
SUBSTITUTE HOUSE BILL 1804

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Huff, Scott, Dyer, Sheldon, Sherstad, Alexander, Skinner, Clements, Zellinsky, Carrell, Lisk and McMorris)

Read first time 03/05/97.

1 AN ACT Relating to civil actions; amending RCW 4.24.005, 7.70.070,
2 4.22.070, 4.22.015, 5.60.060, 70.02.050, 4.16.190, 4.16.350, 4.16.300,
3 51.24.035, and 46.61.688; adding new sections to chapter 4.24 RCW;
4 adding a new section to chapter 4.16 RCW; adding a new chapter to Title
5 4 RCW; and creating new sections.

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

7 **PART 1--EARLY DISPUTE RESOLUTION**

8 NEW SECTION. **Sec. 101.** (1) An attorney who represents a claimant
9 who has accepted an early settlement offer shall not collect a
10 contingent fee that is greater than twenty percent of the amount of the
11 early settlement offer.

12 (2) An attorney who represents a claimant who has rejected or
13 failed to accept an early settlement offer shall not collect a
14 contingent fee that is greater than twenty percent of the amount of the
15 early settlement offer plus the percentage of the amount recovered in
16 excess of the early settlement offer as was agreed to by the claimant
17 and the attorney.

1 (3) A claimant's attorney who has failed to make a demand for
2 compensation under section 102 of this act, or who has omitted from the
3 demand information required under section 102 of this act of a material
4 nature which the attorney had in his or her possession or which was
5 readily available to him or her, shall not collect a contingent fee
6 greater than twenty percent of the amount recovered.

7 (4) A claimant's attorney who has failed to provide his or her
8 client a true and complete copy of an early settlement offer received
9 by the attorney, as required under section 103(3) of this act, shall
10 not collect a contingent fee greater than twenty percent of the amount
11 recovered.

12 (5) Reasonable costs and expenses incurred by an attorney up to the
13 time of receipt of an early settlement offer are deducted from that
14 settlement offer for purposes of calculating the maximum permissible
15 fee under subsections (1) and (2) of this section.

16 (6) An attorney shall disclose, plainly and in writing, to
17 claimants whom the attorney proposes to represent on a contingent-fee
18 basis: (a) The fee limitations imposed by this section; and (b) the
19 fact that such limitations are maximum limits and that the attorney and
20 claimant may negotiate a lower fee. The attorney shall also provide to
21 each claimant a copy of chapter 4.-- RCW (sections 101 through 106 of
22 this act).

23 (7) The fee limitations imposed by this section may not be waived.

24 (8) This section applies to all attorneys practicing in this state,
25 including attorneys prosecuting claims filed in federal court, to the
26 maximum extent permitted by federal law.

27 NEW SECTION. Sec. 102. (1) An attorney representing a claimant on
28 a contingent-fee basis shall send a demand for compensation by
29 certified mail to each allegedly responsible party. In the event that
30 multiple allegedly responsible parties are known to the attorney, a
31 demand must be sent on the same date to each party. The demand must
32 specify the amount of compensation sought and must set forth the
33 material facts, documentary evidence, and other information relevant to
34 the demand, including:

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

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

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

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

5 (e) The basis for claiming that the party to whom the demand is
6 addressed is responsible or partially responsible for the injury or
7 loss;

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

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

18 (h) Documentation of any medical expenses, lost wages, personal
19 losses, and other economic and noneconomic losses suffered as a
20 consequence of the injury or loss.

21 (2) The attorney shall mail copies of each demand to the claimant
22 and to each and every allegedly responsible party.

23 (3) A claimant's attorney who learns of an additional allegedly
24 responsible party after making a demand for compensation under
25 subsection (1) of this section shall send a demand for compensation to
26 the newly discovered allegedly responsible party and simultaneously
27 mail a copy of the demand to each of the other allegedly responsible
28 parties and to the claimant.

29 (4) In the event that a claimant's attorney learns of an additional
30 allegedly responsible party more than ninety days after making a demand
31 for compensation under subsection (1) of this section, the attorney
32 shall not be required to send a demand to that party nor do the fee
33 limitations imposed under section 101 (1) and (2) of this act apply
34 with regard to an amount recovered from that party, except as provided
35 by this subsection. An attorney who fails as a result of a breach of
36 the standard of care to learn of an additional allegedly responsible
37 party within ninety days of sending a demand for compensation to
38 another allegedly responsible party shall not collect a fee in excess

1 of that allowed under section 101 (1) and (2) of this act with respect
2 to an amount recovered from the additional allegedly responsible party.

3 NEW SECTION. **Sec. 103.** (1) An offer by an allegedly responsible
4 party to settle a claim constitutes an early settlement offer if the
5 allegedly responsible party:

6 (a) Makes the settlement offer within sixty days of receipt of a
7 demand for compensation;

8 (b) Communicates the offer in writing and by certified mail to the
9 claimant's attorney; and

10 (c) Leaves the offer open for acceptance for a minimum of thirty
11 days from the date of its receipt by the claimant's attorney.

12 (2) An allegedly responsible party may amend or issue an additional
13 early settlement offer during the sixty-day period set forth in
14 subsection (1) of this section. An amended or additional early
15 settlement offer shall be subject to the requirements set forth in
16 subsection (1) of this section.

17 (3) A settlement offer that is made to a claimant prior to receipt
18 of a demand for compensation, and that conforms to the requirements of
19 subsection (1) of this section is deemed an early settlement offer and
20 has the same effect as if it were a response to a demand for
21 compensation.

22 (4) An allegedly responsible party is under no obligation to issue
23 a response to a demand for compensation. The fact that a demand for
24 compensation was or was not made, the fact that an early settlement
25 offer was or was not made, and the amount of any demand or settlement
26 offer made are inadmissible at a trial arising from the injury or loss.

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

29 NEW SECTION. **Sec. 104.** The legislature finds that the practices
30 covered by this chapter are matters vitally affecting the public
31 interest for the purpose of applying the consumer protection act,
32 chapter 19.86 RCW. A violation of this chapter is not reasonable in
33 relation to the development and preservation of business and is an
34 unfair or deceptive act in trade or commerce and an unfair method of
35 competition for the purpose of applying the consumer protection act,
36 chapter 19.86 RCW.

1 NEW SECTION. **Sec. 105.** A fiduciary relationship applies with
2 respect to a fee agreement between an attorney and a claimant.

3 NEW SECTION. **Sec. 106.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Allegedly responsible party" means a person, partnership, or
6 corporation alleged by a claimant to be responsible for at least some
7 portion of an injury or loss alleged by that claimant.

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

13 (3) "Claimant" means any natural person or persons seeking
14 compensation in connection with a claim for personal injury or wrongful
15 death, but does not include a claim for workers' compensation benefits,
16 or a case in which a court has certified the existence of a class
17 action pursuant to state or federal law.

18 (4) "Contingent fee" means compensation, however calculated, that
19 is payable only if an amount is recovered.

20 (5) "Early settlement offer" means a settlement offer made in
21 accordance with section 103 of this act.

22 **Sec. 107.** RCW 4.24.005 and 1987 c 212 s 1601 are each amended to
23 read as follows:

24 Any party charged with the payment of attorney's fees in any tort
25 action may petition the court not later than forty-five days of receipt
26 of a final billing or accounting for a determination of the
27 reasonableness of that party's attorneys' fees. The court shall make
28 such a determination and shall take into consideration the following:

29 (1) The time and labor required, the novelty and difficulty of the
30 questions involved, and the skill requisite to perform the legal
31 service properly;

32 (2) The likelihood, if apparent to the client, that the acceptance
33 of the particular employment will preclude other employment by the
34 lawyer;

35 (3) The fee customarily charged in the locality for similar legal
36 services;

37 (4) The amount involved and the results obtained;

1 (5) The time limitations imposed by the client or by the
2 circumstances;

3 (6) The nature and length of the professional relationship with the
4 client;

5 (7) The experience, reputation, and ability of the lawyer or
6 lawyers performing the services;

7 (8) Whether the fee is fixed or contingent;

8 (9) Whether the fixed or contingent fee agreement was in writing
9 and whether the client was aware of his or her right to petition the
10 court under this section;

11 (10) The terms of the fee agreement.

12 However, an attorney's contingency fee is limited to the maximum
13 permissible fee allowed under sections 101 through 106 of this act.

14 **Sec. 108.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
15 amended to read as follows:

16 The court shall, in any action under this chapter, determine the
17 reasonableness of each party's attorneys fees. The court shall take
18 into consideration the following:

19 (1) The time and labor required, the novelty and difficulty of the
20 questions involved, and the skill requisite to perform the legal
21 service properly;

22 (2) The likelihood, if apparent to the client, that the acceptance
23 of the particular employment will preclude other employment by the
24 lawyer;

25 (3) The fee customarily charged in the locality for similar legal
26 services;

27 (4) The amount involved and the results obtained;

28 (5) The time limitations imposed by the client or by the
29 circumstances;

30 (6) The nature and length of the professional relationship with the
31 client;

32 (7) The experience, reputation, and ability of the lawyer or
33 lawyers performing the services;

34 (8) Whether the fee is fixed or contingent.

35 However, an attorney's contingency fee is limited to the maximum
36 permissible fee allowed under sections 101 through 106 of this act.

37 **PART 2--CERTIFICATE OF MERIT**

1 NEW SECTION. **Sec. 201.** A new section is added to chapter 4.24 RCW
2 to read as follows:

3 (1) The claimant's attorney shall file the certificate specified in
4 subsection (2) of this section within ninety days of filing or service,
5 whichever occurs later, of any action for damages arising out of: The
6 negligence of a person licensed, registered, or certified under Title
7 18 RCW or a health care facility as defined in RCW 48.43.005; or a
8 product liability claim under chapter 7.72 RCW. The court may, for
9 good cause shown, extend the period of time within which filing of the
10 certificate is required.

11 (2) The certificate issued by the claimant's attorney shall
12 declare:

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

14 (b) That the attorney has consulted with at least one qualified
15 expert who the attorney reasonably believes is knowledgeable in the
16 relevant issues involved in the particular action and who:

17 (i) Holds a license, certificate, or registration issued by this
18 state or another state in the same profession as that of the defendant
19 and who practices in the same specialty or subspecialty as the
20 defendant; or

21 (ii) Has expertise in those areas requiring expert testimony in a
22 product liability claim or in an action against a health care facility;

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

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

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

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

35 (4) The provisions of this section shall not be applicable to a pro
36 se plaintiff until such a time as an attorney appears on the
37 plaintiff's behalf.

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

4 NEW SECTION. **Sec. 202.** Section 201 of this act applies to all
5 actions for damages filed on or after July 1, 1997.

6 **PART 3--JOINT AND SEVERAL LIABILITY**

7 **Sec. 301.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
8 as follows:

9 (1) In all actions involving fault of more than one entity, the
10 trier of fact shall determine the percentage of the total fault which
11 is attributable to every entity which caused the claimant's damages
12 except entities immune from liability to the claimant under Title 51
13 RCW. The sum of the percentages of the total fault attributed to at-
14 fault entities shall equal one hundred percent. The entities whose
15 fault shall be determined include the claimant or person suffering
16 personal injury or incurring property damage, defendants, third-party
17 defendants, entities ((released by)) who have entered into a release,
18 covenant not to sue, covenant not to enforce judgment, or similar
19 agreement with the claimant, entities with any other individual defense
20 against the claimant, and entities immune from liability to the
21 claimant, but shall not include those entities immune from liability to
22 the claimant under Title 51 RCW. Judgment shall be entered against
23 each defendant except those entities who have ((been released by))
24 entered into a release, covenant not to sue, covenant not to enforce
25 judgment, or similar agreement with the claimant or are immune from
26 liability to the claimant or have prevailed on any other individual
27 defense against the claimant in an amount which represents that party's
28 proportionate share of the claimant's total damages. The liability of
29 each defendant shall be several only and shall not be joint except(
30 (a)) a party shall be responsible for the fault of another person
31 or for payment of the proportionate share of another party where both
32 were acting in concert or when a person was acting as an agent or
33 servant of the party.

34 ~~((b) If the trier of fact determines that the claimant or party~~
35 ~~suffering bodily injury or incurring property damages was not at fault,~~
36 ~~the defendants against whom judgment is entered shall be jointly and~~

1 severally liable for the sum of their proportionate shares of the
2 claimants [~~claimant's~~] total damages.))

3 (2) If a defendant is jointly and severally liable under ((~~one of~~))
4 the exception((~~s~~)) listed in subsection((~~s~~)) (1)((~~(a) or (1)(b)~~)) of
5 this section, such defendant's rights to contribution against another
6 jointly and severally liable defendant, and the effect of settlement by
7 either such defendant, shall be determined under RCW 4.22.040,
8 4.22.050, and 4.22.060.

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

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

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

17 **Sec. 302.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read
18 as follows:

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

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

31 **PART 4--EQUAL ACCESS TO MEDICAL WITNESSES**

32 **Sec. 401.** RCW 5.60.060 and 1996 c 156 s 1 are each amended to read
33 as follows:

34 (1) A husband shall not be examined for or against his wife,
35 without the consent of the wife, nor a wife for or against her husband
36 without the consent of the husband; nor can either during marriage or

1 afterward, be without the consent of the other, examined as to any
2 communication made by one to the other during marriage. But this
3 exception shall not apply to a civil action or proceeding by one
4 against the other, nor to a criminal action or proceeding for a crime
5 committed by one against the other, nor to a criminal action or
6 proceeding against a spouse if the marriage occurred subsequent to the
7 filing of formal charges against the defendant, nor to a criminal
8 action or proceeding for a crime committed by ((said)) the husband or
9 wife against any child of whom ((said)) the husband or wife is the
10 parent or guardian, nor to a proceeding under chapter 70.96A or 71.05
11 RCW(~~(:—PROVIDED, That)~~). However, the spouse of a person sought to be
12 detained under chapter 70.96A or 71.05 RCW may not be compelled to
13 testify and shall be so informed by the court prior to being called as
14 a witness.

15 (2) An attorney or counselor shall not, without the consent of his
16 or her client, be examined as to any communication made by the client
17 to him or her, or his or her advice given thereon in the course of
18 professional employment.

19 (3) A member of the clergy or a priest shall not, without the
20 consent of a person making the confession, be examined as to any
21 confession made to him or her in his or her professional character, in
22 the course of discipline enjoined by the church to which he or she
23 belongs.

24 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
25 a physician or surgeon or osteopathic physician or surgeon shall not,
26 without the consent of his or her patient, be examined in a civil
27 action as to any information acquired in attending such patient, which
28 was necessary to enable him or her to prescribe or act for the patient,
29 except as follows:

30 (a) In any judicial proceedings regarding a child's injury,
31 neglect, or sexual abuse or the cause thereof; and

32 (b) Ninety days after filing an action for personal injuries or
33 wrongful death, the claimant shall be deemed to waive the physician-
34 patient privilege. Waiver of the physician-patient privilege for any
35 one physician or condition constitutes a waiver of the privilege as to
36 all physicians or conditions, subject to such limitations as a court
37 may impose pursuant to court rules. Where the privilege has been
38 waived under this section, ex parte interviews with such physicians may
39 be conducted in the same manner as with any other witness.

1 (5) A public officer shall not be examined as a witness as to
2 communications made to him or her in official confidence, when the
3 public interest would suffer by the disclosure.

4 (6)(a) A peer support group counselor shall not, without consent of
5 the law enforcement officer making the communication, be compelled to
6 testify about any communication made to the counselor by the officer
7 while receiving counseling. The counselor must be designated as such
8 by the sheriff, police chief, or chief of the Washington state patrol,
9 prior to the incident that results in counseling. The privilege only
10 applies when the communication was made to the counselor while acting
11 in his or her capacity as a peer support group counselor. The
12 privilege does not apply if the counselor was an initial responding
13 officer, a witness, or a party to the incident which prompted the
14 delivery of peer support group counseling services to the law
15 enforcement officer.

16 (b) For purposes of this section, "peer support group counselor"
17 means a:

18 (i) Law enforcement officer, or civilian employee of a law
19 enforcement agency, who has received training to provide emotional and
20 moral support and counseling to an officer who needs those services as
21 a result of an incident in which the officer was involved while acting
22 in his or her official capacity; or

23 (ii) Nonemployee counselor who has been designated by the sheriff,
24 police chief, or chief of the Washington state patrol to provide
25 emotional and moral support and counseling to an officer who needs
26 those services as a result of an incident in which the officer was
27 involved while acting in his or her official capacity.

28 (7) A sexual assault advocate may not, without the consent of the
29 victim, be examined as to any communication made by the victim to the
30 sexual assault advocate.

31 (a) For purposes of this section, "sexual assault advocate" means
32 the employee or volunteer from a rape crisis center, victim assistance
33 unit, program, or association, that provides information, medical or
34 legal advocacy, counseling, or support to victims of sexual assault,
35 who is designated by the victim to accompany the victim to the hospital
36 or other health care facility and to proceedings concerning the alleged
37 assault, including police and prosecution interviews and court
38 proceedings.

1 (b) A sexual assault advocate may disclose a confidential
2 communication without the consent of the victim if failure to disclose
3 is likely to result in a clear, imminent risk of serious physical
4 injury or death of the victim or another person. Any sexual assault
5 advocate participating in good faith in the disclosing of records and
6 communications under this section shall have immunity from any
7 liability, civil, criminal, or otherwise, that might result from the
8 action. In any proceeding, civil or criminal, arising out of a
9 disclosure under this section, the good faith of the sexual assault
10 advocate who disclosed the confidential communication shall be
11 presumed.

12 **Sec. 402.** RCW 70.02.050 and 1993 c 448 s 4 are each amended to
13 read as follows:

14 (1) A health care provider may disclose health care information
15 about a patient without the patient's authorization to the extent a
16 recipient needs to know the information, if the disclosure is:

17 (a) To a person who the provider reasonably believes is providing
18 health care to the patient;

19 (b) To any other person who requires health care information for
20 health care education, or to provide planning, quality assurance, peer
21 review, or administrative, legal, financial, or actuarial services to
22 the health care provider; or for assisting the health care provider in
23 the delivery of health care and the health care provider reasonably
24 believes that the person:

25 (i) Will not use or disclose the health care information for any
26 other purpose; and

27 (ii) Will take appropriate steps to protect the health care
28 information;

29 (c) To any other health care provider reasonably believed to have
30 previously provided health care to the patient, to the extent necessary
31 to provide health care to the patient, unless the patient has
32 instructed the health care provider in writing not to make the
33 disclosure;

34 (d) To any person if the health care provider reasonably believes
35 that disclosure will avoid or minimize an imminent danger to the health
36 or safety of the patient or any other individual, however there is no
37 obligation under this chapter on the part of the provider to so
38 disclose;

1 (e) Oral, and made to immediate family members of the patient, or
2 any other individual with whom the patient is known to have a close
3 personal relationship, if made in accordance with good medical or other
4 professional practice, unless the patient has instructed the health
5 care provider in writing not to make the disclosure;

6 (f) To a health care provider who is the successor in interest to
7 the health care provider maintaining the health care information;

8 (g) For use in a research project that an institutional review
9 board has determined:

10 (i) Is of sufficient importance to outweigh the intrusion into the
11 privacy of the patient that would result from the disclosure;

12 (ii) Is impracticable without the use or disclosure of the health
13 care information in individually identifiable form;

14 (iii) Contains reasonable safeguards to protect the information
15 from redisclosure;

16 (iv) Contains reasonable safeguards to protect against identifying,
17 directly or indirectly, any patient in any report of the research
18 project; and

19 (v) Contains procedures to remove or destroy at the earliest
20 opportunity, consistent with the purposes of the project, information
21 that would enable the patient to be identified, unless an institutional
22 review board authorizes retention of identifying information for
23 purposes of another research project;

24 (h) To a person who obtains information for purposes of an audit,
25 if that person agrees in writing to:

26 (i) Remove or destroy, at the earliest opportunity consistent with
27 the purpose of the audit, information that would enable the patient to
28 be identified; and

29 (ii) Not to disclose the information further, except to accomplish
30 the audit or report unlawful or improper conduct involving fraud in
31 payment for health care by a health care provider or patient, or other
32 unlawful conduct by the health care provider;

33 (i) To an official of a penal or other custodial institution in
34 which the patient is detained;

35 (j) To provide directory information, unless the patient has
36 instructed the health care provider not to make the disclosure;

37 (k) In the case of a hospital or health care provider to provide,
38 in cases reported by fire, police, sheriff, or other public authority,
39 name, residence, sex, age, occupation, condition, diagnosis, or extent

1 and location of injuries as determined by a physician, and whether the
2 patient was conscious when admitted; or

3 (1) Made after a deemed waiver of the physician-patient privilege
4 under RCW 5.60.060(4)(b).

5 (2) A health care provider shall disclose health care information
6 about a patient without the patient's authorization if the disclosure
7 is:

8 (a) To federal, state, or local public health authorities, to the
9 extent the health care provider is required by law to report health
10 care information; when needed to determine compliance with state or
11 federal licensure, certification or registration rules or laws; or when
12 needed to protect the public health;

13 (b) To federal, state, or local law enforcement authorities to the
14 extent the health care provider is required by law;

15 (c) Pursuant to compulsory process in accordance with RCW
16 70.02.060.

17 (3) All state or local agencies obtaining patient health care
18 information pursuant to this section shall adopt rules establishing
19 their record acquisition, retention, and security policies that are
20 consistent with this chapter.

21 NEW SECTION. Sec. 403. RCW 5.60.060 and 70.02.050 do not apply to
22 claims, hearings, appeals, or any other proceedings under Title 51 RCW.

23 **PART 5--HEALTH CARE LIMITATION OF ACTIONS**

24 **Sec. 501.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read
25 as follows:

26 If a person entitled to bring an action mentioned in this chapter,
27 except for a penalty or forfeiture, or against a sheriff or other
28 officer, for an escape, be at the time the cause of action accrued
29 either under the age of eighteen years, or incompetent or disabled to
30 such a degree that he or she cannot understand the nature of the
31 proceedings, such incompetency or disability as determined according to
32 chapter 11.88 RCW, or imprisoned on a criminal charge prior to
33 sentencing, the time of such disability shall not be a part of the time
34 limited for the commencement of action.

1 This section does not apply to any civil action for damages for
2 injury occurring as a result of health care that is provided after June
3 25, 1976.

4 NEW SECTION. Sec. 502. A new section is added to chapter 4.16 RCW
5 to read as follows:

6 Any civil action for damages for injury occurring as a result of
7 health care provided after June 25, 1976, and before the effective date
8 of this act that has not accrued before the effective date of this act
9 and that was previously tolled by RCW 4.16.190 accrues on the effective
10 date of this act.

11 **Sec. 503.** RCW 4.16.350 and 1988 c 144 s 2 are each amended to read
12 as follows:

13 Any civil action for damages for injury occurring as a result of
14 health care which is provided after June 25, 1976 against:

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

23 (2) An employee or agent of a person described in subsection (1) of
24 this section, acting in the course and scope of his employment,
25 including, in the event such employee or agent is deceased, his estate
26 or personal representative; or

27 (3) An entity, whether or not incorporated, facility, or
28 institution employing one or more persons described in subsection (1)
29 of this section, including, but not limited to, a hospital, clinic,
30 health maintenance organization, or nursing home; or an officer,
31 director, employee, or agent thereof acting in the course and scope of
32 his employment, including, in the event such officer, director,
33 employee, or agent is deceased, his estate or personal representative;
34 based upon alleged professional negligence shall be commenced within
35 three years of the act or omission alleged to have caused the injury or
36 condition, or one year of the time the patient or his representative
37 discovered or reasonably should have discovered that the injury or

1 condition was caused by said act or omission, whichever period expires
2 later, except that in no event shall an action be commenced more than
3 eight years after said act or omission(~~(: PROVIDED, That)~~). However,
4 the time for commencement of an action is tolled upon proof of fraud,
5 intentional concealment, or the presence of a foreign body not intended
6 to have a therapeutic or diagnostic purpose or effect.

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

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

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

21 **PART 6--CONSTRUCTION CLAIMS**

22 **Sec. 601.** RCW 4.16.300 and 1986 c 305 s 703 are each amended to
23 read as follows:

24 RCW 4.16.300 through 4.16.320 shall apply to all claims or causes
25 of action of any kind against any person, arising from such person
26 having constructed, altered or repaired any improvement upon real
27 property, or having performed or furnished any design, planning,
28 surveying, architectural or construction or engineering services, or
29 supervision or observation of construction, or administration of
30 construction contracts for any construction, alteration or repair of
31 any improvement upon real property. This section is intended to
32 benefit only those persons referenced ~~((herein))~~ in this section,
33 specifically including persons having performed work for which the
34 persons must be registered or licensed under RCW 18.27.020, 18.08.310,
35 18.43.040, 18.96.020, or 19.28.120, and shall not apply to claims or
36 causes of action against ~~((manufacturers))~~ persons not referenced in
37 this section.

1 **Sec. 602.** RCW 51.24.035 and 1987 c 212 s 1801 are each amended to
2 read as follows:

3 (1) ~~Notwithstanding RCW 51.24.030(1), the injured worker or~~
4 ~~beneficiary may not seek damages ((against a design professional who is~~
5 ~~a third person and who has been retained to perform professional~~
6 ~~services on a construction project, or any employee of a design~~
7 ~~professional who is assisting or representing the design professional~~
8 ~~in the performance of professional services on the site of the~~
9 ~~construction project, unless responsibility for safety practices is~~
10 ~~specifically assumed by contract, the provisions of which were mutually~~
11 ~~negotiated, or the design professional actually exercised control over~~
12 ~~the portion of the premises where the worker was injured)) for an~~
13 ~~injury or occupational disease occurring in the course of employment at~~
14 ~~the site of a construction project, whether accomplished by a single~~
15 ~~contract or by multiple contracts, against the owner or developer of~~
16 ~~the project or against any person or entity performing work, furnishing~~
17 ~~materials, or providing services to or for the construction project~~
18 ~~including, but not limited to, design professionals, construction~~
19 ~~managers, general or prime contractors, suppliers, subcontractors of~~
20 ~~any tier, and any employee of a design professional, construction~~
21 ~~manager, general or prime contractor, supplier, or subcontractor of any~~
22 ~~tier.~~

23 (2) The immunity provided by this section does not extend to any
24 person or entity who injures a worker by deliberate intention as
25 defined in RCW 51.24.020, and it is against public policy to seek
26 indemnification in construction contracts against such liability. Such
27 contractual clauses are void and unenforceable.

28 (3) The immunity provided by this section does not extend to
29 manufacturers and product sellers for product liability actions as
30 defined in chapter 7.72 RCW.

31 (4) The immunity provided by this section does not apply to the
32 negligent preparation of design plans and specifications by a design
33 professional.

34 ~~((+3))~~ (5) For the purposes of this section, "design professional"
35 means an architect, professional engineer, land surveyor, or landscape
36 architect, who is licensed or authorized by law to practice such
37 profession, or any corporation organized under chapter 18.100 RCW or
38 authorized under RCW 18.08.420 or 18.43.130 to render design services
39 through the practice of one or more of such professions.

PART 7--MOTOR VEHICLE CLAIMS

Sec. 701. RCW 46.61.688 and 1990 c 250 s 58 are each amended to read as follows:

(1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(d) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all passengers under the age of sixteen years are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

~~(6) ((Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.~~

1 NEW SECTION. **Sec. 901.** Sections 101 through 106 of this act
2 constitute a new chapter in Title 4 RCW.

3 NEW SECTION. **Sec. 902.** Part headings used in this act do not
4 constitute any part of the law.

5 NEW SECTION. **Sec. 903.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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