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HOUSE BILL 1859

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State of Washington

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2005 Regular Session

By Representatives Lantz, Cody, Schual-Berke, Morrell, Kirby, Springer, Miloscia, Kilmer, Upthegrove, Linville, Chase, Wood and Kagi

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1 AN ACT Relating to compensation for birth-related injuries; adding  
2 a new section to chapter 18.130 RCW; adding a new section to chapter  
3 70.41 RCW; adding a new section to chapter 18.46 RCW; adding a new  
4 section to chapter 51.52 RCW; adding a new section to chapter 7.70 RCW;  
5 adding a new chapter to Title 7 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
8 finds that:

9 (a) Physicians and advanced registered nurse practitioners  
10 practicing obstetrics are high-risk medical specialists for whom  
11 malpractice insurance premiums are very costly, and recent increases in  
12 such premiums have been greater for such physicians than for other  
13 physicians.

14 (b) Because obstetric services are essential and the state of  
15 Washington currently pays for almost half of the births in the state  
16 through its medical assistance programs, it is incumbent upon the  
17 legislature to provide a plan designed to result in the stabilization  
18 and reduction of malpractice insurance premiums for providers of  
19 obstetric services in Washington.

1 (c) The costs of birth-related injury claims are particularly high  
2 and warrant the establishment of a limited system of compensation  
3 irrespective of fault. The issue of whether such claims are covered by  
4 this chapter must be determined exclusively in an administrative  
5 proceeding.

6 (2) It is the intent of the legislature to provide compensation, on  
7 a no-fault basis, for a limited class of birth-related injuries that  
8 result in high costs for custodial care and rehabilitation. This plan  
9 applies only to birth-related injuries.

10 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
11 section apply throughout this chapter unless the context clearly  
12 requires otherwise.

13 (1) "Advanced registered nurse practitioner" means an advanced  
14 registered nurse practitioner licensed under chapter 18.79 RCW.  
15 "Advanced registered nurse practitioner" does not include an advanced  
16 registered nurse practitioner who practices medicine as an officer,  
17 employee, or agent of the federal government.

18 (2) "Association" means the Washington birth-related injury  
19 compensation association established in section 18 of this act.

20 (3) "Birth-related injury" means injury to a live infant at birth  
21 caused by oxygen deprivation or mechanical injury, occurring in the  
22 course of labor, delivery, or resuscitation in the immediate  
23 postdelivery period in a hospital or childbirth center, that renders  
24 the infant permanently and significantly mentally or physically  
25 impaired in one or more major life activities. This definition applies  
26 to live births only and does not include disability or death caused by  
27 genetic or congenital abnormality.

28 (4) "Board" means the board of industrial insurance appeals  
29 established in chapter 51.52 RCW, or an industrial appeals judge  
30 appointed by the board to hear and determine claims filed under this  
31 chapter.

32 (5) "Childbirth center" means a facility licensed under chapter  
33 18.46 RCW.

34 (6) "Claimant" means any person who files a claim under this  
35 chapter for compensation for a birth-related injury to an infant.

36 (7) "Family member" means a biological or adoptive father, mother,  
37 grandparent, or legal guardian.

1 (8) "Family residential or custodial care" means care normally  
2 rendered by trained professional attendants that is beyond the scope of  
3 child care duties, but is provided by family members.

4 (9) "Hospital" means any facility licensed under chapter 70.41 RCW.

5 (10) "Physician" means a physician licensed under chapter 18.71  
6 RCW, or an osteopathic physician licensed under chapter 18.57 RCW.  
7 "Physician" does not include a physician who practices medicine as an  
8 officer, employee, or agent of the federal government.

9 (11) "Plan" means the Washington birth-related injury compensation  
10 plan.

11 NEW SECTION. **Sec. 3.** WASHINGTON BIRTH-RELATED INJURY COMPENSATION  
12 PLAN--EXCLUSIVENESS OF REMEDY. (1) There is established the Washington  
13 birth-related injury compensation plan for the purpose of providing  
14 compensation, irrespective of fault, for birth-related injury claims.  
15 The plan applies to births occurring on or after January 1, 2007, and  
16 is administered by the Washington birth-related injury compensation  
17 association.

18 (2) The rights and remedies granted by this plan on account of a  
19 birth-related injury that is covered by this chapter are exclusive and  
20 preclude all other rights and remedies at common law or otherwise of  
21 the claimant arising out of or related to a medical negligence claim  
22 with respect to the injury against any person or entity directly  
23 involved in the labor, delivery, or immediate postdelivery  
24 resuscitation during which the injury occurs. A civil action is not  
25 foreclosed under this section when:

26 (a) There is a preponderance of the evidence showing that the acts  
27 or omissions of the hospital, childbirth center, physician, or advanced  
28 registered nurse practitioner were made in bad faith or with malicious  
29 purpose or willful or wanton disregard of human rights, safety, or  
30 property; and

31 (b) The suit is filed prior to and in lieu of payment of an award  
32 under this chapter.

33 NEW SECTION. **Sec. 4.** BOARD OF INDUSTRIAL INSURANCE APPEALS  
34 AUTHORIZED TO HEAR AND DETERMINE CLAIMS. The board is authorized to  
35 hear and pass upon all claims filed under this chapter. The board may

1 exercise the power and authority granted to it in chapter 51.52 RCW to  
2 appoint industrial appeals judges to hear and determine claims and as  
3 otherwise necessary to carry out the purposes of this chapter.

4 NEW SECTION. **Sec. 5. FILING OF CLAIMS AND RESPONSES--MEDICAL**  
5 **DISCIPLINARY REVIEW.** (1) A claimant may initiate a claim for  
6 compensation under the plan by filing with the board a petition seeking  
7 compensation. Such claim may be filed by a legal representative on  
8 behalf of an injured infant. In the case of a deceased infant, the  
9 claim may be filed by an administrator, personal representative, or  
10 other legal representative thereof. The petition shall include the  
11 following information:

12 (a) The name and address of the claimant and his or her attorney,  
13 if any;

14 (b) The name and address of the injured infant;

15 (c) The name and address of any physician or advanced registered  
16 nurse practitioner who provided obstetrical services at the birth and  
17 the name and address of the hospital or childbirth center at which the  
18 birth occurred;

19 (d) A description of the disability resulting from the injury for  
20 which the claim is made;

21 (e) The time and place the injury occurred; and

22 (f) A brief statement of the facts and circumstances surrounding  
23 the injury and giving rise to the claim.

24 (2) The claimant shall furnish the board with as many copies of the  
25 petition as required for service upon the association, any physician,  
26 advanced registered nurse practitioner, hospital, or childbirth center  
27 named in the petition, and the department of health, along with a  
28 twenty dollar filing fee payable to the department of labor and  
29 industries. Upon receipt of the petition, the board shall immediately  
30 serve the association, by service upon the agent designated to accept  
31 service on behalf of the association, by registered or certified mail,  
32 and shall mail copies of the petition, by registered or certified mail,  
33 to any physician, advanced registered nurse practitioner, hospital, or  
34 childbirth center named in the petition, and shall furnish a copy of  
35 the petition by regular mail to the department of health.

36 (3)(a) The claimant shall furnish to the association the following

1 information, which must be filed with the association within ten days  
2 after the filing of the petition as set forth in subsection (1) of this  
3 section:

4 (i) All available relevant medical records relating to the  
5 birth-related injury and a list identifying any unavailable records  
6 known to the claimant and the reasons for the records' unavailability;

7 (ii) Appropriate assessments, evaluations, and prognoses, and other  
8 records and documents that are reasonably necessary for the  
9 determination of the amount of compensation to be paid to, or on behalf  
10 of, the injured infant on account of the birth-related injury;

11 (iii) Documentation of expenses and services incurred to date that  
12 identifies any payment made for such expenses and services and the  
13 payer; and

14 (iv) Documentation of any applicable private or government source  
15 of services or reimbursement related to the disability resulting from  
16 the injury.

17 (b) The information required by (a) of this subsection remains  
18 confidential and exempt under section 18(4) of this act and is exempt  
19 from disclosure under chapter 42.17 RCW.

20 (4) The association has forty-five days from the date of service of  
21 a petition, filed under this section, in which to file a response to  
22 the petition and to submit to the board relevant written information  
23 relating to the issue of whether the injury alleged is a birth-related  
24 injury.

25 NEW SECTION. **Sec. 6.** BOARD TO DETERMINE CLAIMS. The board has  
26 exclusive jurisdiction to determine whether a claim filed under this  
27 chapter is a compensable birth-related injury. If the board  
28 determines that the claimant is entitled to compensation from the  
29 association, or if the claimant accepts an award issued under section  
30 10 of this act, no civil action for damages resulting from the birth-  
31 related injury may be brought or continued in violation of the  
32 exclusiveness of remedy provisions of section 3 of this act. If it is  
33 determined that a claim filed under this chapter is not a compensable  
34 birth-related injury, neither the doctrine of collateral estoppel nor  
35 res judicata prohibits the claimant from pursuing any and all civil  
36 remedies available under common law and statutory law. The findings of  
37 fact and conclusions of law of the board are not admissible in any

1 subsequent proceeding; however, the sworn testimony of any person and  
2 the exhibits introduced into evidence in the administrative case are  
3 admissible for impeachment purposes in any subsequent civil action only  
4 against a party to the administrative proceeding, subject to the rules  
5 of evidence. An award may not be made or paid under this chapter if  
6 the claimant recovers damages for the birth-related injury either under  
7 a settlement or by final judgment in a civil action.

8 NEW SECTION. **Sec. 7.** TOLLING OF STATUTE OF LIMITATIONS. The  
9 statute of limitations with respect to any civil action that may be  
10 brought by, or on behalf of, an injured infant allegedly arising out  
11 of, or related to, a birth-related injury is tolled by the filing of a  
12 claim in accordance with this chapter, and the time during which the  
13 claim is pending or is on appeal is not computed as part of the period  
14 within which the civil action may be brought.

15 NEW SECTION. **Sec. 8.** HEARING--PARTIES--DISCOVERY. (1) The board  
16 shall set the date for a hearing no sooner than sixty days and no later  
17 than one hundred twenty days after the filing by a claimant of a  
18 petition in compliance with section 5 of this act. The board shall  
19 immediately notify the claimant and the association of the time and  
20 place of the hearing, which shall be held in the county where the  
21 injury occurred unless otherwise agreed to by the parties and  
22 authorized by the board.

23 (2) Any party to a proceeding under this chapter may, upon  
24 application to the board setting forth the materiality of the evidence  
25 to be given, serve interrogatories or cause the depositions of  
26 witnesses residing within or without the state to be taken, the costs  
27 thereof to be taxed as expenses incurred in connection with the filing  
28 of a claim. Depositions shall be taken after giving notice to the  
29 parties and in the manner prescribed for the taking of depositions  
30 under chapter 51.52 RCW.

31 NEW SECTION. **Sec. 9.** DETERMINATION OF CLAIMS--PRESUMPTION--  
32 FINDINGS OF BOARD BINDING ON PARTICIPANTS. (1) The board shall make  
33 the following determinations based upon all available evidence:

34 (a) Whether the injury claimed is a birth-related injury. There is  
35 a rebuttable presumption that the injury is a birth-related injury if

1 the claimant demonstrates, to the satisfaction of the board, that the  
2 infant sustained an injury at birth caused by oxygen deprivation or  
3 mechanical injury and that the infant was thereby rendered permanently  
4 and significantly mentally or physically impaired in one or more major  
5 life activities; and

6 (b) How much compensation, if any, is awardable pursuant to section  
7 10 of this act.

8 (2) If the board determines that the injury claimed is not a  
9 birth-related injury, an order denying the claim shall be entered and  
10 a copy of the order must be sent immediately to the parties by  
11 registered or certified mail.

12 (3) A physician or advanced registered nurse practitioner is bound  
13 for all purposes by the finding of the board or any court considering  
14 an appeal of an order of the board with respect to whether the injury  
15 is a birth-related injury.

16 (4) If it is in the interest of judicial economy or if requested by  
17 the claimant, the board may bifurcate the proceeding and address the  
18 issue of whether the injury is a birth-related injury first. An award  
19 pursuant to section 10 of this act, if any, can be considered in a  
20 separate proceeding. The board may issue a final order on whether the  
21 injury is a birth-related injury that is subject to appeal under  
22 section 11 of this act, before issuance of an award under section 10 of  
23 this act.

24 NEW SECTION. **Sec. 10.** BOARD AWARDS FOR BIRTH-RELATED INJURIES--  
25 NOTICE OF AWARD. (1)(a) Upon determining that an infant has sustained  
26 a birth-related injury, the board shall make an award providing  
27 compensation for the following items relative to the injury:

28 (i) Actual expenses for: Medically necessary and reasonable  
29 medical and hospital services, habilitative and training services,  
30 family residential or custodial care, professional residential care,  
31 and in-home custodial care; medically necessary drugs, special  
32 equipment, and facilities; and related travel. Family members who  
33 provide nonprofessional residential or custodial care may not be  
34 compensated under this chapter for care that falls within the scope of  
35 child care duties and other services normally and gratuitously provided  
36 by family members. Family residential or custodial care shall be  
37 performed only at the direction and control of a physician when such

1 care is medically necessary. Reasonable charges for expenses for  
2 family residential or custodial care provided by a family member shall  
3 be equal to the rates established by medicaid for services provided by  
4 home care workers. A family member or a combination of family members  
5 providing care in accordance with this section may not be compensated  
6 for more than a total of ten hours per day. No professional  
7 residential or custodial care may be awarded for the period of time  
8 during the day that family residential or custodial care is being  
9 provided.

10 (ii) Actual expenses shall not include:

11 (A) Expenses for items or services that the infant has received, or  
12 is entitled to receive, under the laws of any state or the federal  
13 government, except to the extent this exclusion may be prohibited by  
14 federal law;

15 (B) Expenses for items or services that the infant has received, or  
16 is contractually entitled to receive, from any health carrier, as  
17 defined in RCW 48.43.005(18), or other insurer;

18 (C) Expenses for which the infant has received reimbursement, or  
19 for which the infant is entitled to receive reimbursement, under the  
20 laws of any state or the federal government, except to the extent this  
21 exclusion may be prohibited by federal law; and

22 (D) Expenses for which the infant has received reimbursement, or  
23 for which the infant is contractually entitled to receive  
24 reimbursement, under the provisions of a health or sickness insurance  
25 policy or other private insurance program.

26 (iii)(A) Periodic payments of an award to the parents or legal  
27 guardians of the infant found to have sustained a birth-related injury.  
28 The award may not exceed one hundred thousand dollars. At the  
29 discretion of the board, the award may be made in a lump sum.

30 (B) Death benefit for the infant if the infant has died as a result  
31 of the birth-related injury in an amount of ten thousand dollars.

32 (iv) Reasonable expenses incurred in connection with the filing of  
33 a claim under this chapter, including reasonable attorneys' fees, which  
34 shall be subject to the approval and award of the board. In  
35 determining an award for attorneys' fees, the board shall consider the  
36 following factors:

37 (A) The time and labor required, the novelty and difficulty of the

1 questions involved, and the skill requisite to perform the legal  
2 services properly;

3 (B) The fee customarily charged in the locality for similar legal  
4 services;

5 (C) The time limitations imposed by the claimant or the  
6 circumstances;

7 (D) The nature and length of the professional relationship with the  
8 claimant;

9 (E) The experience, reputation, and ability of the lawyer or  
10 lawyers performing services; and

11 (F) The contingency or certainty of a fee.

12 (b) Expenses included under (a)(i) of this section shall be limited  
13 to reasonable fees paid by private health benefit plans, as defined in  
14 RCW 48.43.005(19), in the same community for similar treatment of  
15 injured persons.

16 (c) If the board makes a final determination that a claim is  
17 compensable under this chapter, and the claimant accepts an award under  
18 this section, the claimant shall not be liable for any expenses,  
19 including attorneys' fees, incurred in connection with the filing of a  
20 claim under this chapter, other than those expenses awarded under this  
21 section.

22 (2) The award shall require that the association immediately pay  
23 those expenses previously incurred and pay future expenses as they are  
24 incurred.

25 (3) A copy of the award shall be sent immediately by registered or  
26 certified mail to each person or entity served with a copy of the  
27 petition under section 5 of this act.

28 NEW SECTION. **Sec. 11.** CONCLUSIVENESS OF DETERMINATION OR AWARD--  
29 APPEAL. (1) A determination of the board as to whether an injury is a  
30 birth-related injury under section 9 of this act or an award of  
31 compensation under section 10 of this act is conclusive and binding as  
32 to all questions of fact. An order of the board may be appealed to the  
33 court of appeals. Appeals shall be filed in accordance with rules of  
34 procedure prescribed by the supreme court.

35 (2) In case of an appeal from an award of the board, the appeal  
36 operates as a suspension of the award of compensation, and the

1 association is not required to make payment of the award involved in  
2 the appeal until the questions at issue in the appeal have been fully  
3 determined.

4 NEW SECTION. **Sec. 12.** ENFORCEMENT OF AWARDS. (1) The board has  
5 full authority to enforce its awards and to respond to deception or  
6 lack of cooperation in reaching the determination as to any award.  
7 That authority includes the power to petition the superior court for an  
8 order of contempt.

9 (2) A party may petition the superior court for enforcement of a  
10 final award by the board.

11 NEW SECTION. **Sec. 13.** LIMITATION ON CLAIM. Any claim for  
12 compensation under this chapter that is filed more than eight years  
13 after the birth of an infant alleged to have a birth-related injury is  
14 barred.

15 NEW SECTION. **Sec. 14.** PLAN OF OPERATION. (1) The assessments  
16 established under sections 15 and 16 of this act shall be used to  
17 finance the Washington birth-related injury compensation plan.

18 (2) The association established in section 18 of this act shall  
19 administer the assessments and appropriations dedicated to the plan, in  
20 accordance with the following requirements:

21 (a) By July 1, 2006, the directors of the association shall submit  
22 to the office of the insurance commissioner for review a plan of  
23 operation that provides for the efficient administration of the plan  
24 and for prompt processing of claims against and awards made on behalf  
25 of the plan. The plan of operation must include provision for:

- 26 (i) Establishment of necessary facilities;
- 27 (ii) Management of the funds collected on behalf of the plan;
- 28 (iii) Processing of claims against the plan;
- 29 (iv) Assessment of the persons and entities listed in sections 15  
30 and 16 of this act to pay awards and expenses. Assessments shall be on  
31 an actuarially sound basis subject to the limits set forth in sections  
32 15 and 16 of this act; and

33 (v) Any other matters necessary for the efficient operation of the  
34 birth-related injury compensation plan.

1 (b) Amendments to the plan of operation may be made by the  
2 directors of the plan, subject to the approval of the office of the  
3 insurance commissioner.

4 (3) The funds collected by the association and any income therefrom  
5 shall be disbursed only for the payment of awards under this chapter  
6 and for the payment of the reasonable expenses of administering the  
7 plan.

8 NEW SECTION. **Sec. 15.** ASSESSMENTS ON HEALTH CARE PROVIDERS. The  
9 following persons and entities shall pay into the association an  
10 assessment in accordance with the plan of operation:

11 (1) Beginning January 1, 2006, and each January 1st thereafter,  
12 each hospital licensed under chapter 70.41 RCW and each childbirth  
13 center licensed under chapter 18.46 RCW shall pay an initial assessment  
14 of fifty dollars per infant delivered in the hospital during the prior  
15 calendar year, as reported to the department of health. Upon  
16 demonstration of financial need by a hospital, the association may  
17 provide for installment payments of assessments.

18 (2) Beginning January 1, 2006, and each January 1st thereafter, all  
19 physicians licensed under chapter 18.71 RCW, all osteopathic physicians  
20 licensed under chapter 18.57 RCW, and all advanced registered nurse  
21 practitioners licensed under chapter 18.79 RCW, shall be assessed an  
22 assessment of five hundred dollars, which must be paid by March 1,  
23 2006, and each March 1st thereafter. The assessment imposed under this  
24 subsection does not apply to the following physicians or advanced  
25 registered nurse practitioners:

26 (a) A resident physician, assistant resident physician, or intern  
27 in an approved postgraduate training program, as defined by the  
28 department of health;

29 (b) A retired physician who has withdrawn from the practice of  
30 medicine but who maintains an active license. Before reentering the  
31 practice of medicine in this state, a retired physician must notify the  
32 department of health and pay the appropriate assessments under this  
33 section;

34 (c) A physician or advanced registered nurse practitioner who is  
35 employed full time by the United States department of veterans affairs  
36 and whose practice is confined to United States department of veterans  
37 affairs hospitals;

1 (d) A physician or advanced registered nurse practitioner who is a  
2 member of the armed forces of the United States; or

3 (e) A physician or advanced registered nurse practitioner who is  
4 employed full time by the state of Washington and whose practice is  
5 confined to state-owned correctional institutions, or state-owned  
6 mental health or developmental services facilities, or who is employed  
7 full time by the department of health.

8 NEW SECTION. **Sec. 16.** ASSESSMENTS ON CASUALTY INSURERS. (1)(a)

9 If the assessments collected pursuant to section 15 of this act and any  
10 appropriation of funds provided by the legislature are insufficient to  
11 maintain the plan on an actuarially sound basis, the office of the  
12 insurance commissioner shall require each entity licensed to issue  
13 casualty insurance under chapter 48.22 RCW to pay into the association  
14 an annual assessment in an amount determined by the office pursuant to  
15 subsection (3)(a) of this section, in the manner required by the plan  
16 of operation.

17 (b) All annual assessments shall be made on the basis of net direct  
18 premiums written for casualty insurance in the state during the prior  
19 year ending December 31st, as reported to the office of the insurance  
20 commissioner, and shall be in the proportion that the net direct  
21 premiums written by each carrier for casualty insurance bears to the  
22 aggregate net direct premiums for all casualty insurance written in  
23 this state by all such entities.

24 (c) No casualty insurer shall be individually liable for an annual  
25 assessment in excess of 0.25 percent of that insurer's net direct  
26 premiums written.

27 (d) Casualty insurance carriers are entitled to recover their  
28 initial and annual assessments through a surcharge on future policies,  
29 a rate increase applicable prospectively, or a combination of the two.

30 (2) The association may enforce collection of assessments required  
31 to be paid pursuant to this chapter by suit filed in superior court.  
32 The association shall be entitled to an award of attorneys' fees,  
33 costs, and interest upon the entry of a judgment against a physician  
34 for failure to pay an assessment, with interest accruing until the  
35 assessment is paid.

36 (3)(a) The office of the insurance commissioner shall undertake an  
37 actuarial evaluation of the requirements of the plan based on the

1 plan's experience in the first year of operation and any additional  
2 relevant information, including without limitation, the assets and  
3 liabilities of the plan. Pursuant to the investigation, the office of  
4 the insurance commissioner shall establish the rate of contribution of  
5 casualty insurers for the tax year beginning January 1, 2007.  
6 Following the initial evaluation, the office of the insurance  
7 commissioner shall cause an actuarial evaluation to be made of the  
8 assets and liabilities of the plan no less frequently than biennially.  
9 Pursuant to the results of the evaluations, the office of the insurance  
10 commissioner shall prepare a statement as to the appropriate  
11 contribution rate applicable to casualty insurers to maintain the plan  
12 on an actuarially sound basis.

13 (b) If the office of the insurance commissioner finds that the plan  
14 cannot be maintained on an actuarially sound basis based on the  
15 assessments in section 15 of this act and any appropriation of funds  
16 provided by the legislature, the commissioner shall increase the  
17 assessments specified in this section on a proportional basis as  
18 needed. At no time shall the rate be greater than 0.25 percent of net  
19 direct premiums written.

20 NEW SECTION. **Sec. 17.** SUSPENSION OF NEW CLAIMS. (1) If current  
21 estimates of the present value of the total cost of claims, including  
22 the estimated amount to be paid to claimants, the claimants' attorneys,  
23 the attorneys' fees of the association incident to claims, and any  
24 other expenses that are reasonably anticipated to be incurred by the  
25 association in connection with the adjudication and payment of claims  
26 equals eighty percent of the funds on hand plus the funds that will  
27 become available to the association within the next twelve months from  
28 all sources described in sections 15 and 16 of this act, the  
29 association shall not accept any new claims without express authority  
30 from the legislature. Nothing in this section precludes the  
31 association from accepting any claim if the injury occurred eighteen  
32 months or more before the effective date of this suspension. Within  
33 thirty days of the effective date of this suspension, the association  
34 shall notify the governor, the speaker of the house of representatives,  
35 the president of the senate, the office of the insurance commissioner,  
36 and the department of health of this suspension.

1 (2) If any person is precluded from asserting a claim against the  
2 association because of subsection (1) of this section, the plan shall  
3 not constitute the exclusive remedy for such person, his or her  
4 personal representative, parents, dependents, or next of kin.

5 NEW SECTION. **Sec. 18.** WASHINGTON BIRTH-RELATED INJURY  
6 COMPENSATION ASSOCIATION--BOARD OF DIRECTORS. (1)(a) The Washington  
7 birth-related injury compensation plan is governed by a board of seven  
8 directors, known as the Washington birth-related injury compensation  
9 association. The association is not a state agency, board, or  
10 commission.

11 (b) The directors shall be appointed for staggered terms of three  
12 years or until their successors are appointed and have qualified.

13 (c) The directors shall be appointed by the governor as follows:

- 14 (i) Two citizen representatives;
- 15 (ii) One representative of physicians;
- 16 (iii) One representative of advanced registered nurse  
17 practitioners;
- 18 (iv) One representative of hospitals;
- 19 (v) One representative of childbirth centers; and
- 20 (vi) One representative of casualty insurers.

21 (2) The directors shall not transact any business or exercise any  
22 power of the plan except upon the affirmative vote of four directors.  
23 The directors shall serve without salary, but each director shall be  
24 reimbursed for actual and necessary expenses incurred in the  
25 performance of his or her official duties as a director of the plan.

26 (3) The board of directors shall:

- 27 (a) Administer the plan;
- 28 (b) Administer the funds collected on behalf of the plan;
- 29 (c) Administer the payment of claims on behalf of the plan;
- 30 (d) Direct the investment and reinvestment of any surplus funds  
31 over losses and expenses, provided that any investment income generated  
32 thereby remains credited to the plan;
- 33 (e) Reinsure the risks of the plan in whole or in part;
- 34 (f) Sue and be sued, and appear and defend, in all actions and  
35 proceedings in its name to the same extent as a natural person;
- 36 (g) Have and exercise all powers necessary or convenient to effect  
37 any or all of the purposes for which the plan is created;

1 (h) Enter into such contracts as are necessary or proper to  
2 administer the plan;

3 (i) Employ or retain such persons as are necessary to perform the  
4 administrative and financial transactions and responsibilities of the  
5 plan and to perform other necessary and proper functions not prohibited  
6 by law;

7 (j) Take such legal action as may be necessary to avoid payment of  
8 improper claims; and

9 (k) Indemnify any employee, agent, member of the board of directors  
10 or alternate thereof, or person acting on behalf of the plan in an  
11 official capacity, for expenses, including attorneys' fees, judgments,  
12 fines, and amounts paid in settlement actually and reasonably incurred  
13 in connection with any action, suit, or proceeding, including any  
14 appeal thereof, arising out of such person's actions undertaken in good  
15 faith on behalf of the plan.

16 (4) All books, records, and audits of the plan are open for  
17 reasonable inspection to the general public, except that a claim file  
18 in the possession of the association or its representative is  
19 confidential and exempt from chapter 42.17 RCW until termination of  
20 litigation or settlement of the claim. Medical records and other  
21 portions of the claim file may remain confidential and exempt as  
22 otherwise provided by law. Any book, record, document, audit, or asset  
23 acquired by, prepared for, or paid for by the association is subject to  
24 the authority of the board of directors, which is responsible therefor.

25 (5) Annually, the association shall furnish audited financial  
26 reports to any claimant who has been awarded compensation under section  
27 10 of this act upon request, and to the office of the insurance  
28 commissioner. The reports must be prepared in accordance with accepted  
29 accounting procedures and must include such information as may be  
30 required by the office of the insurance commissioner. At any time  
31 determined to be necessary, the office of the insurance commissioner  
32 may conduct an audit of the plan.

33 (6) The state of Washington and the directors of the association  
34 are not subject to any liability with respect to their good faith  
35 administration of the plan, except the association may be sued to  
36 enforce payment of compensation awarded under section 10 of this act.

1        NEW SECTION.    **Sec. 19.**    PATIENT SAFETY.    In collaboration with the  
2 department of health, the association shall monitor and analyze claims  
3 submitted under this chapter.    The analysis shall attempt to detect  
4 patterns of practice or care that can be modified to reduce the  
5 incidence of birth-related injuries.    Where appropriate, the department  
6 of health may issue recommendations related to the findings of their  
7 analysis of birth-related injury claims.    Any such recommendations  
8 shall be posted on the web site of the department of health.

9        NEW SECTION.    **Sec. 20.**    A new section is added to chapter 18.130  
10 RCW to read as follows:

11        Upon receipt of a copy of a petition filed under section 5 of this  
12 act, the applicable disciplinary authority shall review the information  
13 in the petition and determine whether the claim involved conduct by a  
14 physician licensed under chapter 18.71 RCW, an osteopathic physician  
15 licensed under chapter 18.57 RCW, or an advanced registered nurse  
16 practitioner licensed under chapter 18.79 RCW, that is subject to  
17 disciplinary action under this chapter.

18        NEW SECTION.    **Sec. 21.**    A new section is added to chapter 70.41 RCW  
19 to read as follows:

20        Upon receipt of a copy of a petition filed under section 5 of this  
21 act, the department shall investigate the claim presented in the  
22 petition, and if it determines that the injury resulted from, or was  
23 aggravated by, a violation of licensing statutes or rules on the part  
24 of a hospital, it shall take appropriate action consistent with its  
25 enforcement authority.

26        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 18.46 RCW  
27 to read as follows:

28        Upon receipt of a copy of a petition filed under section 5 of this  
29 act, the department shall investigate the claim presented in the  
30 petition, and if it determines that the injury resulted from, or was  
31 aggravated by, a violation of licensing statutes or rules on the part  
32 of a childbirth center, it shall take appropriate action consistent  
33 with its enforcement authority.

1        NEW SECTION.   **Sec. 23.**   A new section is added to chapter 51.52 RCW  
2   to read as follows:

3        The board may adopt rules to implement sections 1 through 19 of  
4   this act to promote the efficient administration of, and to minimize  
5   costs associated with, the resolution of claims filed under this  
6   chapter.

7        NEW SECTION.   **Sec. 24.**   A new section is added to chapter 7.70 RCW  
8   to read as follows:

9        Sections 1 through 19 of this act constitute the exclusive remedy  
10   for claims for damages for birth-related injury, as defined in section  
11   2 of this act, that occur on or after January 1, 2007.

12        NEW SECTION.   **Sec. 25.**   Captions used in this act are not any part  
13   of the law.

14        NEW SECTION.   **Sec. 26.**   Sections 1 through 19 of this act  
15   constitute a new chapter in Title 7 RCW.

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