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Judiciary Committee

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HB 1910

**Title:** An act relating to limiting noneconomic damages in actions under chapter 7.70 RCW.

**Brief Description:** Limiting noneconomic damages in actions involving provision of health care.

**Sponsors:** Representatives Schual-Berke, Pflug and McMahan.

**Brief Summary of Bill**

- Limits the amount of non-economic damages that may be awarded in a medical malpractice action to \$400,000, unless the defendant engaged in reckless, willful or wanton conduct.

**Hearing Date:** 3/3/03

**Staff:** Edie Adams (786-7180).

**Background:**

In 1986 the Legislature, as part of broader tort reform legislation, placed limitations on the amount of non-economic damages that may be awarded in a civil action for personal injury or death. The limitation was based on a formula tied to the age of the victim and the average annual wage in the state. The maximum award for non-economic damages was limited to 43 percent of the average annual wage multiplied by the victim's life expectancy. "Non-economic damages" are subjective, non-monetary losses such as pain and suffering, mental anguish or emotional distress, disability or disfigurement, loss of consortium, loss of companionship, and destruction of the parent-child relationship. In contrast, "economic damages" are monetary losses such as medical expenses and loss of earnings or employment.

The Washington Supreme Court (Court) struck down this limit on non-economic damages as a violation of the constitutional right to trial by jury contained in Article I, Section 21 of the Washington Constitution. *Sofie v. Fibreboard*. The Court found that the jury's fact-finding role is the essence of the right to a trial by jury contained in the constitution. In addition, the Court held that the determination of damages, especially non-economic damages, is a factual issue within the role of the jury's fact-finding function.

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the standard of care;
- The health care provider promised that the injury suffered would not occur; or
- The injury resulted from health care to which the patient did not consent.

In a civil action for damages, the plaintiff must show that the defendant violated some duty of care to the plaintiff. Generally, persons may be found liable for negligence, which involves failing to exercise the level of care of a reasonably prudent person. In some instances, however, the plaintiff must prove that the defendant was grossly negligent, or engaged in reckless, willful or wanton misconduct.

Reckless, willful, and wanton misconduct differs from negligence and gross negligence in that it involves a mental state, whereas negligence is based on neglect or inattention. Recklessness involves conduct showing a conscious disregard for the safety of others. Willful conduct involves actual knowledge of the potential injury coupled with intentional failure to avert injury while wanton conduct involves an action or omission intentionally performed with a reckless indifference to the injury that will probably result.

**Summary of Bill:**

The amount of non-economic damages that may be awarded in an action for injury or death that results from the provision of health care is limited to \$400,000. The \$400,000 limit is to be adjusted for inflation on an annual basis, beginning on July 1, 2005.

The limit on non-economic damages does not apply in an action where the defendant's acts or omissions were reckless, willful or wanton. In an action involving more than one defendant where the \$400,000 limit does not apply, the responsibility for damages of a defendant whose acts or omissions were not reckless, willful or wanton are determined as if the \$400,000 limit applied.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect only if the proposed constitutional amendment to Article 1, Section 21 passes at the next general election.