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ENGROSSED SUBSTITUTE SENATE BILL 5728

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State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Brandland, McCaslin, T. Sheldon, Deccio, Schmidt, Parlette and Hale)

READ FIRST TIME 02/28/03.

1 AN ACT Relating to civil liability reform; amending RCW 4.22.070,  
2 4.22.015, 4.56.115, 4.56.110, 19.52.025, 4.56.250, 7.70.100, 4.16.350,  
3 7.70.080, 7.70.060, 46.61.688, 4.92.005, 4.96.010, 4.92.040, 4.92.090,  
4 and 4.92.130; adding a new section to chapter 4.24 RCW; adding new  
5 sections to chapter 4.56 RCW; adding a new section to chapter 7.04 RCW;  
6 adding new sections to chapter 7.70 RCW; adding a new section to  
7 chapter 4.16 RCW; adding a new section to chapter 4.28 RCW; and  
8 creating new sections.

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

10 PART 1

11 JOINT AND SEVERAL

12 **Sec. 101.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
13 as follows:

14 (1) In all actions involving fault of more than one entity, the  
15 trier of fact shall determine the percentage of the total fault which  
16 is attributable to every entity which caused the claimant's damages

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

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

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

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

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

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

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

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

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

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

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

25 A comparison of fault for any purpose under RCW 4.22.005 through  
26 ~~((4.22.060))~~ 4.22.070 shall involve consideration of both the nature of  
27 the conduct of the parties to the action and the extent of the causal  
28 relation between such conduct and the damages.

29 **PART 2**

30 **EMPLOYMENT REFERENCE**

31 **NEW SECTION.** **Sec. 201.** The legislature finds that employers are  
32 becoming increasingly discouraged from disclosing job reference  
33 information. The legislature further finds that full disclosure of  
34 such information will increase productivity, enhance the safety of the

1 workplace, and provide greater opportunities to disadvantaged groups  
2 who may not have the educational background or resumes of other  
3 workers.

4 NEW SECTION. **Sec. 202.** A new section is added to chapter 4.24 RCW  
5 to read as follows:

6 An employer who discloses information about a former or current  
7 employee's job performance, conduct, or other work-related information  
8 to a prospective employer, or employment agency as defined by RCW  
9 49.60.040, at the specific request of that individual employer or  
10 employment agency, is presumed to be acting in good faith and is immune  
11 from civil liability for such disclosure or its consequences. For  
12 purposes of this section, the presumption of good faith may only be  
13 rebutted upon a showing by clear and convincing evidence that the  
14 information disclosed by the employer was knowingly false or  
15 deliberately misleading.

16 **PART 3**  
17 **POSTJUDGMENT INTEREST RATE**

18 **Sec. 301.** RCW 4.56.115 and 1983 c 147 s 2 are each amended to read  
19 as follows:

20 Judgments founded on the tortious conduct of the state of  
21 Washington or of the political subdivisions, municipal corporations,  
22 and quasi municipal corporations of the state, whether acting in their  
23 governmental or proprietary capacities, shall bear interest from the  
24 date of entry at two percentage points above the (~~maximum rate~~  
25 ~~permitted under RCW 19.52.020 on~~) equivalent coupon issue yield (as  
26 published by the board of governors of the federal reserve system) of  
27 the average bill rate for twenty-six week treasury bills as determined  
28 at the first bill market auction conducted during the calendar month  
29 immediately preceding the date of entry thereof(~~(:—PROVIDED, That)~~).  
30 In any case where a court is directed on review to enter judgment on a  
31 verdict or in any case where a judgment entered on a verdict is wholly  
32 or partly affirmed on review, interest on the judgment or on that  
33 portion of the judgment affirmed shall date back to and shall accrue  
34 from the date the verdict was rendered. Interest does not accrue on  
35 that portion of a judgment that is subject to appropriation by the

1 legislature under RCW 4.92.090 or by a local legislative authority  
2 under RCW 4.96.010 until the appropriation has been made by the  
3 legislature or local legislative authority.

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

6 Interest on judgments shall accrue as follows:

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

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

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

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

1 NEW SECTION. **Sec. 303.** The rate of interest required by sections  
2 301 and 302(3), chapter . . . , Laws of 2003 (sections 301 and 302(3) of  
3 this act) applies to the accrual of interest as of the date of entry of  
4 judgment with respect to a judgment that is entered on or after the  
5 effective date of this act.

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

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

14 **PART 4**  
15 **MEDICAL LIABILITY**

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

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

31 The legislature further finds that the state of California, largely  
32 as a result of its enactment of the "medical injury compensation reform  
33 act" in 1975, has been able to successfully stabilize the health care  
34 professional liability insurance market, maintain access to affordable

1 quality health care services, and avert the kind of crisis now facing  
2 the residents of Washington.

3 The legislature finds that such reforms are rationally related to  
4 the legitimate goals of reducing the costs associated with the health  
5 care tort liability system while ensuring adequate and appropriate  
6 compensation for persons injured as a result of health care, ensuring  
7 the continued availability and affordability of health care services in  
8 this state, preventing the curtailment of health care services in this  
9 state, stabilizing insurance and health care costs, preventing stale  
10 health care liability claims, and protecting and preserving the public  
11 health, safety, and welfare as a whole.

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

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

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

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

28 (c) "Bodily injury" means physical injury, sickness, or disease,  
29 including death.

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

32 (2) In no action seeking damages for personal injury or death may  
33 a claimant recover a judgment for noneconomic damages exceeding an  
34 amount determined by multiplying 0.43 by the average annual wage and by  
35 the life expectancy of the person incurring noneconomic damages, as the  
36 life expectancy is determined by the life expectancy tables adopted by  
37 the insurance commissioner. For purposes of determining the maximum

1 amount allowable for noneconomic damages, a claimant's life expectancy  
2 shall not be less than fifteen years. The limitation contained in this  
3 subsection applies to all claims for noneconomic damages made by a  
4 claimant who incurred bodily injury. Claims for loss of consortium,  
5 loss of society and companionship, destruction of the parent-child  
6 relationship, and all other derivative claims asserted by persons who  
7 did not sustain bodily injury are to be included within the limitation  
8 on claims for noneconomic damages arising from the same bodily injury.

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

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

13 (1) In an action or arbitration for damages for injury or death  
14 occurring as a result of health care, or arranging for the provision of  
15 health care, whether brought under chapter 7.70 RCW, or under RCW  
16 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or  
17 any combination thereof, the total amount of noneconomic damages may  
18 not exceed three hundred fifty thousand dollars.

19 (2) The limitation on noneconomic damages contained in subsection  
20 (1) of this section includes all noneconomic damages claimed by or on  
21 behalf of the person whose injury or death occurred as a result of  
22 health care or arranging for the provision of health care, as well as  
23 all claims for loss of consortium, loss of society and companionship,  
24 destruction of the parent-child relationship, and other derivative  
25 claims asserted by or on behalf of others arising from the same injury  
26 or death. If the jury's assessment of noneconomic damages exceeds the  
27 limitation contained in subsection (1) of this section, nothing in RCW  
28 4.44.450 precludes the court from entering a judgment that limits the  
29 total amount of noneconomic damages to three hundred fifty thousand  
30 dollars.

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

33 (1) No action based upon a health care provider's professional  
34 negligence may be commenced unless the defendant has been given at  
35 least ninety days' notice of the intention to commence the action. If



1 the notice is served within ninety days of the expiration of the  
2 applicable statute of limitations, the time for the commencement of the  
3 action must be extended ninety days from the service of the notice.

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

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

13 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to  
14 implement mandatory mediation of actions under this chapter. The rules  
15 shall require mandatory mediation without exception and address, at a  
16 minimum:

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

24 (b) Appropriate limits on the amount or manner of compensation of  
25 mediators;

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

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

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

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

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

37 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the  
38 parties.

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

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

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

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

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

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

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

1 ~~or effect, until the date the patient or the patient's representative~~  
2 ~~has actual knowledge of the act of fraud or concealment, or of the~~  
3 ~~presence of the foreign body; the patient or the patient's~~  
4 ~~representative has one year from the date of the actual knowledge in~~  
5 ~~which to commence a civil action for damages.~~

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

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

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

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

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

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

35 (3) Any action not commenced in accordance with this section is  
36 barred.

37 (4) For purposes of this section, the tolling provisions of RCW  
38 4.16.190 do not apply.

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

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

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

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

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

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

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

- 3 (a) The nature and character of the proposed treatment;
- 4 (b) The anticipated results of the proposed treatment;
- 5 (c) The recognized possible alternative forms of treatment; and
- 6 (d) The recognized serious possible risks, complications, and  
7 anticipated benefits involved in the treatment and in the recognized  
8 possible alternative forms of treatment, including nontreatment;

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

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

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

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

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

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

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

1 (3) Once signed, such a contract governs all subsequent open-book  
2 account transactions for medical services for which the contract was  
3 signed until or unless rescinded by written notice within thirty days  
4 of signature. Written notice of such rescission may be given by a  
5 guardian or other legal representative of the patient if the patient is  
6 incapacitated or a minor.

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

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

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

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

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

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

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

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

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

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

1 judgment ordering the payment of future damages by periodic payments,  
2 the court shall make a specific finding as to the dollar amount of  
3 periodic payments which will compensate the judgment creditor for such  
4 future damages. As a condition to authorizing periodic payments of  
5 future damages, the court shall require the judgment debtor who is not  
6 adequately insured to post security adequate to ensure full payment of  
7 such damages awarded by the judgment. Upon termination of periodic  
8 payments of future damages, the court shall order the return of this  
9 security, or so much as remains, to the judgment debtor.

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

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

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

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

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

37 (7) It is the intent of the legislature in enacting this section to  
38 authorize, in actions for damages for injury occurring as a result of

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

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

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

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

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



1 professional health care provider associations, as appropriate. The  
2 Washington state department of health shall present a report to the  
3 legislature by December 1, 2003.

4 **PART 5**

5 **CONSTRUCTION LIABILITY**

6 NEW SECTION. **Sec. 501.** A new section is added to chapter 4.16 RCW  
7 to read as follows:

8 (1) Persons engaged in any activity defined in RCW 4.16.300 may be  
9 excused, in whole or in part, from any obligation, damage, loss, or  
10 liability for those defined activities under the principles of  
11 comparative fault for the following affirmative defenses:

12 (a) To the extent it is caused by an unforeseen act of nature that  
13 caused, prevented, or precluded the activities defined in RCW 4.16.300  
14 from meeting the applicable building codes, regulations, and ordinances  
15 in effect at the commencement of construction. For purposes of this  
16 section an "unforeseen act of nature" means any weather condition,  
17 earthquake, or manmade event such as war, terrorism, or vandalism;

18 (b) To the extent it is caused by a homeowner's unreasonable  
19 failure to minimize or prevent those damages in a timely manner,  
20 including the failure of the homeowner to allow reasonable and timely  
21 access for inspections and repairs under this section. This includes  
22 the failure to give timely notice to the builder after discovery of a  
23 violation, but does not include damages due to the untimely or  
24 inadequate response of a builder to the homeowner's claim;

25 (c) To the extent it is caused by the homeowner or his or her  
26 agent, employee, subcontractor, independent contractor, or consultant  
27 by virtue of their failure to follow the builder's or manufacturer's  
28 maintenance recommendations, or commonly accepted homeowner maintenance  
29 obligations. In order to rely upon this defense as it relates to a  
30 builder's recommended maintenance schedule, the builder shall show that  
31 the homeowner had written notice of the schedule, the schedule was  
32 reasonable at the time it was issued, and the homeowner failed to  
33 substantially comply with the written schedule;

34 (d) To the extent it is caused by the homeowner or his or her  
35 agent's or an independent third party's alterations, ordinary wear and

1 tear, misuse, abuse, or neglect, or by the structure's use for  
2 something other than its intended purpose;

3 (e) To the extent that a cause of action does not accrue within the  
4 statute of repose pursuant to RCW 4.16.310 or that an actionable cause  
5 as set forth in RCW 4.16.300 is not filed within the applicable statute  
6 of limitations. In contract actions, the applicable contract statute  
7 of limitations expires, regardless of discovery, six years after  
8 substantial completion of construction, or during the period within six  
9 years after the termination of the services enumerated in RCW 4.16.300,  
10 whichever is later;

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

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

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

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

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

23 **PART 6**

24 **SEATBELT DEFENSE**

25 **Sec. 601.** RCW 46.61.688 and 2002 c 328 s 2 are each amended to  
26 read as follows:

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

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

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

35 (c) "Passenger cars," meaning motor vehicles with motive power,

1 except multipurpose passenger vehicles, motorcycles, or trailers,  
2 designed for carrying ten passengers or less; and

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

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

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

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

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

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

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

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

35 **PART 7**

36 **GOVERNMENTAL ACTIVITIES**

1        NEW SECTION.    **Sec.701.**    While the common law doctrine of sovereign  
2 immunity declares that the state is immune from liability for the  
3 tortious conduct of its employees and officers, Article II, section 26  
4 of the state Constitution allows the legislature to waive its immunity  
5 and specify by statute "in what manner, and in what courts, suit may be  
6 brought against the state."    In the granting or withholding of  
7 sovereign immunity, there are limitations, gradations, and competing  
8 interests to be balanced by the legislature, including fairness to the  
9 citizens of the state, the preservation of proper and essential  
10 functions of government, and the conservation of scarce public  
11 resources.

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

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

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

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

1 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,  
2 (~~4.92.140~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) Whenever a final judgment against the state is obtained in an  
2 action on a claim arising out of tortious conduct, the claim shall be  
3 paid from the liability account, subject to the limitations of RCW  
4 4.92.090.

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

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

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

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

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

1 recommend to the legislature whether such claims should be approved or  
2 rejected. Recommendations shall be submitted to the senate and house  
3 of representatives committees on ways and means not later than the  
4 thirtieth day of each regular session of the legislature. Claims which  
5 cannot be processed for timely submission of recommendations shall be  
6 held for submission during the following regular session of the  
7 legislature. The recommendations shall include, but not be limited to:

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

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

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

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

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

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

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

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

30 (1) Neither the state nor its agencies, institutions, officers,  
31 employees, or volunteers are liable to pay a claim or a judgment for  
32 noneconomic damages as defined in RCW 4.56.250 by any one person that  
33 exceeds the sum of one million dollars or any claim or judgment, or  
34 portions thereof, that, when totaled with all other claims or judgments  
35 paid by the state or its agencies, institutions, officers, employees,  
36 or volunteers arising out of the same incident or occurrence, exceeds  
37 the sum of two million dollars. However, a judgment or judgments may



1 be claimed and rendered in excess of these amounts and may be settled  
2 and paid under this section up to one million dollars or two million  
3 dollars, as the case may be, and that portion of the judgment that  
4 exceeds these amounts may be reported to the legislature, but may be  
5 paid in part or in whole only by further act of the legislature.  
6 Notwithstanding the limited waiver of sovereign immunity provided in  
7 this section, the state or an agency, institution, or any officer,  
8 employee, or volunteer may agree, within the limits of insurance  
9 coverage provided, to settle a claim made or a judgment rendered  
10 against it without further action by the legislature, but the state or  
11 agency has not waived any defense of sovereign immunity or increased  
12 the limits of its liability as a result of its obtaining insurance  
13 coverage for tortious acts in excess of the waiver provided in this  
14 section.

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

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

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

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

32 A liability account in the custody of the treasurer is hereby  
33 created as a nonappropriated account to be used solely and exclusively  
34 for the payment of liability settlements and judgments against the  
35 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of  
36 its officers, employees, and volunteers and all related legal defense

1 costs. Legislative appropriation is required for expenditures from the  
2 liability account to the extent specified in RCW 4.92.090.

3 (1) The purpose of the liability account is to: (a) Expeditiously  
4 pay legal liabilities and defense costs of the state resulting from  
5 tortious conduct; (b) promote risk control through a cost allocation  
6 system which recognizes agency loss experience, levels of self-  
7 retention, and levels of risk exposure; and (c) establish an  
8 actuarially sound system to pay incurred losses, within defined limits.

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

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

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

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

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

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

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

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

33 (8) The liability account shall not exceed fifty percent of the  
34 actuarial value of the outstanding liability as determined annually by  
35 the risk management division. If the account exceeds the maximum  
36 amount specified in this section, premiums may be adjusted by the risk  
37 management division in order to maintain the account balance at the

1 maximum limits. If, after adjustment of premiums, the account balance  
2 remains above the limits specified, the excess amount shall be prorated  
3 back to the appropriate funds.

4 NEW SECTION. **Sec. 707.** Sections 701 through 706 of this act apply  
5 to all claims that have not been reduced to judgment on the effective  
6 date of this section.

7 **PART 8**  
8 **MISCELLANEOUS**

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

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

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

34 The court may, upon motion by the defendant and a showing of good

1 cause, grant only one additional period of forty-five days, following  
2 the motion to waive the requirement of an affidavit, for the defendant  
3 to provide the information required under this section.

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

6 NEW SECTION. **Sec. 803.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

--- END ---