall not  
2 collect a contingent fee greater than twenty percent of the amount  
3 recovered.

4 (5) An attorney shall disclose, plainly and in writing, to  
5 claimants whom the attorney proposes to represent on a contingent-fee  
6 basis: (a) The fee limitations imposed by this section; and (b) the  
7 fact that such limitations are maximum limits and that the attorney and  
8 claimant may negotiate a lower fee.

9 The attorney shall also provide to each claimant a copy of this  
10 act.

11 (6) The fee limitations imposed by this section may not be waived.

12 (7) This section applies to all attorneys practicing in this state,  
13 including attorneys prosecuting claims filed in federal court, to the  
14 maximum extent permitted by federal law.

15 NEW SECTION. **Sec. 114.** A fiduciary relationship applies with  
16 respect to a fee agreement between an attorney and a claimant.

17 **Sec. 115.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
18 amended to read as follows:

19 (1) The court shall, in any action under this chapter, determine  
20 the reasonableness of each party's attorneys fees. The court shall  
21 take into consideration the following:

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

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

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

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

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

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

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



1 ((+8)) (h) Whether the fee is fixed or contingent.

2 (2) An attorney's contingency fee is limited to the maximum  
3 permissible fee allowed under section 113 of this act.

4 NEW SECTION. Sec. 116. In any action brought under this chapter  
5 that is tried by jury, the judge shall present the following questions  
6 to the jury after the jury has delivered its verdict in the proceeding.  
7 The questions shall be considered and answered by the jury in a  
8 deliberative process and the results announced in open court.

9 (1) Do you as a jury believe any pleading, claim, or issue in this  
10 case was frivolous? To decide that a pleading, claim, or issue in this  
11 case was frivolous you must decide at least one of the following in the  
12 affirmative:

13 (a) The pleading, claim, or issue was primarily filed, brought, or  
14 raised by a party for an improper purpose. "Improper purpose" means  
15 that the pleading, claim, or issue was filed, brought, or raised with  
16 the purpose of harassing, embarrassing, or coercing another party,  
17 causing unnecessary delay, or needlessly increasing litigation costs.

18 (b) The pleading, claim, or issue was filed, brought, or raised in  
19 bad faith. "Bad faith" means that the party either knew reasonable  
20 grounds did not exist for filing, bringing, or raising the pleading,  
21 claim, or issue, or the party acted with reckless disregard as to  
22 whether or not reasonable grounds existed for filing, bringing, or  
23 raising the pleading, claim, or issue.

24 (2) If your answers to the question in both (a) and (b) of  
25 subsection (1) of this section are "No" do not proceed further. If  
26 your answer is "Yes" to a question in either (a) or (b) of subsection  
27 (1) of this section, you must make one of the following  
28 recommendations:

29 (a) We recommend that . . . . . (name of party) be required to  
30 pay sanctions in the amount of . . . . . dollars, payable to . . . . .  
31 (name of party) as a result of filing, bringing, or raising a frivolous  
32 pleading, claim, or issue.

33 (b) We do not believe that a monetary sanction should be imposed  
34 against . . . . . (name of party) for filing, bringing, or raising a  
35 frivolous pleading, claim, or issue.

36 (3) The court shall take the jury's recommendation under  
37 consideration in deciding whether to impose sanctions against a party

1 for filing, bringing, or raising a frivolous pleading, claim, or issue.  
2 The court shall enter into the record written findings and conclusions  
3 in accepting or rejecting the jury's recommendations.

4 (4) In addition to any other remedies provided in RCW 4.84.185 or  
5 by court rule, sanctions that may be imposed under this section at the  
6 discretion of the court for filing, bringing, or raising a frivolous  
7 pleading, claim, or issue include the payment of reasonable costs and  
8 reasonable attorneys' fees of the other party caused in responding to  
9 the frivolous pleading, claim, or issue, and a monetary penalty on the  
10 party or party's attorney who brought the frivolous pleading, claim, or  
11 issue, and the firm with which the attorney is employed or associated.

12 **PART II**

13 **MEDICAL MALPRACTICE PREMIUM ASSISTANCE**

14 NEW SECTION. **Sec. 201.** The department of health shall develop, in  
15 consultation with the department of revenue, a program to provide  
16 business and occupation tax credits for physicians who serve uninsured,  
17 medicare, and medicaid patients in a private practice or a reduced fee  
18 access program for the uninsured and shall submit proposed legislation  
19 to the legislature by December 15, 2010.

20 **PART III**

21 **MISCELLANEOUS**

22 NEW SECTION. **Sec. 301.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 302.** Sections 107, 109 through 114, and 116 of  
27 this act are each added to chapter 7.70 RCW.

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