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

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

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

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

(3) The legislature intends, during the period of the declared state of emergency due to the COVID-19 pandemic, to amend the current
standard of care law governing health care providers to give special
consideration to additional relevant factors.

Sec. 2. RCW 7.70.040 and 2011 c 336 s 251 are each amended to
read as follows:
(1) The following shall be necessary elements of proof that
injury resulted from the failure of the health care provider to
follow the accepted standard of care:
((11)) (a) The health care provider failed to exercise that
degree of care, skill, and learning expected of a reasonably prudent
health care provider at that time in the profession or class to which
he or she belongs, in the state of Washington, acting in the same or
similar circumstances;
((22)) (b) Such failure was a proximate cause of the injury
complained of.
(2)(a) The following shall be necessary elements of proof that
injury resulted from the failure of a health care provider to follow
the accepted standard of care in acting or failing to act following
the proclamation of a state of emergency in all counties in the state
of Washington by the governor in response to the COVID-19 pandemic on
February 29, 2020, and until the state of emergency is terminated:
(i) The health care provider failed to exercise that degree of
care, skill, and learning expected of a reasonably prudent health
care provider at that time in the profession or class to which he or
she belongs, in the state of Washington, acting in the same or
similar circumstances, taking into account whether the act or
omission:
(A) Was in good faith based upon guidance, direction, or
recommendations, including in interim or preliminary form, published
by the federal government, the state of Washington or departments,
divisions, agencies, or agents thereof, or local governments in the
state of Washington or departments, divisions, agencies, or agents
thereof, in response to the COVID-19 pandemic and applicable to such
health care provider; or
(B) Was due to a lack of resources including, but not limited to,
available facility capacity, staff, and supplies, directly
attributable to the COVID-19 pandemic;
(ii) Such failure was a proximate cause of the injury complained
of.
(b) The provisions in (a) of this subsection apply only if relevant to the determination of whether the health care provider followed the standard of care, as determined by the court.

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

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

--- END ---