
SUBSTITUTE SENATE BILL 5728

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, 4.56.250, 4.16.350, 7.70.080, 7.70.060,
3 46.61.688, 4.92.005, 4.96.010, 4.92.040, 4.92.090, and 4.92.130; adding
4 a new section to chapter 4.24 RCW; adding new sections to chapter 4.56
5 RCW; adding a new section to chapter 4.28 RCW; adding a new section to
6 chapter 7.04 RCW; adding new sections to chapter 7.70 RCW; adding a new
7 section to chapter 4.16 RCW; adding a new section to chapter 47.01 RCW;
8 adding a new section to chapter 4.92 RCW; adding a new section to
9 chapter 72.09 RCW; adding a new section to chapter 35.21 RCW; adding a
10 new section to chapter 36.01 RCW; adding a new section to chapter 26.44
11 RCW; and creating new sections.

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

13 **PART 1**

14 **JOINT AND SEVERAL**

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

17 (1) In all actions involving fault of more than one entity, the
18 trier of fact shall determine the percentage of the total fault which

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

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

29 (2) If a defendant is jointly and severally liable under ~~((one of))~~
30 the exception(~~(s))~~ listed in subsection(~~(s))~~ (1)~~((a) or (1)(b))~~ of
31 this section, such defendant's rights to contribution against another
32 jointly and severally liable defendant, and the effect of settlement by
33 either such defendant, shall be determined under RCW 4.22.040,
34 4.22.050, and 4.22.060.

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

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

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

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

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

15 A comparison of fault for any purpose under RCW 4.22.005 through
16 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of
17 the conduct of the parties to the action and the extent of the causal
18 relation between such conduct and the damages.

19 **PART 2**

20 **EMPLOYMENT REFERENCE**

21 NEW SECTION. **Sec. 201.** The legislature finds that employers are
22 becoming increasingly discouraged from disclosing job reference
23 information. The legislature further finds that full disclosure of
24 such information will increase productivity, enhance the safety of the
25 workplace, and provide greater opportunities to disadvantaged groups
26 who may not have the educational background or resumes of other
27 workers.

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

30 An employer who discloses information about a former or current
31 employee's job performance, conduct, or other work-related information
32 to a prospective employer, or employment agency as defined by RCW
33 49.60.040, at the specific request of that individual employer or
34 employment agency, is presumed to be acting in good faith and is immune

1 from civil liability for such disclosure or its consequences. For
2 purposes of this section, the presumption of good faith may only be
3 rebutted upon a showing by clear and convincing evidence that the
4 information disclosed by the employer was knowingly false or
5 deliberately misleading.

6 **PART 3**

7 **POSTJUDGMENT INTEREST RATE**

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

10 Judgments founded on the tortious conduct of the state of
11 Washington or of the political subdivisions, municipal corporations,
12 and quasi municipal corporations of the state, whether acting in their
13 governmental or proprietary capacities, shall bear interest from the
14 date of entry at two percentage points above the (~~maximum rate~~
15 ~~permitted under RCW 19.52.020 or~~) equivalent coupon issue yield (as
16 published by the board of governors of the federal reserve system) of
17 the average bill rate for twenty-six week treasury bills as determined
18 at the first bill market auction conducted during the calendar month
19 immediately preceding the date of entry thereof(~~(:—PROVIDED, That)~~).
20 In any case where a court is directed on review to enter judgment on a
21 verdict or in any case where a judgment entered on a verdict is wholly
22 or partly affirmed on review, interest on the judgment or on that
23 portion of the judgment affirmed shall date back to and shall accrue
24 from the date the verdict was rendered. Interest does not accrue on
25 that portion of a judgment that is subject to appropriation by the
26 legislature under RCW 4.92.090 or by a local legislative authority
27 under RCW 4.96.010 until the appropriation has been made by the
28 legislature or local legislative authority.

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

31 Interest on judgments shall accrue as follows:

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

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

4 (3) Except as provided under subsections (1) and (2) of this
5 section, judgments shall bear interest from the date of entry at two
6 percentage points above the ((maximum rate permitted under RCW
7 19.52.020 on)) equivalent coupon issue yield (as published by the board
8 of governors of the federal reserve system) of the average bill rate
9 for twenty-six week treasury bills as determined at the first bill
10 market auction conducted during the calendar month immediately
11 preceding the date of entry thereof((: PROVIDED, That)). In any case
12 where a court is directed on review to enter judgment on a verdict or
13 in any case where a judgment entered on a verdict is wholly or partly
14 affirmed on review, interest on the judgment or on that portion of the
15 judgment affirmed shall date back to and shall accrue from the date the
16 verdict was rendered.

17 **PART 4**

18 **MEDICAL LIABILITY**

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

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

34 The legislature further finds that the state of California, largely
35 as a result of its enactment of the "medical injury compensation reform
36 act" in 1975, has been able to successfully stabilize the health care

1 professional liability insurance market, maintain access to affordable
2 quality health care services, and avert the kind of crisis now facing
3 the residents of Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 404.** A new section is added to chapter 4.28 RCW
33 to read as follows:

34 (1) No action based upon a health care provider's professional
35 negligence may be commenced unless the defendant has been given at
36 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 this section are not applicable with respect
5 to any defendant whose name is unknown to the plaintiff at the time of
6 filing the complaint and who is identified therein by a fictitious
7 name.

8 (3) Failure to comply with this section does not invalidate any
9 proceedings of any court of this state, nor does it affect the
10 jurisdiction of the court to render a judgment therein. However,
11 failure by an attorney at law to comply with the provisions of this
12 section is grounds for professional discipline and the Washington state
13 bar association shall investigate and take appropriate action in any
14 such cases brought to its attention.

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

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

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

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

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

1 officer, director, employee, or agent is deceased, his or her estate or
2 personal representative;
3 based upon alleged professional negligence shall be commenced within
4 three years of the act or omission alleged to have caused the injury or
5 condition, or one year of the time the patient or his or her
6 representative or custodial parent or guardian discovered or reasonably
7 should have discovered that the injury or condition was caused by said
8 act or omission, whichever period (~~expires later, except that in no~~
9 ~~event shall an action be commenced more than eight years after said act~~
10 ~~or omission: PROVIDED, That the time for commencement of an action is~~
11 ~~tolled upon proof of fraud, intentional concealment, or the presence of~~
12 ~~a foreign body not intended to have a therapeutic or diagnostic purpose~~
13 ~~or effect, until the date the patient or the patient's representative~~
14 ~~has actual knowledge of the act of fraud or concealment, or of the~~
15 ~~presence of the foreign body; the patient or the patient's~~
16 ~~representative has one year from the date of the actual knowledge in~~
17 ~~which to commence a civil action for damages.~~

18 ~~For purposes of this section, notwithstanding RCW 4.16.190, the~~
19 ~~knowledge of a custodial parent or guardian shall be imputed to a~~
20 ~~person under the age of eighteen years, and such imputed knowledge~~
21 ~~shall operate to bar the claim of such minor to the same extent that~~
22 ~~the claim of an adult would be barred under this section. Any action~~
23 ~~not commenced in accordance with this section shall be barred.~~

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

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

31 (a) Upon proof of fraud, intentional concealment, or the presence
32 of a foreign body not intended to have a therapeutic or diagnostic
33 purpose or effect, in which case the patient or the patient's
34 representative has one year from the date the patient or the patient's
35 representative or custodial parent or guardian has actual knowledge of
36 the act of fraud or concealment or of the presence of the foreign body
37 in which to commence a civil action for damages.

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

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

10 (3) Any action not commenced in accordance with this section is
11 barred.

12 (4) For purposes of this section, the tolling provisions of RCW
13 4.16.190 do not apply.

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

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

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

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

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

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

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

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

15 (b) The anticipated results of the proposed treatment;

16 (c) The recognized possible alternative forms of treatment; and

17 (d) The recognized serious possible risks, complications, and
18 anticipated benefits involved in the treatment and in the recognized
19 possible alternative forms of treatment, including nontreatment;

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

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

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

27 (1) A contract for health care services that contains a provision
28 for arbitration of a dispute as to professional negligence of a health
29 care provider under chapter 7.70 RCW must have the provision as the
30 first article of the contract and must be expressed in the following
31 language:

32 "It is understood that any dispute as to medical malpractice that
33 is as to whether any medical services rendered under this contract were
34 unnecessary or unauthorized or were improperly, negligently, or
35 incompetently rendered, will be determined by submission to arbitration
36 as provided by Washington law, and not by a lawsuit or resort to court

1 process except as Washington law provides for judicial review of
2 arbitration proceedings. Both parties to this contract, by entering
3 into it, are giving up their constitutional right to have such a
4 dispute decided in a court of law before a jury, and instead are
5 accepting the use of arbitration."

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

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

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

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

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

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

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

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

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

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

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

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

8 (2) In any action for damages for injury occurring as a result of
9 health care, the court shall, at the request of either party, enter a
10 judgment ordering that money damages or its equivalent for future
11 damages of the judgment creditor be paid in whole or in part by
12 periodic payments rather than by a lump-sum payment if the award equals
13 or exceeds fifty thousand dollars in future damages. In entering a
14 judgment ordering the payment of future damages by periodic payments,
15 the court shall make a specific finding as to the dollar amount of
16 periodic payments which will compensate the judgment creditor for such
17 future damages. As a condition to authorizing periodic payments of
18 future damages, the court shall require the judgment debtor who is not
19 adequately insured to post security adequate to ensure full payment of
20 such damages awarded by the judgment. Upon termination of periodic
21 payments of future damages, the court shall order the return of this
22 security, or so much as remains, to the judgment debtor.

23 (3)(a) The judgment ordering the payment of future damages by
24 periodic payments must specify the recipient or recipients of the
25 payments, the dollar amount of the payments, the interval between
26 payments, and the number of payments or the period of time over which
27 payments must be made. The payments are only subject to modification
28 in the event of the death of the judgment creditor.

29 (b) In the event that the court finds that the judgment debtor has
30 exhibited a continuing pattern of failing to make the payments, as
31 specified in (a) of this subsection, the court shall find the judgment
32 debtor in contempt of court and, in addition to the required periodic
33 payments, shall order the judgment debtor to pay the judgment creditor
34 all damages caused by the failure to make such periodic payments,
35 including court costs and attorneys' fees.

36 (4) However, money damages awarded for loss of future earnings may
37 not be reduced or payments terminated by reason of the death of the
38 judgment creditor, but must be paid to persons to whom the judgment

1 creditor owed a duty of support, as provided by law, immediately prior
2 to his or her death. In such cases the court that rendered the
3 original judgment, may, upon petition of any party in interest, modify
4 the judgment to award and apportion the unpaid future damages in
5 accordance with this subsection (4).

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

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

12 (7) It is the intent of the legislature in enacting this section to
13 authorize, in actions for damages for injury occurring as a result of
14 health care, the entry of judgments that provide for the payment of
15 future damages through periodic payments rather than lump-sum payments.
16 By authorizing periodic payment judgments, it is the further intent of
17 the legislature that the courts will utilize such judgments to provide
18 compensation sufficient to meet the needs of an injured plaintiff and
19 those persons who are dependent on the plaintiff for whatever period is
20 necessary while eliminating the potential windfall from a lump-sum
21 recovery that was intended to provide for the care of an injured
22 plaintiff over an extended period who then dies shortly after the
23 judgment is paid, leaving the balance of the judgment award to persons
24 and purposes for which it was not intended. It is also the intent of
25 the legislature that all elements of the periodic payment program be
26 specified with certainty in the judgment ordering such payments and
27 that the judgment not be subject to modification at some future time
28 that might alter the specifications of the original judgment.

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

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

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

4 NEW SECTION. **Sec. 413.** The Washington state department of health,
5 in conjunction with the Washington state medical quality assurance
6 commission and appropriate professional associations, shall evaluate
7 the effectiveness of the quality improvement and medical malpractice
8 prevention program, as implemented in state hospitals. Representatives
9 of the following professional associations shall be included in the
10 evaluation process: The Washington state hospital association; the
11 Washington state nurses association; the Washington state bar
12 association; the Washington state medical association; and other
13 professional health care provider associations, as appropriate. The
14 Washington state department of health shall present a report to the
15 legislature by December 1, 2003.

16 **PART 5**

17 **CONSTRUCTION LIABILITY**

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

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

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

30 (b) To the extent it is caused by a homeowner's unreasonable
31 failure to minimize or prevent those damages in a timely manner,
32 including the failure of the homeowner to allow reasonable and timely
33 access for inspections and repairs under this section. This includes
34 the failure to give timely notice to the builder after discovery of a

1 violation, but does not include damages due to the untimely or
2 inadequate response of a builder to the homeowner's claim;

3 (c) To the extent it is caused by the homeowner or his or her
4 agent, employee, subcontractor, independent contractor, or consultant
5 by virtue of their failure to follow the builder's or manufacturer's
6 maintenance recommendations, or commonly accepted homeowner maintenance
7 obligations. In order to rely upon this defense as it relates to a
8 builder's recommended maintenance schedule, the builder shall show that
9 the homeowner had written notice of the schedule, the schedule was
10 reasonable at the time it was issued, and the homeowner failed to
11 substantially comply with the written schedule;

12 (d) To the extent it is caused by the homeowner or his or her
13 agent's or an independent third party's alterations, ordinary wear and
14 tear, misuse, abuse, or neglect, or by the structure's use for
15 something other than its intended purpose;

16 (e) To the extent that a cause of action does not accrue within the
17 statute of repose pursuant to RCW 4.16.310 or that an actionable cause
18 as set forth in RCW 4.16.300 is not filed within the applicable statute
19 of limitations. In contract actions, the applicable contract statute
20 of limitations expires, regardless of discovery, six years after
21 substantial completion of construction, or during the period within six
22 years after the termination of the services enumerated in RCW 4.16.300,
23 whichever is later;

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

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

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

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

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

36 **PART 6**

1 **SEATBELT DEFENSE**

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

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

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

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

12 (c) "Passenger cars," meaning motor vehicles with motive power,
13 except multipurpose passenger vehicles, motorcycles, or trailers,
14 designed for carrying ten passengers or less; and

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

17 (2) This section only applies to motor vehicles that meet the
18 manual seat belt safety standards as set forth in federal motor vehicle
19 safety standard 208. This section does not apply to a vehicle occupant
20 for whom no safety belt is available when all designated seating
21 positions as required by federal motor vehicle safety standard 208 are
22 occupied.

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

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

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

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

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

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

9 **PART 7**

10 **GOVERNMENTAL ACTIVITIES**

11 NEW SECTION. **Sec. 701.** While the common law doctrine of sovereign
12 immunity declares that the state is immune from liability for the
13 tortious conduct of its employees and officers, Article II, section 26
14 of the state Constitution allows the legislature to waive its immunity
15 and specify by statute "in what manner, and in what courts, suit may be
16 brought against the state." In the granting or withholding of
17 sovereign immunity, there are limitations, gradations, and competing
18 interests to be balanced by the legislature, including fairness to the
19 citizens of the state, the preservation of proper and essential
20 functions of government, and the conservation of scarce public
21 resources.

22 In balancing these competing interests, the legislature must also
23 balance the traditional role of the jury in determining damages in
24 civil cases and the legislature's constitutional mandate under Article
25 VIII, section 4 of the state Constitution to protect the state treasury
26 through the appropriation process.

27 The legislature finds that these constitutional principles are not
28 adequately served by either complete sovereign immunity or the complete
29 waiver of sovereign immunity. Pursuant to the express authority of
30 Article II, section 26 of the state Constitution, the purpose of
31 sections 701 through 713 of this act is to recognize and implement
32 these fundamental constitutional principles while providing a fair and
33 equitable means of recovery against governmental entities for the
34 negligent acts of their employees and officers.

35 The legislature further finds that government agencies administer
36 programs, in the exercise of their constitutional, statutory, and moral

1 obligations, that inherently create a significant risk of tort
2 liability in the absence of sovereign immunity. This potential
3 liability is unique to the governmental function. As a result, state
4 and local governments are not similarly situated to individual and
5 private organizations, who are not under legal or moral obligations to
6 provide for the public health, safety, and welfare. For these reasons,
7 the legislature finds it necessary and appropriate to distinguish
8 between the civil liability of private entities and governmental
9 agencies.

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

12 For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,
13 (~~4.92.140~~)) and 4.92.150, volunteer is defined in RCW 51.12.035.

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

16 (1) All local governmental entities, whether acting in a
17 governmental or proprietary capacity, shall be liable for damages
18 arising out of their tortious conduct, or the tortious conduct of their
19 past or present officers, employees, or volunteers while performing or
20 in good faith purporting to perform their official duties, to the same
21 extent as if they were a private person or corporation, subject to the
22 limitations provided in subsection (2) of this section. Filing a claim
23 for damages within the time allowed by law shall be a condition
24 precedent to the commencement of any action claiming damages. The laws
25 specifying the content for such claims shall be liberally construed so
26 that substantial compliance therewith will be deemed satisfactory.

27 (2)(a) Neither local government entities, nor their officers,
28 employees, or volunteers are liable to pay a claim or a judgment by any
29 one person that exceeds the sum of one million dollars or any claim or
30 judgment, or portions thereof, that, when totaled with all other claims
31 or judgments paid by the local government entities, officers,
32 employees, or volunteers arising out of the same incident or
33 occurrence, exceeds the sum of two million dollars. However, a
34 judgment or judgments may be claimed and rendered in excess of these
35 amounts and may be settled and paid under this section up to one
36 million dollars or two million dollars, as the case may be, and that

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

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

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

18 (3) Unless the context clearly requires otherwise, for the purposes
19 of this chapter, "local governmental entity" means a county, city,
20 town, special district, municipal corporation as defined in RCW
21 39.50.010, quasi-municipal corporation, or public hospital.

22 ((+3+)) (4) For the purposes of this chapter, "volunteer" is
23 defined according to RCW 51.12.035.

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

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

27 (2) Whenever a final judgment against the state is obtained in an
28 action on a claim arising out of tortious conduct, the claim shall be
29 paid from the liability account, subject to the limitations of RCW
30 4.92.090.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (1) Neither the state nor its agencies, institutions, officers,
22 employees, or volunteers are liable to pay a claim or a judgment by any
23 one person that exceeds the sum of one million dollars or any claim or
24 judgment, or portions thereof, that, when totaled with all other claims
25 or judgments paid by the state or its agencies, institutions, officers,
26 employees, or volunteers arising out of the same incident or
27 occurrence, exceeds the sum of two million dollars. However, a
28 judgment or judgments may be claimed and rendered in excess of these
29 amounts and may be settled and paid under this section up to one
30 million dollars or two million dollars, as the case may be, and that
31 portion of the judgment that exceeds these amounts may be reported to
32 the legislature, but may be paid in part or in whole only by further
33 act of the legislature. Notwithstanding the limited waiver of
34 sovereign immunity provided in this section, the state or an agency,
35 institution, or any officer, employee, or volunteer may agree, within
36 the limits of insurance coverage provided, to settle a claim made or a
37 judgment rendered against it without further action by the legislature,

1 but the state or agency has not waived any defense of sovereign
2 immunity or increased the limits of its liability as a result of its
3 obtaining insurance coverage for tortious acts in excess of the waiver
4 provided in this section.

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

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

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

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

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

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

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

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

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

36 (4) The liability account shall be financed through annual premiums

1 assessed to state agencies, based on sound actuarial principles, and
2 shall be for liability coverage in excess of agency-budgeted self-
3 retention levels.

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

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

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

13 (8) The liability account shall not exceed fifty percent of the
14 actuarial value of the outstanding liability as determined annually by
15 the risk management division. If the account exceeds the maximum
16 amount specified in this section, premiums may be adjusted by the risk
17 management division in order to maintain the account balance at the
18 maximum limits. If, after adjustment of premiums, the account balance
19 remains above the limits specified, the excess amount shall be prorated
20 back to the appropriate funds.

21 NEW SECTION. **Sec. 707.** A new section is added to chapter 47.01
22 RCW to read as follows:

23 (1) The department, its employees, contractors, and agents, in
24 designing, maintaining, improving, and constructing highways are not
25 liable unless the actions or omissions of its officers, employees,
26 contractors, or agents constitute gross negligence. For purposes of
27 this section, "gross negligence" means the failure to exercise even
28 slight care.

29 (2) Notwithstanding subsection (1) of this section, a court may not
30 allow an action that would be inconsistent with the prioritization of
31 projects and improvements as implemented by the department under
32 chapter 47.05 RCW. Nothing in this section may be read as creating
33 liability for failure to reconstruct or improve existing roads and
34 structures to meet current standards, or for failure to meet standards
35 that did not apply at the time of the construction or improvement
36 project.

1 NEW SECTION. **Sec. 708.** A new section is added to chapter 4.92 RCW
2 to read as follows:

3 In an effort to protect the public health, safety, and welfare, the
4 legislature has enacted programs addressing child and vulnerable adult
5 abuse and neglect and criminal offenders. The purpose of these
6 enactments is to generally improve the public health, safety, and
7 welfare. However, the state cannot guarantee the safety of its
8 citizens, particularly in cases of harm involving the intentional or
9 criminal conduct of others. The work undertaken by state employees and
10 agents to deliver these important services requires them to make
11 decisions based upon incomplete or conflicting information and as a
12 result a desirable outcome is not achievable in every instance. While
13 the legislature desires that the employees charged with delivering
14 these services be held accountable and perform to the best of their
15 ability, it also recognizes the difficulties inherent in the delivery
16 of these services and the adverse impact that civil lawsuits have on
17 the delivery of these important services. Consequently, the
18 legislature finds that it is in the best interests of the general
19 public to act to limit the liability exposure of public agencies and
20 employees who undertake to deliver these important public services.

21 NEW SECTION. **Sec. 709.** A new section is added to chapter 72.09
22 RCW to read as follows:

23 The state of Washington, the department and its employees,
24 community corrections officers, staff, and volunteers who assist
25 community corrections officers in the community with community
26 placement, community supervision, community custody, parole
27 supervision, probation supervision, and supervision of suspended
28 sentences are not liable for civil damages resulting from any act or
29 omission in the rendering of community placement, community
30 supervision, community custody, parole supervision, probation
31 supervision, or supervision of suspended sentences unless the act or
32 omission constitutes gross negligence. Violations of agency policies
33 or an offender's violation of minor or administrative conditions of a
34 sentence may not be the basis for a claim that an act or omission is
35 grossly negligent.

36 For purposes of this section, in order to establish gross
37 negligence, the plaintiff must present objective evidence of a failure

1 to exercise slight care in the enforcement of a condition prohibiting
2 crime related conduct that is specifically ordered as a condition of
3 the sentence for which the offender is under supervision, or in the
4 case of parole, a condition prohibiting crime related conduct that is
5 specifically ordered by the indeterminate sentence review board as a
6 condition of parole. The plaintiff must also present objective
7 evidence that enforcement of a sentence or parole condition would have
8 resulted in the detection of a violation of the condition which, if
9 reported, would have resulted in incarceration of the offender for a
10 sufficient period of time to prevent the harm to the plaintiff. When
11 determining whether a plaintiff has established gross negligence,
12 including but not limited to ruling on pretrial motions, the court
13 shall apply the gross negligence standard to protect the public from
14 broad claims of liability for the correctional duties performed by
15 public agencies.

16 NEW SECTION. **Sec. 710.** A new section is added to chapter 35.21
17 RCW to read as follows:

18 Cities and towns, their departments, employees, officers, staff,
19 and volunteers who provide community corrections programs, probation
20 supervision, pretrial supervision, or pretrial release services are not
21 liable for civil damages resulting from any act or omission in the
22 rendering of community corrections programs, probation supervision,
23 pretrial supervision, or pretrial release services unless the act or
24 omission constitutes gross negligence. Violations of agency policies
25 or an offender's violation of minor or administrative conditions may
26 not be the basis for a claim that an act or omission is grossly
27 negligent.

28 For purposes of this section, in order to establish gross
29 negligence, the plaintiff must present objective evidence of a failure
30 to exercise slight care in the enforcement of a condition prohibiting
31 crime-related conduct that is specifically ordered as a condition of
32 probation, pretrial supervision, or pretrial release. The plaintiff
33 must also present objective evidence that enforcement of a condition
34 would have resulted in detection of a violation of the condition,
35 which, if reported, would have resulted in incarceration of the
36 offender for a sufficient period of time to prevent the harm to the
37 plaintiff. When determining whether a plaintiff has established gross

1 negligence, including but not limited to ruling on pretrial motions,
2 the court shall apply the gross negligence standard to protect the
3 public from broad claims of liability for the correctional duties
4 performed by public agencies.

5 NEW SECTION. **Sec. 711.** A new section is added to chapter 36.01
6 RCW to read as follows:

7 Counties, their departments, employees, officers, staff, and
8 volunteers who provide community corrections programs, probation
9 supervision, pretrial supervision, or pretrial release services are not
10 liable for civil damages resulting from any act or omission in the
11 rendering of community corrections programs, probation supervision,
12 pretrial supervision, or pretrial release services unless the act or
13 omission constitutes gross negligence. Violations of agency policies
14 or an offender's violation of minor or administrative conditions may
15 not be the basis for a claim that an act or omission is grossly
16 negligent.

17 For purposes of this section, in order to establish gross
18 negligence, the plaintiff must present objective evidence of a failure
19 to exercise slight care in the enforcement of a condition prohibiting
20 crime-related conduct that is specifically ordered as a condition of
21 probation, pretrial supervision, or pretrial release. The plaintiff
22 must also present objective evidence that enforcement of a condition
23 would have resulted in detection of a violation of the condition,
24 which, if reported, would have resulted in incarceration of the
25 offender for a sufficient period of time to prevent the harm to the
26 plaintiff. When determining whether a plaintiff has established gross
27 negligence, including but not limited to ruling on pretrial motions,
28 the court shall apply the gross negligence standard to protect the
29 public from broad claims of liability for the correctional duties
30 performed by public agencies.

31 NEW SECTION. **Sec. 712.** A new section is added to chapter 26.44
32 RCW to read as follows:

33 Law enforcement agencies or the department, in receiving and
34 evaluating reports of child abuse, in investigating reports of child
35 abuse, in providing protective services, and when reporting child abuse
36 allegations to the court, are liable to the extent that the actions or

1 omissions of its officers, employees, or agents constitute gross
2 negligence. For purposes of this section, "gross negligence" means
3 making a decision or taking an action that is not supported by
4 substantial evidence, and fails to show an exercise of slight care.
5 When deciding whether substantial evidence supports a decision or
6 action, and whether slight care has been exercised, including ruling on
7 pretrial motions, the court shall apply the gross negligence standard
8 to protect law enforcement and other public employees and agencies from
9 claims of liability for actions that they are required to take based,
10 on the exercise of statutory authority, in situations involving
11 conflicting or uncertain evidence.

12 NEW SECTION. **Sec. 713.** Sections 701 through 712 of this act apply
13 to all claims that have not been reduced to judgment on the effective
14 date of this section.

15 **PART 8**
16 **MISCELLANEOUS**

17 NEW SECTION. **Sec. 801.** Part headings used in this act are not any
18 part of the law.

19 NEW SECTION. **Sec. 802.** 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.

--- END ---