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## Judiciary Committee

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### HB 2835

**Title:** An act relating to noneconomic damage awards in actions against health care providers under chapter 7.70 RCW.

**Brief Description:** Establishing advisory limits on noneconomic damages awarded against health care providers.

**Sponsors:** Representatives Schual-Berke and Edwards.

Brief Summary of Bill
<ul style="list-style-type: none"><li>Establishes an advisory \$400,000 cap on non-economic damages in medical malpractice actions.</li></ul>



**Hearing Date:** 1/29/04

**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 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 reasonable 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:**

An advisory limit on non-economic damages in medical malpractice actions is established. The advisory limit is set at \$400,000 and adjusted for inflation on an annual basis, beginning on July 1, 2005. The advisory limit is not binding on the trier of fact.

The jury must be informed of the advisory limit on non-economic damages in accordance with court rules to be adopted by the Supreme Court.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.