

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

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

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

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

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

36 (c) Nothing in this section shall affect any cause of action
37 arising from the manufacture or marketing of a fungible product in a

1 generic form which contains no clearly identifiable shape, color, or
2 marking.

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

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

13 A comparison of fault for any purpose under RCW 4.22.005 through
14 4.22.060 shall involve consideration of both the nature of the conduct
15 of the parties to the action and the extent of the causal relation
16 between such conduct and the damages.

17 **PART 2**

18 **EMPLOYMENT REFERENCE**

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

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

28 An employer who discloses information about a former or current
29 employee's job performance, conduct, or other work-related information
30 to a prospective employer, or employment agency as defined by RCW
31 49.60.040, at the specific request of that individual employer or
32 employment agency, is presumed to be acting in good faith and is immune
33 from civil liability for such disclosure or its consequences. For
34 purposes of this section, the presumption of good faith may only be

1 rebutted upon a showing by clear and convincing evidence that the
2 information disclosed by the employer was knowingly false or
3 deliberately misleading.

4 **PART 3**

5 **POSTJUDGMENT INTEREST RATE**

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

8 Judgments founded on the tortious conduct of the state of
9 Washington or of the political subdivisions, municipal corporations,
10 and quasi municipal corporations of the state, whether acting in their
11 governmental or proprietary capacities, shall bear interest from the
12 date of entry at two percentage points above the (~~maximum rate~~
13 ~~permitted under RCW 19.52.020 on~~) equivalent coupon issue yield (as
14 published by the board of governors of the federal reserve system) of
15 the average bill rate for twenty-six week treasury bills as determined
16 at the first bill market auction conducted during the calendar month
17 immediately preceding the date of entry thereof(~~(:—PROVIDED, That)~~).
18 In any case where a court is directed on review to enter judgment on a
19 verdict or in any case where a judgment entered on a verdict is wholly
20 or partly affirmed on review, interest on the judgment or on that
21 portion of the judgment affirmed shall date back to and shall accrue
22 from the date the verdict was rendered.

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

25 Interest on judgments shall accrue as follows:

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

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

33 (3) Except as provided under subsections (1) and (2) of this
34 section, judgments shall bear interest from the date of entry at two
35 percentage points above the (~~maximum rate permitted under RCW~~

1 ~~19.52.020-en~~) equivalent coupon issue yield (as published by the board
2 of governors of the federal reserve system) of the average bill rate
3 for twenty-six week treasury bills as determined at the first bill
4 market auction conducted during the calendar month immediately
5 preceding the date of entry thereof(~~:- PROVIDED, That~~). In any case
6 where a court is directed on review to enter judgment on a verdict or
7 in any case where a judgment entered on a verdict is wholly or partly
8 affirmed on review, interest on the judgment or on that portion of the
9 judgment affirmed shall date back to and shall accrue from the date the
10 verdict was rendered.

11 **PART 4**

12 **MEDICAL LIABILITY**

13 **Sec. 401.** 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, but not limited to pain, suffering, inconvenience, mental
24 anguish, disability or disfigurement incurred by the injured party,
25 emotional distress, loss of society and companionship, loss of
26 consortium, injury to reputation and humiliation, and destruction of
27 the parent-child relationship.

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~~

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)) an action~~
12 ~~or arbitration for damages for injury occurring as a result of health~~
13 ~~care, the injured plaintiff may not recover noneconomic damages~~
14 ~~exceeding two hundred fifty thousand dollars.~~

15 **Sec. 402.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
16 amended to read as follows:

17 (1) Except as set forth in subsection (2) of this section, the
18 court shall, in any action under this chapter, determine the
19 reasonableness of each party's attorneys' fees. The court shall take
20 into consideration the following:

21 ~~((1))~~ (a) The time and labor required, the novelty and difficulty
22 of the questions involved, and the skill requisite to perform the legal
23 service properly;

24 ~~((2))~~ (b) The likelihood, if apparent to the client, that the
25 acceptance of the particular employment will preclude other employment
26 by the lawyer;

27 ~~((3))~~ (c) The fee customarily charged in the locality for similar
28 legal services;

29 ~~((4))~~ (d) The amount involved and the results obtained;

30 ~~((5))~~ (e) The time limitations imposed by the client or by the
31 circumstances;

32 ~~((6))~~ (f) The nature and length of the professional relationship
33 with the client;

34 ~~((7))~~ (g) The experience, reputation, and ability of the lawyer
35 or lawyers performing the services;

36 ~~((8))~~ (h) Whether the fee is fixed or contingent.

1 (2)(a) An attorney may not contract for or collect a contingency
2 fee for representing a person in connection with an action for damages
3 against a health care provider based upon professional negligence in
4 excess of the following limits:

5 (i) Forty percent of the first fifty thousand dollars recovered;

6 (ii) Thirty-three and one-third percent of the next fifty thousand
7 dollars recovered;

8 (iii) Twenty-five percent of the next five hundred thousand dollars
9 recovered;

10 (iv) Fifteen percent of any amount in which the recovery exceeds
11 six hundred thousand dollars.

12 (b) The limitations in this section apply regardless of whether the
13 recovery is by judgment, settlement, arbitration, mediation, or other
14 form of alternative dispute resolution.

15 (c) If periodic payments are awarded to the plaintiff, the court
16 shall place a total value on these payments and include this amount in
17 computing the total award from which attorneys' fees are calculated
18 under this subsection.

19 (d) For purposes of this subsection, "recovered" means the net sum
20 recovered after deducting any disbursements or costs incurred in
21 connection with prosecution or settlement of the claim. Costs of
22 medical care incurred by the plaintiff and the attorneys' office
23 overhead costs or charges are not deductible disbursements or costs for
24 such purposes.

25 (3) This section applies to all agreements for attorneys' fees
26 entered into or modified after the effective date of this section, and
27 to all attorney fee agreements relating to causes of action filed on or
28 after the effective date of this section.

29 NEW SECTION. Sec. 403. A new section is added to chapter 4.28 RCW
30 to read as follows:

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

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

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

12 **Sec. 404.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
13 as follows:

14 Any civil action for damages for injury occurring as a result of
15 health care which is provided after June 25, 1976 against:

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

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

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

36 based upon alleged professional negligence shall be commenced within
37 three years of the act or omission alleged to have caused the injury or

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

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

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

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

28 **Sec. 405.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
29 amended to read as follows:

30 (1) Any party may present evidence to the trier of fact that the
31 patient has already been compensated for the injury complained of from
32 (~~(any source except the assets of the patient, his representative, or~~
33 ~~his immediate family, or insurance purchased with such assets. In the~~
34 ~~event such evidence is admitted, the plaintiff may present evidence of~~
35 ~~an obligation to repay such compensation. Insurance bargained for or~~
36 ~~provided on behalf of an employee shall be considered insurance~~
37 ~~purchased with the assets of the employee)) a collateral source. In~~

1 the event the evidence is admitted, the other party may present
2 evidence of any amount that was paid or contributed to secure the right
3 to any compensation. Compensation as used in this section shall mean
4 payment of money or other property to or on behalf of the patient,
5 rendering of services to the patient free of charge to the patient, or
6 indemnification of expenses incurred by or on behalf of the patient.
7 Notwithstanding this section, evidence of compensation by a defendant
8 health care provider may be offered only by that provider.

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

12 **Sec. 406.** RCW 7.70.030 and 1975-'76 2nd ex.s. c 56 s 8 are each
13 amended to read as follows:

14 No award shall be made in any action or arbitration for damages for
15 injury occurring as the result of health care which is provided after
16 June 25, 1976, unless the plaintiff establishes one or more of the
17 following propositions:

18 (1) That injury resulted from the failure of a health care provider
19 to follow the accepted standard of care;

20 (2) That a health care provider promised the patient or his
21 representative that the injury suffered would not occur;

22 (3) That injury resulted from health care to which the patient or
23 his or her representative did not consent.

24 Unless otherwise provided in this chapter, the plaintiff shall have
25 the burden of proving each fact essential to an award by ((a
26 ~~preponderance of the~~)) clear, cogent, and convincing evidence.

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

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

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

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

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

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

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

14 A contract for health care services that contains a provision for
15 arbitration of any dispute as to professional negligence may not be a
16 contract of adhesion, nor unconscionable, nor otherwise improper.

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

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

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

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

26 (2) In any action for damages for injury occurring as a result of
27 health care, the court shall, at the request of either party, enter a
28 judgment ordering that money damages or its equivalent for future
29 damages of the judgment creditor be paid in whole or in part by
30 periodic payments rather than by a lump-sum payment if the award equals
31 or exceeds fifty thousand dollars in future damages. In entering a
32 judgment ordering the payment of future damages by periodic payments,
33 the court shall make a specific finding as to the dollar amount of
34 periodic payments which will compensate the judgment creditor for such
35 future damages. As a condition to authorizing periodic payments of
36 future damages, the court shall require the judgment debtor who is not

1 adequately insured to post security adequate to ensure full payment of
2 such damages awarded by the judgment. Upon termination of periodic
3 payments of future damages, the court shall order the return of this
4 security, or so much as remains, to the judgment debtor.

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

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

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

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

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

32 NEW SECTION. **Sec. 410.** Section 401 of this act takes effect only
33 if Senate Joint Resolution No. 8207 is approved by the electorate at
34 the next general election held in this state.

35 **PART 5**

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

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

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

9 (8) As to any causes of action to which this section does not
10 apply, all applicable affirmative defenses are preserved.

11 **PART 6**
12 **SEATBELT DEFENSE**

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

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

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

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

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

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

28 (2) This section only applies to motor vehicles that meet the
29 manual seat belt safety standards as set forth in federal motor vehicle
30 safety standard 208. This section does not apply to a vehicle occupant
31 for whom no safety belt is available when all designated seating
32 positions as required by federal motor vehicle safety standard 208 are
33 occupied.

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

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

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

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

13 ~~(7))~~ This section does not apply to an operator or passenger who
14 possesses written verification from a licensed physician that the
15 operator or passenger is unable to wear a safety belt for physical or
16 medical reasons.

17 ~~((8))~~ (7) The state patrol may adopt rules exempting operators or
18 occupants of farm vehicles, construction equipment, and vehicles that
19 are required to make frequent stops from the requirement of wearing
20 safety belts.

21 **PART 7**

22 **GOVERNMENTAL ACTIVITIES**

23 NEW SECTION. **Sec. 701.** A new section is added to chapter 43.20A
24 RCW to read as follows:

25 In an effort to protect the public health, safety, and welfare, the
26 legislature has authorized and funded programs addressing child and
27 elderly abuse and neglect and criminal offenders. The work undertaken
28 by state employees and agents to deliver these important services
29 requires them to make decisions based upon circumstantial evidence and
30 measurable risk of harm associated with the available competing
31 choices.

32 The legislature is obligated for policy reasons and fiscal
33 responsibility to assure the state is accountable under fair and
34 reasonable standards of negligence. The state cannot guarantee the
35 safety of its citizens, particularly in cases of harm involving the
36 criminal conduct of others. The legislature expects state workers to

1 perform this difficult work nonnegligently, and does not intend to
2 immunize the state for negligence. However, the legislature finds that
3 the citizens of this state should not be liable when the state worker
4 exercises reasonable care.

5 NEW SECTION. **Sec. 702.** A new section is added to chapter 43.20A
6 RCW to read as follows:

7 The state or a person, individually or in a representative capacity
8 for the state, who is involved in the delivery of social and health
9 services through the department of social and health services, is not
10 liable for selecting one of two or more alternative courses of action
11 even though the course of action chosen results in a poor outcome if
12 the person exercised reasonable care and skill in arriving at the
13 judgment to follow the particular course of action.

14 NEW SECTION. **Sec. 703.** A new section is added to chapter 72.09
15 RCW to read as follows:

16 In an effort to protect the public health, safety, and welfare, the
17 legislature has authorized and funded programs addressing child and
18 elderly abuse and neglect and criminal offenders. The work undertaken
19 by state employees and agents to deliver these important services
20 requires them to make decisions based upon circumstantial evidence and
21 measurable risk of harm associated with the available competing
22 choices.

23 The legislature is obligated for policy reasons and fiscal
24 responsibility to assure the state is accountable under fair and
25 reasonable standards of negligence. The state cannot guarantee the
26 safety of its citizens, particularly in cases of harm involving the
27 criminal conduct of others. The legislature expects state workers to
28 perform this difficult work nonnegligently, and does not intend to
29 immunize the state for negligence. However, the legislature finds that
30 the citizens of this state should not be liable when the state worker
31 exercises reasonable care.

32 NEW SECTION. **Sec. 704.** A new section is added to chapter 72.09
33 RCW to read as follows:

34 The state or a person, individually or in a representative capacity
35 for the state, who is involved in the delivery of services through the

1 department of corrections, is not liable for selecting one of two or
2 more alternative courses of action even though the course of action
3 chosen results in a poor outcome if the person exercised reasonable
4 care and skill in arriving at the judgment to follow the particular
5 course of action.

6 NEW SECTION. **Sec. 705.** Nothing in sections 701 through 704 of
7 this act may be construed to limit the application of other statutes
8 specifying a liability standard for the state's employees and agents.

9 **Sec. 706.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
10 as follows:

11 The state of Washington, (~~whether~~) while acting in its
12 (~~governmental or~~) proprietary capacity, shall be liable for damages
13 arising out of its tortious conduct to the same extent as if it were a
14 private person or corporation. While acting in its governmental
15 capacity, the state is liable only to the extent that the actions or
16 omissions of its officers, employees, or agents constitute gross
17 negligence. For purposes of this section, "gross negligence" means the
18 failure to exercise slight care. "Governmental capacity" includes, but
19 is not limited to, the supervision of offenders, protection of
20 vulnerable citizens, fire fighting, police activities, and highway
21 design and construction.

22 **Sec. 707.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
23 as follows:

24 (1) All local governmental entities, (~~whether~~) acting in a
25 (~~governmental or~~) proprietary capacity, shall be liable for damages
26 arising out of their tortious conduct, or the tortious conduct of their
27 past or present officers, employees, or volunteers while performing or
28 in good faith purporting to perform their official duties, to the same
29 extent as if they were a private person or corporation. While acting
30 in its governmental capacity, local governmental entities are liable
31 only to the extent that the actions or omissions of its officers,
32 employees, or agents constitute gross negligence. "Governmental
33 capacity" includes, but is not limited to, the supervision of
34 offenders, protection of vulnerable citizens, fire fighting, police
35 activities, and highway design and construction. Filing a claim for

1 damages within the time allowed by law shall be a condition precedent
2 to the commencement of any action claiming damages. The laws
3 specifying the content for such claims shall be liberally construed so
4 that substantial compliance therewith will be deemed satisfactory.

5 (2) Unless the context clearly requires otherwise, for the purposes
6 of this chapter, "local governmental entity" means a county, city,
7 town, special district, municipal corporation as defined in RCW
8 39.50.010, quasi-municipal corporation, or public hospital.

9 (3) For the purposes of this chapter, "volunteer" is defined
10 according to RCW 51.12.035.

11 (4) For purposes of this chapter, "gross negligence" means the
12 failure to exercise slight care.

13 **PART 8**
14 **MISCELLANEOUS**

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

17 NEW SECTION. **Sec. 802.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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