

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

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

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

26 (2)(a) A defendant who is jointly and severally liable under one of
27 the exceptions listed in subsection (1)(a) or (b) of this section on
28 the basis of negligent or reckless acts or omissions shall be jointly
29 liable for no more than twice the percentage of fault allocated to that
30 defendant but in no case more than one hundred percent of the sum of
31 the proportionate shares.

32 (b) A defendant who is jointly and severally liable under one of
33 the exceptions listed in subsection (1)(a) or (b) of this section on
34 the basis of intentional acts or omissions shall be jointly liable for
35 the sum of the proportionate shares of the claimant's total damages.

36 (c) If a defendant is jointly and severally liable under one of the
37 exceptions listed in subsection(~~((s))~~) (1)(a) or (~~((1))~~)(b) of this
38 section, such defendant's rights to contribution against another

1 jointly and severally liable defendant, and the effect of settlement by
2 either such defendant, shall be determined under RCW 4.22.040,
3 4.22.050, and 4.22.060.

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

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

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

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

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

22 A comparison of fault for any purpose under RCW 4.22.005 through
23 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of
24 the conduct of the parties to the action and the extent of the causal
25 relation between such conduct and the damages.

26 **PART 2**

27 **EMPLOYMENT REFERENCE**

28 NEW SECTION. **Sec. 201.** The legislature finds that employers are
29 becoming increasingly discouraged from disclosing job reference
30 information. The legislature further finds that full disclosure of
31 such information will increase productivity, enhance the safety of the
32 workplace, and provide greater opportunities to disadvantaged groups
33 who may not have the educational background or resumes of other
34 workers.

1 **Sec. 302.** RCW 4.56.110 and 1989 c 360 s 19 are each amended to
2 read as follows:

3 Interest on judgments shall accrue as follows:

4 (1) Judgments founded on written contracts, providing for the
5 payment of interest until paid at a specified rate, shall bear interest
6 at the rate specified in the contracts: PROVIDED, That said interest
7 rate is set forth in the judgment.

8 (2) All judgments for unpaid child support that have accrued under
9 a superior court order or an order entered under the administrative
10 procedure act shall bear interest at the rate of twelve percent.

11 (3) Judgments founded on the tortious conduct of individuals or
12 other entities, whether acting in their personal or representative
13 capacities, shall bear interest from the date of entry at two
14 percentage points above the equivalent coupon issue yield, as published
15 by the board of governors of the federal reserve system, of the average
16 bill rate for twenty-six week treasury bills as determined at the first
17 bill market auction conducted during the calendar month immediately
18 preceding the date of entry. In any case where a court is directed on
19 review to enter judgment on a verdict or in any case where a judgment
20 entered on a verdict is wholly or partly affirmed on review, interest
21 on the judgment or on that portion of the judgment affirmed shall date
22 back to and shall accrue from the date the verdict was rendered.

23 (4) Except as provided under subsections (1) (~~and~~), (2), and (3)
24 of this section, judgments shall bear interest from the date of entry
25 at the maximum rate permitted under RCW 19.52.020 on the date of entry
26 thereof(~~(: PROVIDED, That)~~). In any case where a court is directed on
27 review to enter judgment on a verdict or in any case where a judgment
28 entered on a verdict is wholly or partly affirmed on review, interest
29 on the judgment or on that portion of the judgment affirmed shall date
30 back to and shall accrue from the date the verdict was rendered. The
31 method for determining an interest rate prescribed by this subsection
32 is also the method for determining the "rate applicable to civil
33 judgments" for purposes of RCW 10.82.090.

34 NEW SECTION. **Sec. 303.** The rate of interest required by sections
35 301 and 302(3), chapter . . . , Laws of 2003 (sections 301 and 302(3) of
36 this act) applies to the accrual of interest as of the date of entry of

1 judgment with respect to a judgment that is entered on or after the
2 effective date of this act.

3 **Sec. 304.** RCW 19.52.025 and 1986 c 60 s 1 are each amended to read
4 as follows:

5 Each month the state treasurer shall compute the highest rate of
6 interest permissible under RCW 19.52.020(1), and the rate of interest
7 required by RCW 4.56.110(3) and 4.56.115, for the succeeding calendar
8 month. The treasurer shall file (~~(this rate)~~) these rates with the
9 state code reviser for publication in the next available issue of the
10 Washington State Register in compliance with RCW 34.08.020(8).

11 **PART 4**
12 **MEDICAL LIABILITY**

13 NEW SECTION. **Sec. 401.** The legislature finds that it is in the
14 best interest of the people of the state of Washington to contain the
15 significantly increasing costs of malpractice insurance for licensed
16 health care professionals and institutions and to ensure the continued
17 availability and affordability of health care services in this state by
18 enacting further reforms to the health care tort liability system.

19 The legislature finds that, notwithstanding the tort reform
20 measures it has enacted in the past, the amounts being paid out in
21 judgments and settlements have continued to increase inordinately, and
22 that as a result there have been dramatic increases in the cost of
23 health care professional liability insurance coverage. The legislature
24 further finds that the upward pressures on already high malpractice
25 insurance premiums threaten the public's health by discouraging
26 physicians and other health care professionals from initiating or
27 continuing their practice in this state.

28 The legislature further finds that the state of California, largely
29 as a result of its enactment of the "medical injury compensation reform
30 act" in 1975, has been able to successfully stabilize the health care
31 professional liability insurance market, maintain access to affordable
32 quality health care services, and avert the kind of crisis now facing
33 the residents of Washington.

34 The legislature finds that such reforms are rationally related to
35 the legitimate goals of reducing the costs associated with the health

1 care tort liability system while ensuring adequate and appropriate
2 compensation for persons injured as a result of health care, ensuring
3 the continued availability and affordability of health care services in
4 this state, preventing the curtailment of health care services in this
5 state, stabilizing insurance and health care costs, preventing stale
6 health care liability claims, and protecting and preserving the public
7 health, safety, and welfare as a whole.

8 **Sec. 402.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to
9 read as follows:

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

12 (a) "Economic damages" means objectively verifiable monetary
13 losses, including medical expenses, loss of earnings, burial costs,
14 loss of use of property, cost of replacement or repair, cost of
15 obtaining substitute domestic services, loss of employment, and loss of
16 business or employment opportunities.

17 (b) "Noneconomic damages" means subjective, nonmonetary losses,
18 including(~~(7)~~) but not limited to pain, suffering, inconvenience,
19 mental anguish, disability or disfigurement incurred by the injured
20 party, loss of ability to enjoy life, emotional distress, loss of
21 society and companionship, loss of consortium, injury to reputation and
22 humiliation, (~~(and)~~) destruction of the parent-child relationship, and
23 other nonpecuniary damages of any type.

24 (c) "Bodily injury" means physical injury, sickness, or disease,
25 including death.

26 (d) "Average annual wage" means the average annual wage in the
27 state of Washington as determined under RCW 50.04.355.

28 (2) In no action seeking damages for personal injury or death may
29 a claimant recover a judgment for noneconomic damages exceeding an
30 amount determined by multiplying 0.43 by the average annual wage and by
31 the life expectancy of the person incurring noneconomic damages, as the
32 life expectancy is determined by the life expectancy tables adopted by
33 the insurance commissioner. For purposes of determining the maximum
34 amount allowable for noneconomic damages, a claimant's life expectancy
35 shall not be less than fifteen years. The limitation contained in this
36 subsection applies to all claims for noneconomic damages made by a
37 claimant who incurred bodily injury. Claims for loss of consortium,

1 loss of society and companionship, destruction of the parent-child
2 relationship, and all other derivative claims asserted by persons who
3 did not sustain bodily injury are to be included within the limitation
4 on claims for noneconomic damages arising from the same bodily injury.

5 (3) If a case is tried to a jury, the jury shall not be informed of
6 the limitation contained in subsection (2) of this section.

7 NEW SECTION. **Sec. 403.** A new section is added to chapter 4.56 RCW
8 to read as follows:

9 (1) In an action or arbitration for damages for injury or death
10 occurring as a result of health care, or arranging for the provision of
11 health care, whether brought under chapter 7.70 RCW, or under RCW
12 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or
13 any combination thereof, the total amount of noneconomic damages may
14 not exceed three hundred fifty thousand dollars.

15 (2) The limitation on noneconomic damages contained in subsection
16 (1) of this section includes all noneconomic damages claimed by or on
17 behalf of the person whose injury or death occurred as a result of
18 health care or arranging for the provision of health care, as well as
19 all claims for loss of consortium, loss of society and companionship,
20 destruction of the parent-child relationship, and other derivative
21 claims asserted by or on behalf of others arising from the same injury
22 or death. If the jury's assessment of noneconomic damages exceeds the
23 limitation contained in subsection (1) of this section, nothing in RCW
24 4.44.450 precludes the court from entering a judgment that limits the
25 total amount of noneconomic damages to three hundred fifty thousand
26 dollars.

27 **Sec. 404.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
28 read as follows:

29 (1) No action based upon a health care provider's professional
30 negligence may be commenced unless the defendant has been given at
31 least ninety days' notice of the intention to commence the action. If
32 the notice is served within ninety days of the expiration of the
33 applicable statute of limitations, the time for the commencement of the
34 action must be extended ninety days from the service of the notice.

35 (2) The provisions of subsection (1) of this section are not

1 applicable with respect to any defendant whose name is unknown to the
2 plaintiff at the time of filing the complaint and who is identified
3 therein by a fictitious name.

4 (3) After the filing of the ninety-day presuit notice, and before
5 a superior court trial, all causes of action, whether based in tort,
6 contract, or otherwise, for damages arising from injury occurring as a
7 result of health care provided after July 1, 1993, shall be subject to
8 mandatory mediation prior to trial.

9 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
10 implement mandatory mediation of actions under this chapter. The rules
11 shall require mandatory mediation without exception and address, at a
12 minimum:

13 (a) Procedures for the appointment of, and qualifications of,
14 mediators. A mediator shall have experience or expertise related to
15 actions arising from injury occurring as a result of health care, and
16 be a member of the state bar association who has been admitted to the
17 bar for a minimum of five years or who is a retired judge. The parties
18 may stipulate to a nonlawyer mediator. The court may prescribe
19 additional qualifications of mediators;

20 (b) Appropriate limits on the amount or manner of compensation of
21 mediators;

22 (c) The number of days following the filing of a claim under this
23 chapter within which a mediator must be selected;

24 (d) The method by which a mediator is selected. The rule shall
25 provide for designation of a mediator by the superior court if the
26 parties are unable to agree upon a mediator;

27 (e) The number of days following the selection of a mediator within
28 which a mediation conference must be held;

29 (f) A means by which mediation of an action under this chapter may
30 be waived by a mediator who has determined that the claim is not
31 appropriate for mediation; and

32 (g) Any other matters deemed necessary by the court.

33 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the
34 parties.

35 (6) The supreme court shall by rule also adopt procedures for the
36 parties to certify to the court the manner of mediation used by the
37 parties to comply with this section.

1 **Sec. 405.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
2 as follows:

3 (1) Any civil action for damages for injury or death occurring as
4 a result of health care which is provided after June 25, 1976, against:

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

13 ~~((2))~~ (b) An employee or agent of a person described in (a) of
14 this subsection ~~((1) of this section)~~, acting in the course and scope
15 of his or her employment, including, in the event such employee or
16 agent is deceased, his or her estate or personal representative; or

17 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or
18 institution employing one or more persons described in (a) of this
19 subsection ~~((1) of this section)~~, including, but not limited to, a
20 hospital, clinic, health maintenance organization, or nursing home; or
21 an officer, director, employee, or agent thereof acting in the course
22 and scope of his or her employment, including, in the event such
23 officer, director, employee, or agent is deceased, his or her estate or
24 personal representative;

25 based upon alleged professional negligence shall be commenced within
26 three years of the act or omission alleged to have caused the injury or
27 condition, or one year of the time the patient or his or her
28 representative or custodial parent or guardian discovered or reasonably
29 should have discovered that the injury or condition was caused by said
30 act or omission, whichever period ~~((expires later, except that in no~~
31 ~~event shall an action be commenced more than eight years after said act~~
32 ~~or omission: PROVIDED, That the time for commencement of an action is~~
33 ~~tolled upon proof of fraud, intentional concealment, or the presence of~~
34 ~~a foreign body not intended to have a therapeutic or diagnostic purpose~~
35 ~~or effect, until the date the patient or the patient's representative~~
36 ~~has actual knowledge of the act of fraud or concealment, or of the~~
37 ~~presence of the foreign body; the patient or the patient's~~

1 ~~representative has one year from the date of the actual knowledge in~~
2 ~~which to commence a civil action for damages.~~

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

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

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

16 (a) Upon proof of fraud, intentional concealment, or the presence
17 of a foreign body not intended to have a therapeutic or diagnostic
18 purpose or effect, in which case the patient or the patient's
19 representative has one year from the date the patient or the patient's
20 representative or custodial parent or guardian has actual knowledge of
21 the act of fraud or concealment or of the presence of the foreign body
22 in which to commence a civil action for damages.

23 (b) In the case of a minor, for any period during minority, but
24 only for such period during minority in which the minor's custodial
25 parent or guardian and the defendant or the defendant's insurer have
26 committed fraud or collusion in the failure to bring an action on
27 behalf of the minor.

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

32 (3) Any action not commenced in accordance with this section is
33 barred.

34 (4) For purposes of this section, the tolling provisions of RCW
35 4.16.190 do not apply.

36 (5) This section does not apply to a civil action based on
37 intentional conduct brought against those individuals or entities

1 specified in this section by a person for recovery of damages for
2 injury occurring as a result of childhood sexual abuse as defined in
3 RCW 4.16.340(5).

4 **Sec. 406.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
5 amended to read as follows:

6 (1) Any party may present evidence to the trier of fact that the
7 ((patient)) plaintiff has already been, or will be, compensated for the
8 injury complained of from ((any source except the assets of the
9 patient, his representative, or his immediate family, or insurance
10 purchased with such assets. In the event such evidence is admitted,
11 the plaintiff may present evidence of an obligation to repay such
12 compensation. Insurance bargained for or provided on behalf of an
13 employee shall be considered insurance purchased with the assets of the
14 employee)) a collateral source. In the event the evidence is admitted,
15 the other party may present evidence of any amount that was paid or
16 contributed to secure the right to any compensation. Compensation as
17 used in this section shall mean payment of money or other property to
18 or on behalf of the patient, rendering of services to the patient free
19 of charge to the patient, or indemnification of expenses incurred by or
20 on behalf of the patient. Notwithstanding this section, evidence of
21 compensation by a defendant health care provider may be offered only by
22 that provider.

23 (2) Unless otherwise provided by statute, there is no right of
24 subrogation or reimbursement from a plaintiff's tort recovery with
25 respect to compensation covered in subsection (1) of this section.

26 **Sec. 407.** RCW 7.70.060 and 1975-'76 2nd ex.s. c 56 s 11 are each
27 amended to read as follows:

28 If a patient while legally competent, or his or her representative
29 if he or she is not competent, signs a consent form which sets forth
30 the following, the signed consent form shall constitute prima facie
31 evidence that the patient gave his or her informed consent to the
32 treatment administered and the patient has the burden of rebutting this
33 by ((a preponderance of the)) clear, cogent, and convincing evidence:

34 (1) A description, in language the patient could reasonably be
35 expected to understand, of:

36 (a) The nature and character of the proposed treatment;

1 (b) The anticipated results of the proposed treatment;
2 (c) The recognized possible alternative forms of treatment; and
3 (d) The recognized serious possible risks, complications, and
4 anticipated benefits involved in the treatment and in the recognized
5 possible alternative forms of treatment, including nontreatment;

6 (2) Or as an alternative, a statement that the patient elects not
7 to be informed of the elements set forth in subsection (1) of this
8 section.

9 Failure to use a form shall not be admissible as evidence of
10 failure to obtain informed consent.

11 NEW SECTION. **Sec. 408.** A new section is added to chapter 7.04 RCW
12 to read as follows:

13 (1) A contract for health care services that contains a provision
14 for arbitration of a dispute as to professional negligence of a health
15 care provider under chapter 7.70 RCW must have the provision as the
16 first article of the contract and must be expressed in the following
17 language:

18 "It is understood that any dispute as to medical malpractice that
19 is as to whether any medical services rendered under this contract were
20 unnecessary or unauthorized or were improperly, negligently, or
21 incompetently rendered, will be determined by submission to arbitration
22 as provided by Washington law, and not by a lawsuit or resort to court
23 process except as Washington law provides for judicial review of
24 arbitration proceedings. Both parties to this contract, by entering
25 into it, are giving up their constitutional right to have such a
26 dispute decided in a court of law before a jury, and instead are
27 accepting the use of arbitration."

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

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

35 (3) Once signed, such a contract governs all subsequent open-book
36 account transactions for medical services for which the contract was
37 signed until or unless rescinded by written notice within thirty days

1 of signature. Written notice of such rescission may be given by a
2 guardian or other legal representative of the patient if the patient is
3 incapacitated or a minor.

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

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

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

14 NEW SECTION. **Sec. 409.** A new section is added to chapter 7.70 RCW
15 to read as follows:

16 RCW 7.70.100, 7.70.110, 7.70.120, and 7.70.130 do not apply if
17 there is a contract for binding arbitration under section 408 of this
18 act.

19 NEW SECTION. **Sec. 410.** A new section is added to chapter 7.70 RCW
20 to read as follows:

21 (1) The definitions in this subsection apply throughout this
22 section unless the context clearly requires otherwise.

23 (a) "Future damages" includes damages for future medical treatment,
24 care or custody, loss of future earnings, loss of bodily function, or
25 future pain and suffering of the judgment creditor.

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

28 (2) In any action for damages for injury occurring as a result of
29 health care, the court shall, at the request of either party, enter a
30 judgment ordering that money damages or its equivalent for future
31 damages of the judgment creditor be paid in whole or in part by
32 periodic payments rather than by a lump-sum payment if the award equals
33 or exceeds fifty thousand dollars in future damages. In entering a
34 judgment ordering the payment of future damages by periodic payments,
35 the court shall make a specific finding as to the dollar amount of
36 periodic payments which will compensate the judgment creditor for such

1 future damages. As a condition to authorizing periodic payments of
2 future damages, the court shall require the judgment debtor who is not
3 adequately insured to post security adequate to ensure full payment of
4 such damages awarded by the judgment. Upon termination of periodic
5 payments of future damages, the court shall order the return of this
6 security, or so much as remains, to the judgment debtor.

7 (3)(a) The judgment ordering the payment of future damages by
8 periodic payments must specify the recipient or recipients of the
9 payments, the dollar amount of the payments, the interval between
10 payments, and the number of payments or the period of time over which
11 payments must be made. The payments are only subject to modification
12 in the event of the death of the judgment creditor.

13 (b) In the event that the court finds that the judgment debtor has
14 exhibited a continuing pattern of failing to make the payments, as
15 specified in (a) of this subsection, the court shall find the judgment
16 debtor in contempt of court and, in addition to the required periodic
17 payments, shall order the judgment debtor to pay the judgment creditor
18 all damages caused by the failure to make such periodic payments,
19 including court costs and attorneys' fees.

20 (4) However, money damages awarded for loss of future earnings may
21 not be reduced or payments terminated by reason of the death of the
22 judgment creditor, but must be paid to persons to whom the judgment
23 creditor owed a duty of support, as provided by law, immediately prior
24 to his or her death. In such cases the court that rendered the
25 original judgment, may, upon petition of any party in interest, modify
26 the judgment to award and apportion the unpaid future damages in
27 accordance with this subsection (4).

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

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

34 (7) It is the intent of the legislature in enacting this section to
35 authorize, in actions for damages for injury occurring as a result of
36 health care, the entry of judgments that provide for the payment of
37 future damages through periodic payments rather than lump-sum payments.
38 By authorizing periodic payment judgments, it is the further intent of

1 the legislature that the courts will utilize such judgments to provide
2 compensation sufficient to meet the needs of an injured plaintiff and
3 those persons who are dependent on the plaintiff for whatever period is
4 necessary while eliminating the potential windfall from a lump-sum
5 recovery that was intended to provide for the care of an injured
6 plaintiff over an extended period who then dies shortly after the
7 judgment is paid, leaving the balance of the judgment award to persons
8 and purposes for which it was not intended. It is also the intent of
9 the legislature that all elements of the periodic payment program be
10 specified with certainty in the judgment ordering such payments and
11 that the judgment not be subject to modification at some future time
12 that might alter the specifications of the original judgment.

13 NEW SECTION. **Sec. 411.** A new section is added to chapter 4.56 RCW
14 to read as follows:

15 In the event that the Washington state supreme court or other court
16 of competent jurisdiction rules or affirms that section 403 of this act
17 is unconstitutional, then the prescribed cap on noneconomic damages
18 takes effect upon the ratification of a state constitutional amendment
19 that empowers the legislature to place limits on the amount of
20 noneconomic damages recoverable in any or all civil causes of action.

21 NEW SECTION. **Sec. 412.** Unless otherwise provided in this act,
22 this act applies to all causes of action filed on or after the
23 effective date of this section.

24 NEW SECTION. **Sec. 413.** The Washington state department of health,
25 in conjunction with the Washington state medical quality assurance
26 commission and appropriate professional associations, shall evaluate
27 the effectiveness of the quality improvement and medical malpractice
28 prevention program, as implemented in state hospitals. Representatives
29 of the following professional associations shall be included in the
30 evaluation process: The Washington state hospital association; the
31 Washington state nurses association; the Washington state bar
32 association; the Washington state medical association; and other
33 professional health care provider associations, as appropriate. The
34 Washington state department of health shall present a report to the
35 legislature by December 1, 2003.

1 of limitations expires, regardless of discovery, six years after
2 substantial completion of construction, or during the period within six
3 years after the termination of the services enumerated in RCW 4.16.300,
4 whichever is later;

5 (f) As to a particular violation for which the builder has obtained
6 a valid release;

7 (g) To the extent that the builder's repair corrected the alleged
8 violation or defect;

9 (h) To the extent that the builder making the improvement did so in
10 conformity with all applicable state, county, and municipal building
11 and construction codes;

12 (i) As to any causes of action to which this section does not
13 apply, all applicable affirmative defenses are preserved.

14 (2) This section does not apply to any civil action in tort
15 alleging personal injury or wrongful death to a person or persons
16 resulting from a construction defect.

17 **PART 6**

18 **SEATBELT DEFENSE**

19 **Sec. 601.** RCW 46.61.688 and 2003 c 353 (ESB 5450) s 4 are each
20 amended to read as follows:

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

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

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

29 (c) "Neighborhood electric vehicle," meaning a self-propelled,
30 electrically powered four-wheeled motor vehicle whose speed attainable
31 in one mile is more than twenty miles per hour and not more than
32 twenty-five miles per hour and conforms to federal regulations under
33 Title 49 C.F.R. Part 571.500;

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

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

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

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

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

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

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

25 (7) This section does not apply to an operator or passenger who
26 possesses written verification from a licensed physician that the
27 operator or passenger is unable to wear a safety belt for physical or
28 medical reasons.

29 (8) The state patrol may adopt rules exempting operators or
30 occupants of farm vehicles, construction equipment, and vehicles that
31 are required to make frequent stops from the requirement of wearing
32 safety belts.

33 **PART 7**

34 **GOVERNMENTAL ACTIVITIES**

35 NEW SECTION. **Sec. 701.** While the common law doctrine of sovereign
36 immunity declares that the state is immune from liability for the

1 tortious conduct of its employees and officers, Article II, section 26
2 of the state Constitution allows the legislature to waive its immunity
3 and specify by statute "in what manner, and in what courts, suit may be
4 brought against the state." In the granting or withholding of
5 sovereign immunity, there are limitations, gradations, and competing
6 interests to be balanced by the legislature, including fairness to the
7 citizens of the state, the preservation of proper and essential
8 functions of government, and the conservation of scarce public
9 resources.

10 In balancing these competing interests, the legislature must also
11 balance the traditional role of the jury in determining damages in
12 civil cases and the legislature's constitutional mandate under Article
13 VIII, section 4 of the state Constitution to protect the state treasury
14 through the appropriation process.

15 The legislature finds that these constitutional principles are not
16 adequately served by either complete sovereign immunity or the complete
17 waiver of sovereign immunity. Pursuant to the express authority of
18 Article II, section 26 of the state Constitution, the purpose of
19 sections 701 through 707 of this act is to recognize and implement
20 these fundamental constitutional principles while providing a fair and
21 equitable means of recovery against governmental entities for the
22 negligent acts of their employees and officers.

23 The legislature further finds that government agencies administer
24 programs, in the exercise of their constitutional, statutory, and moral
25 obligations, that inherently create a significant risk of tort
26 liability in the absence of sovereign immunity. This potential
27 liability is unique to the governmental function. As a result, state
28 and local governments are not similarly situated to individual and
29 private organizations, who are not under legal or moral obligations to
30 provide for the public health, safety, and welfare. For these reasons,
31 the legislature finds it necessary and appropriate to distinguish
32 between the civil liability of private entities and governmental
33 agencies.

34 **Sec. 702.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read
35 as follows:

36 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,
37 (~~4.92.140~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

1 **Sec. 703.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
2 as follows:

3 (1) All local governmental entities, whether acting in a
4 governmental or proprietary capacity, shall be liable for damages
5 arising out of their tortious conduct, or the tortious conduct of their
6 past or present officers, employees, or volunteers while performing or
7 in good faith purporting to perform their official duties, to the same
8 extent as if they were a private person or corporation, subject to the
9 limitations provided in subsection (2) of this section. Filing a claim
10 for damages within the time allowed by law shall be a condition
11 precedent to the commencement of any action claiming damages. The laws
12 specifying the content for such claims shall be liberally construed so
13 that substantial compliance therewith will be deemed satisfactory.

14 (2)(a) Subject to the further limitation applicable to rural public
15 hospital districts in this subsection, neither local government
16 entities, nor their officers, employees, or volunteers are liable to
17 pay a claim or a judgment for noneconomic damages as defined in RCW
18 4.56.250 by any one person that exceeds the sum of one million dollars
19 or any claim or judgment, or portions thereof, that, when totaled with
20 all other claims or judgments paid by the local government entities,
21 officers, employees, or volunteers arising out of the same incident or
22 occurrence, exceeds the sum of two million dollars. Neither rural
23 public hospital districts, nor their officers, employees, or volunteers
24 are liable to pay a claim or a judgment by any one person that exceeds
25 the sum of five hundred thousand dollars or any claim or judgment, or
26 portions thereof, that, when totaled with all other claims or judgments
27 paid by the rural public hospital district, officers, employees, or
28 volunteers arising out of the same incident or occurrence, exceeds the
29 sum of one million dollars. However, a judgment or judgments may be
30 claimed and rendered in excess of these amounts and may be settled and
31 paid under this section up to five hundred thousand dollars, one
32 million dollars, or two million dollars, as the case may be, and that
33 portion of the judgment that exceeds these amounts may be reported to
34 the local legislative authority, but may be paid in part or in whole
35 only by further act of the local legislative authority.
36 Notwithstanding the limited waiver of sovereign immunity provided in
37 this section, the local government entities, officers, employees, or
38 volunteers may agree, within the limits of insurance coverage provided,

1 to settle a claim made or a judgment rendered against it without
2 further action by the local legislative authority, but the local
3 government entities, officers, employees, or volunteers have not waived
4 any defense of sovereign immunity or increased the limits of its
5 liability as a result of its obtaining insurance coverage for tortious
6 acts in excess of the waiver provided in this section.

7 (b) The liability of the local government entities, officers,
8 employees, or volunteers is several only and is not joint.

9 (c) No attorney may charge, demand, receive, or collect, for
10 services rendered, fees in excess of twenty-five percent of any
11 judgment or settlement under this section.

12 (d) Subsection (2)(a) of this section does not apply in cases in
13 which the local government entity or its officers, employees, or
14 volunteers are held liable for civil damages resulting from any
15 negligent act or omission in the rendering of community placement,
16 community supervision, community custody, parole supervision, probation
17 supervision, or supervision of suspended sentences if (i) the offender
18 under supervision has ever been convicted of the crime of first or
19 second degree rape, first or second degree rape of a child, or first or
20 second degree homicide, and (ii) the civil damages resulted from the
21 subsequent commission of one of these specified offenses.

22 (3) Unless the context clearly requires otherwise, for the purposes
23 of this chapter((7)):

24 (a) "Local governmental entity" means a county, city, town, special
25 district, municipal corporation as defined in RCW 39.50.010, quasi-
26 municipal corporation, or public hospital.

27 ((+3)) (b) "Rural public hospital district" has the meaning
28 specified in RCW 70.44.460.

29 (4) For the purposes of this chapter, "volunteer" is defined
30 according to RCW 51.12.035.

31 **Sec. 704.** RCW 4.92.040 and 2002 c 332 s 11 are each amended to
32 read as follows:

33 (1) No execution shall issue against the state on any judgment.

34 (2) Whenever a final judgment against the state is obtained in an
35 action on a claim arising out of tortious conduct, the claim shall be
36 paid from the liability account, subject to the limitations of RCW
37 4.92.090.

1 (3) Whenever a final judgment against the state shall have been
2 obtained in any other action, the clerk of the court shall make and
3 furnish to the risk management division a duly certified copy of such
4 judgment; the risk management division shall thereupon audit the amount
5 of damages and costs therein awarded, and the same shall be paid from
6 appropriations specifically provided for such purposes by law.

7 (4) Final judgments for which there are no provisions in state law
8 for payment shall be transmitted by the risk management division to the
9 senate and house of representatives committees on ways and means as
10 follows:

11 (a) On the first day of each session of the legislature, the risk
12 management division shall transmit judgments received and audited since
13 the adjournment of the previous session of the legislature.

14 (b) During each session of legislature, the risk management
15 division shall transmit judgments immediately upon completion of audit.

16 (5) All claims, other than judgments, made to the legislature
17 against the state of Washington for money or property, shall be
18 accompanied by a statement of the facts on which such claim is based
19 and such evidence as the claimant intends to offer in support of the
20 claim and shall be filed with the risk management division, which shall
21 retain the same as a record. All claims of two thousand dollars or
22 less shall be approved or rejected by the risk management division, and
23 if approved shall be paid from appropriations specifically provided for
24 such purpose by law. Such decision, if adverse to the claimant in
25 whole or part, shall not preclude the claimant from seeking relief from
26 the legislature. If the claimant accepts any part of his or her claim
27 which is approved for payment by the risk management division, such
28 acceptance shall constitute a waiver and release of the state from any
29 further claims relating to the damage or injury asserted in the claim
30 so accepted. The risk management division shall submit to the house
31 and senate committees on ways and means, at the beginning of each
32 regular session, a comprehensive list of all claims paid pursuant to
33 this subsection during the preceding year. For all claims not approved
34 by the risk management division, the risk management division shall
35 recommend to the legislature whether such claims should be approved or
36 rejected. Recommendations shall be submitted to the senate and house
37 of representatives committees on ways and means not later than the
38 thirtieth day of each regular session of the legislature. Claims which

1 cannot be processed for timely submission of recommendations shall be
2 held for submission during the following regular session of the
3 legislature. The recommendations shall include, but not be limited to:

4 (a) A summary of the facts alleged in the claim, and a statement as
5 to whether these facts can be verified by the risk management division;

6 (b) An estimate by the risk management division of the value of the
7 loss or damage which was alleged to have occurred;

8 (c) An analysis of the legal liability, if any, of the state for
9 the alleged loss or damage; and

10 (d) A summary of equitable or public policy arguments which might
11 be helpful in resolving the claim.

12 (6) The legislative committees to whom such claims are referred
13 shall make a transcript, recording, or statement of the substance of
14 the evidence given in support of such a claim. If the legislature
15 approves a claim the same shall be paid from appropriations
16 specifically provided for such purpose by law.

17 (7) Subsections (3) through (6) of this section do not apply to
18 judgments or claims against the state housing finance commission
19 created under chapter 43.180 RCW.

20 **Sec. 705.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
21 as follows:

22 The state of Washington, whether acting in its governmental or
23 proprietary capacity, shall be liable for damages arising out of its
24 tortious conduct to the same extent as if it were a private person or
25 corporation, subject to the limitations provided in this section.

26 (1) Neither the state nor its agencies, institutions, officers,
27 employees, or volunteers are liable to pay a claim or a judgment for
28 noneconomic damages as defined in RCW 4.56.250 by any one person that
29 exceeds the sum of one million dollars or any claim or judgment, or
30 portions thereof, that, when totaled with all other claims or judgments
31 paid by the state or its agencies, institutions, officers, employees,
32 or volunteers arising out of the same incident or occurrence, exceeds
33 the sum of two million dollars. However, a judgment or judgments may
34 be claimed and rendered in excess of these amounts and may be settled
35 and paid under this section up to one million dollars or two million
36 dollars, as the case may be, and that portion of the judgment that
37 exceeds these amounts may be reported to the legislature, but may be

1 paid in part or in whole only by further act of the legislature.
2 Notwithstanding the limited waiver of sovereign immunity provided in
3 this section, the state or an agency, institution, or any officer,
4 employee, or volunteer may agree, within the limits of insurance
5 coverage provided, to settle a claim made or a judgment rendered
6 against it without further action by the legislature, but the state or
7 agency has not waived any defense of sovereign immunity or increased
8 the limits of its liability as a result of its obtaining insurance
9 coverage for tortious acts in excess of the waiver provided in this
10 section.

11 (2) The liability of the state, its agencies, and institutions is
12 several only and is not joint.

13 (3) No attorney may charge, demand, receive, or collect, for
14 services rendered, fees in excess of twenty-five percent of any
15 judgment or settlement under this section.

16 (4) Subsection (1) of this section does not apply in cases in which
17 the state or its agencies, institutions, officers, employees, or
18 volunteers are held liable for civil damages resulting from any
19 negligent act or omission in the rendering of community placement,
20 community supervision, community custody, parole supervision, probation
21 supervision, or supervision of suspended sentences if (a) the offender
22 under supervision has ever been convicted of the crime of first or
23 second degree rape, first or second degree rape of a child, or first or
24 second degree homicide, and (b) the civil damages resulted from the
25 subsequent commission of one of these specified offenses.

26 **Sec. 706.** RCW 4.92.130 and 2002 c 332 s 14 are each amended to
27 read as follows:

28 A liability account in the custody of the treasurer is hereby
29 created as a nonappropriated account to be used solely and exclusively
30 for the payment of liability settlements and judgments against the
31 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of
32 its officers, employees, and volunteers and all related legal defense
33 costs. Legislative appropriation is required for expenditures from the
34 liability account to the extent specified in RCW 4.92.090.

35 (1) The purpose of the liability account is to: (a) Expeditiously
36 pay legal liabilities and defense costs of the state resulting from
37 tortious conduct; (b) promote risk control through a cost allocation

1 system which recognizes agency loss experience, levels of self-
2 retention, and levels of risk exposure; and (c) establish an
3 actuarially sound system to pay incurred losses, within defined limits.

4 (2) The liability account shall be used to pay claims for injury
5 and property damages and legal defense costs exclusive of agency-
6 retained expenses otherwise budgeted.

7 (3) No money shall be paid from the liability account, except for
8 defense costs, unless all proceeds available to the claimant from any
9 valid and collectible liability insurance shall have been exhausted and
10 unless:

11 (a) The claim shall have been reduced to final judgment in a court
12 of competent jurisdiction and legislative appropriation has been made
13 to the extent required by RCW 4.92.090; or

14 (b) The claim has been approved for payment.

15 (4) The liability account shall be financed through annual premiums
16 assessed to state agencies, based on sound actuarial principles, and
17 shall be for liability coverage in excess of agency-budgeted self-
18 retention levels.

19 (5) Annual premium levels shall be determined by the risk manager,
20 with the consultation and advice of the risk management advisory
21 committee. An actuarial study shall be conducted to assist in
22 determining the appropriate level of funding.

23 (6) Disbursements for claims from the liability account shall be
24 made to the claimant, or to the clerk of the court for judgments, upon
25 written request to the state treasurer from the risk manager.

26 (7) The director may direct agencies to transfer moneys from other
27 funds and accounts to the liability account if premiums are delinquent.

28 (8) The liability account shall not exceed fifty percent of the
29 actuarial value of the outstanding liability as determined annually by
30 the risk management division. If the account exceeds the maximum
31 amount specified in this section, premiums may be adjusted by the risk
32 management division in order to maintain the account balance at the
33 maximum limits. If, after adjustment of premiums, the account balance
34 remains above the limits specified, the excess amount shall be prorated
35 back to the appropriate funds.

36 NEW SECTION. **Sec. 707.** Sections 701 through 706 of this act apply

1 to all claims that have not been reduced to judgment on the effective
2 date of this section.

3 **PART 8**
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 801.** A new section is added to chapter 4.28 RCW
6 to read as follows:

7 In any action for personal injuries, wrongful deaths, or damage to
8 property, in which the harm is alleged to have been caused by an act
9 which violates the appropriate standard of care to be exercised by an
10 individual licensed, certified, or registered by the state under Title
11 18 or 19 RCW or by the supreme court, the person initiating the action
12 shall serve upon each defendant an affidavit within ninety days of
13 service of process initiating the action. The affidavit shall be
14 executed by a person whose license, certification, or registration is
15 identical to the defendant. If there is more than one defendant, there
16 shall be an affidavit for each defendant. Each affidavit shall contain
17 a statement that the affiant believes there is a reasonable probability
18 that the defendant's conduct does not meet the standard of care
19 required to be exercised by the defendant. The affiant shall have no
20 financial interest in the outcome of the trial and have at least five
21 years of professional experience in the same vocation as the defendant
22 who is the subject of the affidavit. The affidavit shall be filed
23 within sixty days of the defendant answering the initial complaint.

24 In the event a defendant refuses to provide information necessary
25 to allow the execution of an affidavit, the court may, upon motion of
26 the plaintiff, waive the requirement following a hearing on the motion.
27 No hearing on the motion shall be held in fewer than forty-five days
28 following the receipt by the defendant of the request to provide the
29 information.

30 The court may, upon motion by the defendant and a showing of good
31 cause, grant only one additional period of forty-five days, following
32 the motion to waive the requirement of an affidavit, for the defendant
33 to provide the information required under this section.

34 NEW SECTION. **Sec. 802.** Part headings used in this act are not any
35 part of the law.

1 NEW SECTION. **Sec. 803.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- END ---