
SUBSTITUTE HOUSE BILL 2804

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Rockefeller, Clibborn, Moeller, Kirby, Cody, Morrell, Flannigan, Sommers, Campbell, Lovick, Kagi, Miloscia, O'Brien, Hunt, Simpson, G., Conway, Haigh, Linville, Edwards, Kenney and Chase)

READ FIRST TIME 02/03/04.

1 AN ACT Relating to actions against health care providers under
2 chapter 7.70 RCW; amending RCW 4.22.070, 4.16.190, 4.16.350, 7.70.100,
3 5.64.010, 7.70.080, and 70.105.112; adding new sections to chapter 7.70
4 RCW; creating new sections; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the
7 unavailability or unaffordability of malpractice insurance has caused
8 hardship to health care providers. The legislature further finds that
9 this hardship has the potential to result in impaired access to
10 critical health care services, especially in high risk areas of
11 practice, for Washington state citizens. The legislature further finds
12 that factors contributing to increasing malpractice insurance rates and
13 restrictions in coverage are numerous and complex. No single solution
14 can address these multiple factors, but changes in the civil liability
15 system can significantly address some of these factors. The
16 legislature intends to improve the performance of the civil liability
17 system with respect to the process by which actions alleging negligence
18 by a health care provider are processed and resolved. These changes

1 are designed to ensure that the legal system functions as fairly as
2 possible and that it appropriately addresses concerns that a bad
3 outcome is too often considered the equivalent of malpractice.

4 **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
5 as follows:

6 (1) In all actions involving fault of more than one entity, the
7 trier of fact shall determine the percentage of the total fault which
8 is attributable to every entity which caused the claimant's damages
9 except entities immune from liability to the claimant under Title 51
10 RCW. The sum of the percentages of the total fault attributed to at-
11 fault entities shall equal one hundred percent. The entities whose
12 fault shall be determined include the claimant or person suffering
13 personal injury or incurring property damage, defendants, third-party
14 defendants, entities released by the claimant, entities with any other
15 individual defense against the claimant, and entities immune from
16 liability to the claimant, but shall not include those entities immune
17 from liability to the claimant under Title 51 RCW. Judgment shall be
18 entered against each defendant except those who have been released by
19 the claimant or are immune from liability to the claimant or have
20 prevailed on any other individual defense against the claimant in an
21 amount which represents that party's proportionate share of the
22 claimant's total damages. The liability of each defendant shall be
23 several only and shall not be joint except:

24 (a) A party shall be responsible for the fault of another person or
25 for payment of the proportionate share of another party where both were
26 acting in concert or when a person was acting as an agent or servant of
27 the party.

28 (b) If the trier of fact determines that the claimant or party
29 suffering bodily injury or incurring property damages was not at fault,
30 the defendants against whom judgment is entered shall be jointly and
31 severally liable for the sum of their proportionate shares of the
32 (~~claimants~~ ~~claimant's~~) claimant's total damages.

33 (2) In all actions for damages under chapter 7.70 RCW, the entities
34 to whom fault may be attributed shall be limited to the claimants,
35 defendants, and third-party defendants who are parties to the action
36 and any entities released by the claimant.

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

7 (~~(3)~~) (4)(a) Nothing in this section affects any cause of action
8 relating to hazardous wastes or substances or solid waste disposal
9 sites.

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

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

16 NEW SECTION. **Sec. 3.** It is the intent of the legislature in
17 enacting section 4 of this act that a hospital not be held liable for
18 a health care provider's acts or omissions under so-called "apparent
19 agency" or "ostensible agency" theories as long as the health care
20 provider is properly credentialed by the hospital and does not perform
21 services that are an essential function of the hospital.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 7.70 RCW
23 to read as follows:

24 A public or private hospital is liable for an act or omission of a
25 health care provider granted privileges to provide health care at the
26 hospital only if the health care provider is an agent or employee of
27 the hospital and the act or omission of the health care provider
28 occurred while the health care provider was acting within the course
29 and scope of the health care provider's agency or employment with the
30 hospital, or if the health care provider is fulfilling an essential
31 function of the hospital. A hospital is not ostensibly liable for any
32 act of negligence committed on the hospital's premises by a health care
33 provider who is properly credentialed and acting as an independent
34 contractor. A public or private hospital may be liable for failing to
35 exercise reasonable care in granting credentials and practice

1 privileges to a health care provider, or in failing to revoke such
2 credentials and privileges when the hospital knew or reasonably should
3 have known such revocation was appropriate.

4 **Sec. 5.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read
5 as follows:

6 (1) Unless otherwise provided in this section, if a person entitled
7 to bring an action mentioned in this chapter, except for a penalty or
8 forfeiture, or against a sheriff or other officer, for an escape, be at
9 the time the cause of action accrued either under the age of eighteen
10 years, or incompetent or disabled to such a degree that he or she
11 cannot understand the nature of the proceedings, such incompetency or
12 disability as determined according to chapter 11.88 RCW, or imprisoned
13 on a criminal charge prior to sentencing, the time of such disability
14 shall not be a part of the time limited for the commencement of action.

15 (2) Subsection (1) of this section with respect to a person under
16 the age of eighteen years does not apply to the time limited for the
17 commencement of an action under RCW 4.16.350.

18 NEW SECTION. **Sec. 6.** The legislature intends, by reestablishing
19 the eight-year statute of repose in RCW 4.16.350, to respond to the
20 court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136
21 (1998), by expressly stating the legislature's rationale for the eight-
22 year statute of repose.

23 The legislature recognizes that the eight-year statute of repose
24 alone may not solve the crisis in the medical insurance industry.
25 However, to the extent that the eight-year statute of repose has an
26 effect on medical malpractice insurance, that effect will tend to
27 reduce rather than increase the cost of malpractice insurance.

28 Whether or not the statute of repose has the actual effect of
29 reducing insurance costs, the legislature finds it will provide
30 protection against claims, however few, that are stale, based on
31 untrustworthy evidence, or that place undue burdens on defendants.

32 In accordance with the court's opinion in *DeYoung*, the legislature
33 further finds that compelling even one defendant to answer a stale
34 claim is a substantial wrong, and setting an outer limit to the
35 operation of the discovery rule is an appropriate aim.

1 The legislature further finds that an eight-year statute of repose
2 is a reasonable time period in light of the need to balance the
3 interests of injured plaintiffs and the health care industry.

4 The legislature intends to reestablish the eight-year statute of
5 repose in section 7 of this act and specifically set forth for the
6 court the legislature's legitimate rationale for adopting the eight-
7 year statute of repose. The legislature further intends that the
8 eight-year statute of repose reestablished in section 7 of this act be
9 applied to actions commenced on or after the effective date of this
10 act.

11 **Sec. 7.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
12 as follows:

13 (1) Any civil action for damages that is based upon alleged
14 professional negligence, that is for an injury or condition occurring
15 as a result of health care which is provided after June 25, 1976, and
16 that is brought against((+)

17 (+)) a person or entity identified in subsection (2) of this
18 section, shall:

19 (a) With respect to a patient who was eighteen years old or older
20 at the time of the act or omission alleged to have caused the injury or
21 condition, be commenced by the later of:

22 (i) Three years from the act or omission; or

23 (ii) One year from the time the patient or his or her
24 representative discovered or reasonably should have discovered that the
25 injury or condition was caused by the act or omission; and

26 (b) With respect to a patient who was under the age of eighteen
27 years at the time of the act or omission alleged to have caused the
28 injury or condition, be commenced by the later of:

29 (i) When the patient reaches age twenty-one or eight years from the
30 act or omission, whichever occurs first; or

31 (ii) One year from the time the patient or his or her
32 representative discovered or reasonably should have discovered that the
33 injury or condition was caused by the act or omission; and

34 (c) Notwithstanding (a) or (b) of this subsection, in any event be
35 commenced no later than eight years after the act or omission.

36 (2) Persons or entities against whom an action is brought under
37 subsection (1) of this section include:

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

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

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

21 ~~based upon alleged professional negligence shall be commenced within~~
22 ~~three years of the act or omission alleged to have caused the injury or~~
23 ~~condition, or one year of the time the patient or his representative~~
24 ~~discovered or reasonably should have discovered that the injury or~~
25 ~~condition was caused by said act or omission, whichever period expires~~
26 ~~later, except that in no event shall an action be commenced more than~~
27 ~~eight years after said act or omission: PROVIDED, That)).~~

28 (3) The time for commencement of an action is tolled upon proof of
29 fraud, intentional concealment, or the presence of a foreign body not
30 intended to have a therapeutic or diagnostic purpose or effect, until
31 the date the patient or the patient's representative has actual
32 knowledge of the act of fraud or concealment, or of the presence of the
33 foreign body; the patient or the patient's representative has one year
34 from the date of the actual knowledge in which to commence a civil
35 action for damages.

36 (4) For purposes of this section, (~~notwithstanding RCW 4.16.190,~~)
37 the knowledge of a custodial parent or guardian shall be imputed to a
38 person under the age of eighteen years, and such imputed knowledge

1 shall operate to bar the claim of such minor to the same extent that
2 the claim of an adult would be barred under this section. Any action
3 not commenced in accordance with this section shall be barred.

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

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

12 NEW SECTION. **Sec. 8.** A new section is added to chapter 7.70 RCW
13 to read as follows:

14 (1) In an action against a health care provider under this chapter,
15 an expert may not provide testimony at trial, or execute a certificate
16 of merit required under this chapter, unless the expert meets the
17 following criteria:

18 (a) Has recognized expertise in any area of practice or specialty
19 at issue in the action, as demonstrated by devotion of a significant
20 portion of his or her practice to the area of practice or specialty;
21 and

22 (b) At the time of the occurrence of the incident at issue in the
23 action, was either:

24 (i) Engaged in active practice in the same area of practice or
25 specialty as the defendant; or

26 (ii) Teaching at an accredited medical school or an accredited or
27 affiliated academic or clinical training program in the same area of
28 practice or specialty as the defendant, including instruction regarding
29 the particular condition at issue.

30 (2) Upon motion of a party, the court may waive the requirements of
31 subsection (1) of this section and allow an expert who does not meet
32 those requirements to testify at trial or execute a certificate of
33 merit required under this chapter if the court finds that:

34 (a) Extensive efforts were made by the party to locate an expert
35 who meets the criteria under subsection (1) of this section, but none
36 was willing and available to testify; and

1 (b) The proposed expert is qualified to be an expert witness by
2 virtue of the person's training, experience, and knowledge.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 7.70 RCW
4 to read as follows:

5 An expert opinion provided in the course of an action against a
6 health care provider under this chapter must be corroborated by
7 objective evidence, such as, but not limited to, treatment or practice
8 protocols or guidelines developed by medical specialty organizations,
9 objective academic research, or clinical trials or studies.

10 NEW SECTION. **Sec. 10.** A new section is added to chapter 7.70 RCW
11 to read as follows:

12 In any action under this chapter, each side shall presumptively be
13 entitled to only two independent experts on an issue and only two
14 standard-of-care experts, except upon a showing of good cause. Where
15 there are multiple parties on a side and the parties cannot agree as to
16 which independent experts or standard-of-care experts will be called on
17 an issue, the court, upon a showing of good cause, shall allow
18 additional experts on an issue or additional standard-of-care experts
19 to be called as the court deems appropriate.

20 NEW SECTION. **Sec. 11.** A new section is added to chapter 7.70 RCW
21 to read as follows:

22 In an action under this chapter, all parties shall submit a
23 pretrial expert report pursuant to time frames provided in court rules.
24 The expert report must disclose the identity of all expert witnesses
25 and state the nature of the opinions the expert witnesses will present
26 as testimony at trial. Further depositions of these expert witnesses
27 is prohibited. The testimony that an expert witness may present at
28 trial is limited in nature to the opinions disclosed to the court as
29 part of the pretrial expert report. The legislature respectfully
30 requests that the supreme court adopt rules to implement the provisions
31 of this section.

32 **Sec. 12.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
33 read as follows:

34 (1) No action based upon a health care provider's professional

1 negligence may be commenced unless the defendant has been given at
2 least ninety days' notice of the intention to commence the action. If
3 the notice is served within ninety days of the expiration of the
4 applicable statute of limitations, the time for the commencement of the
5 action must be extended ninety days from the service of the notice.

6 (2) The provisions of subsection (1) of this section are not
7 applicable with respect to any defendant whose name is unknown to the
8 plaintiff at the time of filing the complaint and who is identified
9 therein by a fictitious name.

10 (3) After the filing of the ninety-day presuit notice, and before
11 a superior court trial, all causes of action, whether based in tort,
12 contract, or otherwise, for damages arising from injury occurring as a
13 result of health care provided after July 1, 1993, shall be subject to
14 mandatory mediation prior to trial except as provided in subsection (6)
15 of this section.

16 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
17 implement mandatory mediation of actions under this chapter. The rules
18 shall require mandatory mediation without exception unless subsection
19 (6) of this section applies. The rules on mandatory mediation shall
20 address, at a minimum:

21 (a) Procedures for the appointment of, and qualifications of,
22 mediators. A mediator shall have experience or expertise related to
23 actions arising from injury occurring as a result of health care, and
24 be a member of the state bar association who has been admitted to the
25 bar for a minimum of five years or who is a retired judge. The parties
26 may stipulate to a nonlawyer mediator. The court may prescribe
27 additional qualifications of mediators;

28 (b) Appropriate limits on the amount or manner of compensation of
29 mediators;

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

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

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

37 ~~(f) ((A means by which mediation of an action under this chapter~~

1 ~~may be waived by a mediator who has determined that the claim is not~~
2 ~~appropriate for mediation; and~~

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

4 ~~((3)) (5) Mediators shall not impose discovery schedules upon the~~
5 ~~parties.~~

6 (6) The mandatory mediation requirement of subsection (4) of this
7 section does not apply to an action subject to mandatory arbitration
8 under chapter 7.06 RCW or to an action in which the parties have
9 agreed, subsequent to the arisal of the claim, to submit the claim to
10 arbitration under chapter 7.04 RCW.

11 (7) The legislature respectfully requests that the supreme court by
12 rule also adopt procedures for the parties to certify to the court the
13 manner of mediation used by the parties to comply with this section.

14 **Sec. 13.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each
15 amended to read as follows:

16 (1) In any civil action against a health care provider for personal
17 injuries which is based upon alleged professional negligence ((and
18 which is against:

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

27 ~~(2) An employee or agent of a person described in subsection (1) of~~
28 ~~this section, acting in the course and scope of his employment,~~
29 ~~including, in the event such employee or agent is deceased, his estate~~
30 ~~or personal representative; or~~

31 ~~(3) An entity, whether or not incorporated, facility, or~~
32 ~~institution employing one or more persons described in subsection (1)~~
33 ~~of this section, including, but not limited to, a hospital, clinic,~~
34 ~~health maintenance organization, or nursing home; or an officer,~~
35 ~~director, employee, or agent thereof acting in the course and scope of~~
36 ~~his employment, including, in the event such officer, director,~~
37 ~~employee, or agent is deceased, his estate or personal~~

1 ~~representative~~), evidence of furnishing or offering or promising to
2 pay medical, hospital, or similar expenses occasioned by an injury is
3 not admissible to prove liability for the injury.

4 (2) In a civil action against a health care provider for personal
5 injuries which is based upon alleged professional negligence, evidence
6 of an early offer of settlement is inadmissible, not discoverable, and
7 otherwise unavailable for use in the action. An early offer of
8 settlement means an offer that is made before the filing of a claim and
9 that makes an offer of compensation for the injury suffered. An early
10 offer of settlement may include an apology or an admission of fault on
11 the part of the person making the offer, or a statement regarding
12 remedial actions that may be taken to address the act or omission that
13 is the basis for the allegation of negligence, and does not become
14 admissible, discoverable, or otherwise available for use in the action
15 because it contains an apology, admission of fault, or statement of
16 remedial actions that may be taken. Compensation means payment of
17 money or other property to or on behalf of the injured party, rendering
18 of services to the injured party free of charge, or indemnification of
19 expenses incurred by or on behalf of the injured party.

20 (3) For the purposes of this section, "health care provider" has
21 the same meaning provided in RCW 7.70.020.

22 **Sec. 14.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
23 amended to read as follows:

24 Any party may present evidence to the trier of fact that the
25 ~~((patient))~~ plaintiff has already been compensated for the injury
26 complained of from any source except the assets of the ~~((patient, his))~~
27 plaintiff, the plaintiff's representative, or ((his)) the plaintiff's
28 immediate family(~~(, or insurance purchased with such assets))~~). In the
29 event such evidence is admitted, the plaintiff may present evidence of
30 an obligation to repay such compensation and evidence of any amount
31 paid by the plaintiff, or his or her representative or immediate
32 family, to secure the right to the compensation. (~~(Insurance bargained~~
33 for or provided on behalf of an employee shall be considered insurance
34 purchased with the assets of the employee.)) Compensation as used in
35 this section shall mean payment of money or other property to or on
36 behalf of the patient, rendering of services to the patient free of
37 charge to the patient, or indemnification of expenses incurred by or on

1 behalf of the patient. Notwithstanding this section, evidence of
2 compensation by a defendant health care provider may be offered only by
3 that provider.

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

6 (1) In an action against an individual health care provider under
7 this chapter for personal injury or wrongful death in which the injury
8 is alleged to have been caused by an act or omission that violates the
9 accepted standard of care, the plaintiff must file a certificate of
10 merit at the time of commencing the action.

11 (2) The certificate of merit must be executed by a health care
12 provider who meets the qualifications of an expert under section 8 of
13 this act. If there is more than one defendant in the action, the
14 person commencing the action must file a certificate of merit for each
15 defendant.

16 (3) The certificate of merit must contain a statement that the
17 person executing the certificate of merit believes there is a
18 reasonable probability that the defendant's conduct did not follow the
19 accepted standard of care required to be exercised by the defendant.

20 (4) Upon motion of the plaintiff, the court may grant an additional
21 period of time to file the certificate of merit, not to exceed ninety
22 days, if the court finds there is good cause for the extension.

23 NEW SECTION. **Sec. 16.** (1) A commission on noneconomic damages is
24 established. The commission shall study the feasibility of developing
25 and implementing an advisory schedule of noneconomic damages in actions
26 for injuries resulting from health care under chapter 7.70 RCW. The
27 commission shall present the results of the feasibility study and an
28 implementation plan, if appropriate, to the relevant policy committees
29 of the legislature by October 31, 2005.

30 (2) The commission's goal is to determine whether an advisory
31 schedule could be developed to increase the predictability and
32 proportionality of settlements and awards for noneconomic damages in
33 actions for injuries resulting from health care and, if so, what steps
34 are necessary to implement such a schedule. In making its
35 determination, the commission shall consider:

1 (a) The information that can most appropriately be used to provide
2 guidance to the trier of fact regarding noneconomic damage awards,
3 giving consideration to: (i) Past noneconomic damage awards for
4 similar injuries, considering severity and duration of the injuries;
5 (ii) past noneconomic damage awards for similar claims for damages; and
6 (iii) such other information or methodologies the commission finds
7 appropriate;

8 (b) The most appropriate format in which to present the information
9 to the trier of fact; and

10 (c) When and under what circumstances an advisory schedule should
11 be utilized in alternative dispute resolution settings and presented to
12 the trier of fact at trial.

13 (3) If the commission determines that an advisory schedule for
14 noneconomic damages is feasible, the commission shall develop an
15 implementation plan for the schedule which shall include, at a minimum:

16 (a) Identification of changes to statutory law, administrative
17 rules, or court rules that would be necessary to implement the advisory
18 schedule;

19 (b) Identification of forms or other documents that would be
20 necessary or beneficial in implementing the advisory schedule;

21 (c) A proposed timetable for implementation of the advisory
22 schedule; and

23 (d) Any other information or considerations the commission finds
24 necessary or beneficial to implementation of the advisory schedule.

25 (4) For the purposes of this section, "noneconomic damages" has the
26 meaning given in RCW 4.56.250.

27 NEW SECTION. **Sec. 17.** (1) The commission is composed of fifteen
28 members, as follows: (a) One member from each of the two largest
29 caucuses in the senate, to be appointed by the president of the senate,
30 and one member from each of the two largest caucuses in the house of
31 representatives, to be appointed by the speaker of the house of
32 representatives; (b) one health care ethicist; (c) one economist; (d)
33 one actuary; (e) two attorneys, one representing the plaintiff's bar
34 and one representing the insurance defense bar; (f) two superior court
35 judges; (g) one representative of a hospital; (h) two physicians; and
36 (i) one representative of a medical malpractice insurer. The governor
37 shall appoint the nonlegislative members of the commission.

1 (2) The governor shall select a chair of the commission from among
2 those commission members that are not health care providers, medical
3 malpractice insurers, or attorneys.

4 (3) Legislative members of the commission shall be reimbursed for
5 travel expenses under RCW 44.04.120. Nonlegislative members of the
6 commission shall be reimbursed for travel expenses as provided in RCW
7 43.03.050 and 43.03.060. Travel expenses of nonlegislative members of
8 the commission shall be paid jointly by the house of representatives
9 and senate.

10 (4) The office of financial management shall provide support to the
11 commission to enable it to perform its functions, with the assistance
12 of staff from the administrative office of the courts.

13 **Sec. 18.** RCW 70.105.112 and 1987 c 528 s 9 are each amended to
14 read as follows:

15 This chapter does not apply to special incinerator ash regulated
16 under chapter 70.138 RCW except that, for purposes of RCW
17 4.22.070(~~(+3)~~) (4)(a), special incinerator ash shall be considered
18 hazardous waste.

19 NEW SECTION. **Sec. 19.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 20.** Sections 16 and 17 of this act expire July
24 1, 2006.

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