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HOUSE BILL 2295

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State of Washington

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By Representatives Priest, Serben, Rodne, Holmquist, DeBolt, Newhouse, McDonald, Skinner, Shabro, Clements, McCune, Walsh, Ahern, Jarrett, Cox, Schindler, Nixon, Haler, Hankins, Roach, Tom, Kretz, Condotta, Kristiansen, Armstrong, Bailey, Strow, Buri, Hinkle and Sump

Read first time 03/17/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to comprehensive health care liability reform;  
2 amending RCW 43.70.110, 43.70.250, 5.64.010, 4.24.260, 43.70.510,  
3 18.130.090, 18.130.160, 18.130.172, 48.18.290, 48.18.2901, 4.16.350,  
4 7.70.070, 7.70.080, 7.70.100, 4.22.070, and 4.22.015; reenacting and  
5 amending RCW 69.41.010; adding new sections to chapter 43.70 RCW;  
6 adding new sections to chapter 7.70 RCW; adding new sections to chapter  
7 18.130 RCW; adding a new section to chapter 48.19 RCW; adding a new  
8 section to chapter 48.18 RCW; adding a new section to chapter 42.17  
9 RCW; adding a new chapter to Title 70 RCW; adding a new chapter to  
10 Title 48 RCW; creating new sections; prescribing penalties; and  
11 providing for submission of this act to a vote of the people.

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

13 **PART I - PATIENT SAFETY**

14 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

15 (a) Thousands of patients are injured each year in the United  
16 States as a result of medical errors, and that a comprehensive approach  
17 is needed to effectively reduce the incidence of medical errors in our  
18 health care system. Implementation of proven patient safety strategies

1 can reduce medical errors, and thereby potentially reduce the need for  
2 disciplinary actions against licensed health care professionals and  
3 facilities, and the frequency and severity of medical malpractice  
4 claims; and

5 (b) Health care providers, health care facilities, and health  
6 carriers can and should be supported in their efforts to improve  
7 patient safety and reduce medical errors by encouraging health care  
8 facilities and providers to communicate openly with patients regarding  
9 medical errors that have occurred and steps that can be taken to  
10 prevent errors from occurring in the future, encouraging health care  
11 facilities and providers to work cooperatively in their patient safety  
12 efforts, and increasing funding available to implement proven patient  
13 safety strategies.

14 (2)(a) The legislature also finds that the advances in medical  
15 technology, diagnosis, and treatment have resulted in great strides in  
16 maintaining and improving the health of Washingtonians. Yet those  
17 advances substantially increase the complexity of our health care  
18 delivery system and increase the risk that medical errors will occur.  
19 The legislature further finds that our health care and medical  
20 liability systems are not structured to promote disclosure and analysis  
21 of medical errors, whether they result in patient harm or not. Each  
22 medical error provides an opportunity to learn how to avoid future  
23 errors.

24 (b) The legislature intends to promote full disclosure of medical  
25 errors and adverse health events, and to use the experience and  
26 knowledge gained from analysis of those events to advance patient  
27 safety in a nonpunitive manner. The legislature further intends to  
28 promote full disclosure of medical errors to patients by substantially  
29 reducing the risk of liability exposure associated with such  
30 disclosure.

31 (3) Through the adoption of this act, the legislature intends to  
32 positively influence the safety and quality of care provided in  
33 Washington state's health care system.

34 **Funding Patient Safety Efforts**

1           **Sec. 102.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended  
2 to read as follows:

3           (1) The secretary shall charge fees to the licensee for obtaining  
4 a license. After June 30, 1995, municipal corporations providing  
5 emergency medical care and transportation services pursuant to chapter  
6 18.73 RCW shall be exempt from such fees, provided that such other  
7 emergency services shall only be charged for their pro rata share of  
8 the cost of licensure and inspection, if appropriate. The secretary  
9 may waive the fees when, in the discretion of the secretary, the fees  
10 would not be in the best interest of public health and safety, or when  
11 the fees would be to the financial disadvantage of the state.

12           (2) Except as provided in section 104 of this act, fees charged  
13 shall be based on, but shall not exceed, the cost to the department for  
14 the licensure of the activity or class of activities and may include  
15 costs of necessary inspection.

16           (3) Department of health advisory committees may review fees  
17 established by the secretary for licenses and comment upon the  
18 appropriateness of the level of such fees.

19           **Sec. 103.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to  
20 read as follows:

21           It shall be the policy of the state of Washington that the cost of  
22 each professional, occupational, or business licensing program be fully  
23 borne by the members of that profession, occupation, or business. The  
24 secretary shall from time to time establish the amount of all  
25 application fees, license fees, registration fees, examination fees,  
26 permit fees, renewal fees, and any other fee associated with licensing  
27 or regulation of professions, occupations, or businesses administered  
28 by the department. In fixing said fees, the secretary shall set the  
29 fees for each program at a sufficient level to defray the costs of  
30 administering that program and the patient safety fee established in  
31 section 104 of this act. All such fees shall be fixed by rule adopted  
32 by the secretary in accordance with the provisions of the  
33 administrative procedure act, chapter 34.05 RCW.

34           NEW SECTION. **Sec. 104.** A new section is added to chapter 43.70  
35 RCW to read as follows:

36           (1) The secretary shall increase the licensing fee established

1 under RCW 43.70.110 by two dollars for the health care professionals  
2 designated in subsection (2) of this section and by two dollars per  
3 licensed bed for the health care facilities designated in subsection  
4 (2) of this section. Proceeds of the patient safety fee must be  
5 deposited into the patient safety account in section 108 of this act  
6 and dedicated to patient safety and medical error reduction efforts  
7 that have been proven to improve, or have a substantial likelihood of  
8 improving the quality of care provided by health care professionals and  
9 facilities.

10 (2) The health care professionals and facilities subject to the  
11 patient safety fee are:

12 (a) The following health care professionals licensed under Title 18  
13 RCW:

14 (i) Registered nurses and licensed practical nurses licensed under  
15 chapter 18.79 RCW;

16 (ii) Chiropractors licensed under chapter 18.25 RCW;

17 (iii) Dentists licensed under chapter 18.32 RCW;

18 (iv) Midwives licensed under chapter 18.50 RCW;

19 (v) Naturopaths licensed under chapter 18.36A RCW;

20 (vi) Optometrists licensed under chapter 18.53 RCW;

21 (vii) Osteopathic physicians licensed under chapter 18.57 RCW;

22 (viii) Osteopathic physicians' assistants licensed under chapter  
23 18.57A RCW;

24 (ix) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

25 (x) Physicians licensed under chapter 18.71 RCW;

26 (xi) Physician assistants licensed under chapter 18.71A RCW;

27 (xii) Podiatrists licensed under chapter 18.22 RCW; and

28 (xiii) Psychologists licensed under chapter 18.83 RCW; and

29 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric  
30 hospitals licensed under chapter 71.12 RCW.

31 NEW SECTION. **Sec. 105.** A new section is added to chapter 7.70 RCW  
32 to read as follows:

33 (1) One percent of all attorneys' fees received for representation  
34 of claimants or defendants in actions brought under this chapter that  
35 result in payment to a claimant shall be paid as a patient safety set  
36 aside. Proceeds of the patient safety set aside will be distributed by  
37 the department of health in the form of grants, loans, or other

1 appropriate arrangements to support strategies that have been proven to  
2 reduce medical errors and enhance patient safety, or have a substantial  
3 likelihood of reducing medical errors and enhancing patient safety, as  
4 provided in section 104 of this act.

5 (2) A patient safety set aside shall be transmitted to the  
6 secretary of the department of health by the attorney who receives fees  
7 under subsection (1) of this section for deposit into the patient  
8 safety account established in section 108 of this act.

9 (3) The Washington state supreme court shall by rule adopt  
10 procedures to implement this section.

11 NEW SECTION. **Sec. 106.** A new section is added to chapter 43.70  
12 RCW to read as follows:

13 (1)(a) Patient safety fee and set aside proceeds shall be  
14 administered by the department, after seeking input from health care  
15 providers engaged in direct patient care activities, health care  
16 facilities, health care provider organizations, and other interested  
17 parties. In developing criteria for the award of grants, loans, or  
18 other appropriate arrangements under this section, the department shall  
19 rely primarily upon evidence-based practices to improve patient safety  
20 that have been identified and recommended by governmental and private  
21 organizations, including, but not limited to:

- 22 (i) The federal agency for health care quality and research;
- 23 (ii) The institute of medicine of the national academy of sciences;
- 24 (iii) The joint commission on accreditation of health care  
25 organizations; and
- 26 (iv) The national quality forum.

27 (b) The department shall award grants, loans, or other appropriate  
28 arrangements for at least two strategies that are designed to meet the  
29 goals and recommendations of the federal institute of medicine's  
30 report, "Keeping Patients Safe: Transforming the Work Environment of  
31 Nurses."

32 (2) Projects that have been proven to reduce medical errors and  
33 enhance patient safety shall receive priority for funding over those  
34 that are not proven, but have a substantial likelihood of reducing  
35 medical errors and enhancing patient safety. All project proposals  
36 must include specific performance and outcome measures by which to  
37 evaluate the effectiveness of the project. Project proposals that do

1 not propose to use a proven patient safety strategy must include, in  
2 addition to performance and outcome measures, a detailed description of  
3 the anticipated outcomes of the project based upon any available  
4 related research and the steps for achieving those outcomes.

5 (3) The department may use a portion of the patient safety fee  
6 proceeds for the costs of administering the program.

7 NEW SECTION. **Sec. 107.** A new section is added to chapter 43.70  
8 RCW to read as follows:

9 The secretary may solicit and accept grants or other funds from  
10 public and private sources to support patient safety and medical error  
11 reduction efforts under this act. Any grants or funds received may be  
12 used to enhance these activities as long as program standards  
13 established by the secretary are followed.

14 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.70  
15 RCW to read as follows:

16 The patient safety account is created in the state treasury. All  
17 receipts from the fees and set asides created in sections 104 and 105  
18 of this act must be deposited into the account. Expenditures from the  
19 account may be used only for the purposes of this act. Moneys in the  
20 account may be spent only after appropriation.

21 NEW SECTION. **Sec. 109.** A new section is added to chapter 43.70  
22 RCW to read as follows:

23 By December 1, 2008, the department shall report the following  
24 information to the governor and the health policy and fiscal committees  
25 of the legislature:

26 (1) The amount of patient safety fees and set asides deposited to  
27 date in the patient safety account;

28 (2) The criteria for distribution of grants, loans, or other  
29 appropriate arrangements under this act; and

30 (3) A description of the medical error reduction and patient safety  
31 grants and loans distributed to date, including the stated performance  
32 measures, activities, timelines, and detailed information regarding  
33 outcomes for each project.

**Encouraging Patient Safety Through  
Communications With Patients**

**Sec. 110.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each amended to read as follows:

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

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

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

~~(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;)), or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible ((to prove liability for the injury)).~~

(2) In a civil action against a health care provider for personal injuries which is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action:

(a) Any and all statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(b) Any and all statements or affirmations regarding remedial

1 actions that may be taken to address the act or omission that is the  
2 basis for the allegation of negligence;  
3 which were in the past or are made by a health care provider to the  
4 injured person, a relative of the injured person, or a representative  
5 of the injured person and which relate to the discomfort, pain,  
6 suffering, injury, or death of the injured person as the result of the  
7 alleged professional negligence are not admissible as evidence.

8 (3) For the purposes of this section:

9 (a) "Health care provider" has the same meaning provided in RCW  
10 7.70.020.

11 (b) "Relative" means:

12 (i) An injured person's spouse, parent, grandparent, stepfather,  
13 stepmother, child, grandchild, brother, sister, half brother, half  
14 sister, or spouse's parents;

15 (ii) Relationships in (b)(i) of this subsection that are  
16 established with an injured person as a result of adoption; and

17 (iii) Any person who has a family-type relationship with an injured  
18 person.

19 (c) "Representative" means a legal guardian, attorney, person  
20 designated to make decisions on behalf of a patient under a medical  
21 power of attorney, or any person recognized in law or custom as a  
22 patient's agent.

23 **Encouraging Reports of Unprofessional Conduct**  
24 **or Lack of Capacity to Practice Safely**

25 **Sec. 111.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended  
26 to read as follows:

27 ~~((Physicians licensed under chapter 18.71 RCW, dentists licensed~~  
28 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~  
29 ~~RCW)) Any member of a health profession listed under RCW 18.130.040  
30 who, in good faith, makes a report, files charges, or presents evidence  
31 against another member of ((their)) a health profession based on the  
32 claimed ((incompetency or gross misconduct)) unprofessional conduct as  
33 provided in RCW 18.130.180 or inability to practice with reasonable  
34 skill and safety to consumers by reason of any physical or mental  
35 condition as provided in RCW 18.130.170 of such person before the~~



1 (~~medical quality assurance commission established under chapter 18.71~~  
2 ~~RCW, in a proceeding under chapter 18.32 RCW, or to the board of~~  
3 ~~pharmacy under RCW 18.64.160)) agency, board, or commission responsible  
4 for disciplinary activities for the person's profession under chapter  
5 18.130 RCW, shall be immune from civil action for damages arising out  
6 of such activities. A person prevailing upon the good faith defense  
7 provided for in this section is entitled to recover expenses and  
8 reasonable attorneys' fees incurred in establishing the defense.~~

9 **Coordinated Quality Improvement Programs**

10 **Sec. 112.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to  
11 read as follows:

12 (1)(a) Health care institutions and medical facilities, other than  
13 hospitals, that are licensed by the department, professional societies  
14 or organizations, health care service contractors, health maintenance  
15 organizations, health carriers approved pursuant to chapter 48.43 RCW,  
16 and any other person or entity providing health care coverage under  
17 chapter 48.42 RCW that is subject to the jurisdiction and regulation of  
18 any state agency or any subdivision thereof may maintain a coordinated  
19 quality improvement program for the improvement of the quality of  
20 health care services rendered to patients and the identification and  
21 prevention of medical malpractice as set forth in RCW 70.41.200.

22 (b) All such programs shall comply with the requirements of RCW  
23 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to  
24 reflect the structural organization of the institution, facility,  
25 professional societies or organizations, health care service  
26 contractors, health maintenance organizations, health carriers, or any  
27 other person or entity providing health care coverage under chapter  
28 48.42 RCW that is subject to the jurisdiction and regulation of any  
29 state agency or any subdivision thereof, unless an alternative quality  
30 improvement program substantially equivalent to RCW 70.41.200(1)(a) is  
31 developed. All such programs, whether complying with the requirement  
32 set forth in RCW 70.41.200(1)(a) or in the form of an alternative  
33 program, must be approved by the department before the discovery  
34 limitations provided in subsections (3) and (4) of this section and the  
35 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section

1 shall apply. In reviewing plans submitted by licensed entities that  
2 are associated with physicians' offices, the department shall ensure  
3 that the exemption under RCW 42.17.310(1)(hh) and the discovery  
4 limitations of this section are applied only to information and  
5 documents related specifically to quality improvement activities  
6 undertaken by the licensed entity.

7 (2) Health care provider groups of five or more providers may  
8 maintain a coordinated quality improvement program for the improvement  
9 of the quality of health care services rendered to patients and the  
10 identification and prevention of medical malpractice as set forth in  
11 RCW 70.41.200. For purposes of this section, a health care provider  
12 group may be a consortium of providers consisting of five or more  
13 providers in total. All such programs shall comply with the  
14 requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h)  
15 as modified to reflect the structural organization of the health care  
16 provider group. All such programs must be approved by the department  
17 before the discovery limitations provided in subsections (3) and (4) of  
18 this section and the exemption under RCW 42.17.310(1)(hh) and  
19 subsection (5) of this section shall apply.

20 (3) Any person who, in substantial good faith, provides information  
21 to further the purposes of the quality improvement and medical  
22 malpractice prevention program or who, in substantial good faith,  
23 participates on the quality improvement committee shall not be subject  
24 to an action for civil damages or other relief as a result of such  
25 activity. Any person or entity participating in a coordinated quality  
26 improvement program that, in substantial good faith, shares information  
27 or documents with one or more other programs, committees, or boards  
28 under subsection (6) of this section is not subject to an action for  
29 civil damages or other relief as a result of the activity or its  
30 consequences. For the purposes of this section, sharing information is  
31 presumed to be in substantial good faith. However, the presumption may  
32 be rebutted upon a showing of clear, cogent, and convincing evidence  
33 that the information shared was knowingly false or deliberately  
34 misleading.

35 (4) Information and documents, including complaints and incident  
36 reports, created specifically for, and collected, and maintained by a  
37 quality improvement committee are not subject to discovery or  
38 introduction into evidence in any civil action, and no person who was

1 in attendance at a meeting of such committee or who participated in the  
2 creation, collection, or maintenance of information or documents  
3 specifically for the committee shall be permitted or required to  
4 testify in any civil action as to the content of such proceedings or  
5 the documents and information prepared specifically for the committee.  
6 This subsection does not preclude: (a) In any civil action, the  
7 discovery of the identity of persons involved in the medical care that  
8 is the basis of the civil action whose involvement was independent of  
9 any quality improvement activity; (b) in any civil action, the  
10 testimony of any person concerning the facts that form the basis for  
11 the institution of such proceedings of which the person had personal  
12 knowledge acquired independently of such proceedings; (c) in any civil  
13 action by a health care provider regarding the restriction or  
14 revocation of that individual's clinical or staff privileges,  
15 introduction into evidence information collected and maintained by  
16 quality improvement committees regarding such health care provider; (d)  
17 in any civil action challenging the termination of a contract by a  
18 state agency with any entity maintaining a coordinated quality  
19 improvement program under this section if the termination was on the  
20 basis of quality of care concerns, introduction into evidence of  
21 information created, collected, or maintained by the quality  
22 improvement committees of the subject entity, which may be under terms  
23 of a protective order as specified by the court; (e) in any civil  
24 action, disclosure of the fact that staff privileges were terminated or  
25 restricted, including the specific restrictions imposed, if any and the  
26 reasons for the restrictions; or (f) in any civil action, discovery and  
27 introduction into evidence of the patient's medical records required by  
28 rule of the department of health to be made regarding the care and  
29 treatment received.

30 (5) Information and documents created specifically for, and  
31 collected and maintained by a quality improvement committee are exempt  
32 from disclosure under chapter 42.17 RCW.

33 (6) A coordinated quality improvement program may share information  
34 and documents, including complaints and incident reports, created  
35 specifically for, and collected and maintained by a quality improvement  
36 committee or a peer review committee under RCW 4.24.250 with one or  
37 more other coordinated quality improvement programs maintained in  
38 accordance with this section or with RCW 70.41.200 or a peer review

1 committee under RCW 4.24.250, for the improvement of the quality of  
2 health care services rendered to patients and the identification and  
3 prevention of medical malpractice. The privacy protections of chapter  
4 70.02 RCW and the federal health insurance portability and  
5 accountability act of 1996 and its implementing regulations apply to  
6 the sharing of individually identifiable patient information held by a  
7 coordinated quality improvement program. Any rules necessary to  
8 implement this section shall meet the requirements of applicable  
9 federal and state privacy laws. Information and documents disclosed by  
10 one coordinated quality improvement program to another coordinated  
11 quality improvement program or a peer review committee under RCW  
12 4.24.250 and any information and documents created or maintained as a  
13 result of the sharing of information and documents shall not be subject  
14 to the discovery process and confidentiality shall be respected as  
15 required by subsection (4) of this section and RCW 4.24.250.

16 (7) The department of health shall adopt rules as are necessary to  
17 implement this section.

18 **Prescription Legibility**

19 NEW SECTION. **Sec. 113.** The legislature finds that prescription  
20 drug errors occur because the pharmacist or nurse cannot read the  
21 prescription from the physician or other provider with prescriptive  
22 authority. The legislature further finds that legible prescriptions  
23 can prevent these errors.

24 **Sec. 114.** RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are  
25 each reenacted and amended to read as follows:

26 As used in this chapter, the following terms have the meanings  
27 indicated unless the context clearly requires otherwise:

28 (1) "Administer" means the direct application of a legend drug  
29 whether by injection, inhalation, ingestion, or any other means, to the  
30 body of a patient or research subject by:

31 (a) A practitioner; or

32 (b) The patient or research subject at the direction of the  
33 practitioner.

1 (2) "Community-based care settings" include: Community residential  
2 programs for the developmentally disabled, certified by the department  
3 of social and health services under chapter 71A.12 RCW; adult family  
4 homes licensed under chapter 70.128 RCW; and boarding homes licensed  
5 under chapter 18.20 RCW. Community-based care settings do not include  
6 acute care or skilled nursing facilities.

7 (3) "Deliver" or "delivery" means the actual, constructive, or  
8 attempted transfer from one person to another of a legend drug, whether  
9 or not there is an agency relationship.

10 (4) "Department" means the department of health.

11 (5) "Dispense" means the interpretation of a prescription or order  
12 for a legend drug and, pursuant to that prescription or order, the  
13 proper selection, measuring, compounding, labeling, or packaging  
14 necessary to prepare that prescription or order for delivery.

15 (6) "Dispenser" means a practitioner who dispenses.

16 (7) "Distribute" means to deliver other than by administering or  
17 dispensing a legend drug.

18 (8) "Distributor" means a person who distributes.

19 (9) "Drug" means:

20 (a) Substances recognized as drugs in the official United States  
21 pharmacopoeia, official homeopathic pharmacopoeia of the United States,  
22 or official national formulary, or any supplement to any of them;

23 (b) Substances intended for use in the diagnosis, cure, mitigation,  
24 treatment, or prevention of disease in man or animals;

25 (c) Substances (other than food, minerals or vitamins) intended to  
26 affect the structure or any function of the body of man or animals; and

27 (d) Substances intended for use as a component of any article  
28 specified in (a), (b), or (c) of this subsection. It does not include  
29 devices or their components, parts, or accessories.

30 (10) "Electronic communication of prescription information" means  
31 the communication of prescription information by computer, or the  
32 transmission of an exact visual image of a prescription by facsimile,  
33 or other electronic means for original prescription information or  
34 prescription refill information for a legend drug between an authorized  
35 practitioner and a pharmacy or the transfer of prescription information  
36 for a legend drug from one pharmacy to another pharmacy.

37 (11) "In-home care settings" include an individual's place of

1 temporary and permanent residence, but does not include acute care or  
2 skilled nursing facilities, and does not include community-based care  
3 settings.

4 (12) "Legend drugs" means any drugs which are required by state law  
5 or regulation of the state board of pharmacy to be dispensed on  
6 prescription only or are restricted to use by practitioners only.

7 (13) "Legible prescription" means a prescription or medication  
8 order issued by a practitioner that is capable of being read and  
9 understood by the pharmacist filling the prescription or the nurse or  
10 other practitioner implementing the medication order. A prescription  
11 must be hand printed, typewritten, or electronically generated.

12 (14) "Medication assistance" means assistance rendered by a  
13 nonpractitioner to an individual residing in a community-based care  
14 setting or in-home care setting to facilitate the individual's self-  
15 administration of a legend drug or controlled substance. It includes  
16 reminding or coaching the individual, handing the medication container  
17 to the individual, opening the individual's medication container, using  
18 an enabler, or placing the medication in the individual's hand, and  
19 such other means of medication assistance as defined by rule adopted by  
20 the department. A nonpractitioner may help in the preparation of  
21 legend drugs or controlled substances for self-administration where a  
22 practitioner has determined and communicated orally or by written  
23 direction that such medication preparation assistance is necessary and  
24 appropriate. Medication assistance shall not include assistance with  
25 intravenous medications or injectable medications, except prefilled  
26 insulin syringes.

27 (15) "Person" means individual, corporation, government or  
28 governmental subdivision or agency, business trust, estate, trust,  
29 partnership or association, or any other legal entity.

30 (16) "Practitioner" means:

31 (a) A physician under chapter 18.71 RCW, an osteopathic physician  
32 or an osteopathic physician and surgeon under chapter 18.57 RCW, a  
33 dentist under chapter 18.32 RCW, a podiatric physician and surgeon  
34 under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a  
35 registered nurse, advanced registered nurse practitioner, or licensed  
36 practical nurse under chapter 18.79 RCW, an optometrist under chapter  
37 18.53 RCW who is certified by the optometry board under RCW 18.53.010,  
38 an osteopathic physician assistant under chapter 18.57A RCW, a

1 physician assistant under chapter 18.71A RCW, a naturopath licensed  
2 under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or,  
3 when acting under the required supervision of a dentist licensed under  
4 chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

5 (b) A pharmacy, hospital, or other institution licensed,  
6 registered, or otherwise permitted to distribute, dispense, conduct  
7 research with respect to, or to administer a legend drug in the course  
8 of professional practice or research in this state; and

9 (c) A physician licensed to practice medicine and surgery or a  
10 physician licensed to practice osteopathic medicine and surgery in any  
11 state, or province of Canada, which shares a common border with the  
12 state of Washington.

13 (17) "Secretary" means the secretary of health or the secretary's  
14 designee.

15 **Increasing Patient Safety Through**  
16 **Disclosure and Analysis of Adverse Events**

17 NEW SECTION. **Sec. 115.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Adverse event" means any of the following events or  
20 occurrences:

21 (a) An unanticipated death or major permanent loss of function, not  
22 related to the natural course of a patient's illness or underlying  
23 condition;

24 (b) A patient suicide while the patient was under care in the  
25 hospital;

26 (c) An infant abduction or discharge to the wrong family;

27 (d) Sexual assault or rape of a patient or staff member while in  
28 the hospital;

29 (e) A hemolytic transfusion reaction involving administration of  
30 blood or blood products having major blood group incompatibilities;

31 (f) Surgery performed on the wrong patient or wrong body part;

32 (g) A failure or major malfunction of a facility system such as the  
33 heating, ventilation, fire alarm, fire sprinkler, electrical,  
34 electronic information management, or water supply which affects any  
35 patient diagnosis, treatment, or care service within the facility; or

1 (h) A fire which affects any patient diagnosis, treatment, or care  
2 area of the facility.

3 The term does not include an incident.

4 (2) "Ambulatory surgical facility" means any distinct entity that  
5 operates exclusively for the purpose of providing surgical services to  
6 patients not requiring hospitalization, whether or not the facility is  
7 certified under Title XVIII of the federal social security act.

8 (3) "Childbirth center" means a facility licensed under chapter  
9 18.46 RCW.

10 (4) "Correctional medical facility" means a part or unit of a  
11 correctional facility operated by the department of corrections under  
12 chapter 72.10 RCW that provides medical services for lengths of stay in  
13 excess of twenty-four hours to offenders.

14 (5) "Department" means the department of health.

15 (6) "Health care worker" means an employee, independent contractor,  
16 licensee, or other individual who is directly involved in the delivery  
17 of health services in a medical facility.

18 (7) "Hospital" means a facility licensed under chapter 70.41 RCW.

19 (8) "Incident" means an event, occurrence, or situation involving  
20 the clinical care of a patient in a medical facility which:

21 (a) Results in unanticipated injury to a patient that is less  
22 severe than death or major permanent loss of function and is not  
23 related to the natural course of the patient's illness or underlying  
24 condition; or

25 (b) Could have injured the patient but did not either cause an  
26 unanticipated injury or require the delivery of additional health care  
27 services to the patient.

28 The term does not include an adverse event.

29 (9) "Medical facility" means an ambulatory surgical facility,  
30 childbirth center, hospital, psychiatric hospital, or correctional  
31 medical facility.

32 (10) "Psychiatric hospital" means a hospital facility licensed as  
33 a psychiatric hospital under chapter 71.12 RCW.

34 NEW SECTION. **Sec. 116.** (1) Each medical facility shall report to  
35 the department the occurrence of any adverse event. The report must be  
36 submitted to the department within forty-five days after occurrence of  
37 the event has been confirmed.



1 (2) The report shall be filed in a format specified by the  
2 department after consultation with medical facilities. It shall  
3 identify the facility but shall not include any identifying information  
4 for any of the health care professionals, facility employees, or  
5 patients involved. This provision does not modify the duty of a  
6 hospital to make a report to the department of health or a disciplinary  
7 authority if a licensed practitioner has committed unprofessional  
8 conduct as defined in RCW 18.130.180.

9 (3) Any medical facility or health care worker may report an  
10 incident to the department. The report shall be filed in a format  
11 specified by the department after consultation with medical facilities  
12 and shall identify the facility but shall not include any identifying  
13 information for any of the health care professionals, facility  
14 employees, or patients involved. This provision does not modify the  
15 duty of a hospital to make a report to the department of health or a  
16 disciplinary authority if a licensed practitioner has committed  
17 unprofessional conduct as defined in RCW 18.130.180.

18 (4) If, in the course of investigating a complaint received from an  
19 employee of a licensed medical facility, the department determines that  
20 the facility has not undertaken efforts to investigate the occurrence  
21 of an adverse event, the department shall direct the facility to  
22 undertake an investigation of the event. If a complaint related to a  
23 potential adverse event involves care provided in an ambulatory  
24 surgical facility, the department shall notify the facility and request  
25 that they undertake an investigation of the event. The protections of  
26 RCW 43.70.075 apply to complaints related to adverse events or  
27 incidents that are submitted in good faith by employees of medical  
28 facilities.

29 NEW SECTION. **Sec. 117.** The department shall:

30 (1) Receive reports of adverse events and incidents under section  
31 116 of this act;

32 (2) Investigate adverse events;

33 (3) Establish a system for medical facilities and the health care  
34 workers of a medical facility to report adverse events and incidents,  
35 which shall be accessible twenty-four hours a day, seven days a week;

36 (4) Adopt rules as necessary to implement this act;

37 (5) Directly or by contract:

1 (a) Collect, analyze, and evaluate data regarding reports of  
2 adverse events and incidents, including the identification of  
3 performance indicators and patterns in frequency or severity at certain  
4 medical facilities or in certain regions of the state;

5 (b) Develop recommendations for changes in health care practices  
6 and procedures, which may be instituted for the purpose of reducing the  
7 number and severity of adverse events and incidents;

8 (c) Directly advise reporting medical facilities of immediate  
9 changes that can be instituted to reduce adverse events and incidents;

10 (d) Issue recommendations to medical facilities on a facility-  
11 specific or on a statewide basis regarding changes, trends, and  
12 improvements in health care practices and procedures for the purpose of  
13 reducing the number and severity of adverse events and incidents.  
14 Prior to issuing recommendations, consideration shall be given to the  
15 following factors: Expectation of improved quality care,  
16 implementation feasibility, other relevant implementation practices,  
17 and the cost impact to patients, payers, and medical facilities.  
18 Statewide recommendations shall be issued to medical facilities on a  
19 continuing basis and shall be published and posted on the department's  
20 publicly accessible web site. The recommendations made to medical  
21 facilities under this section shall not be considered mandatory for  
22 licensure purposes unless they are adopted by the department as rules  
23 pursuant to chapter 34.05 RCW; and

24 (e) Monitor implementation of reporting systems addressing adverse  
25 events or their equivalent in other states and make recommendations to  
26 the governor and the legislature as necessary for modifications to this  
27 chapter to keep the system as nearly consistent as possible with  
28 similar systems in other states;

29 (6) Report no later than January 1, 2007, and annually thereafter  
30 to the governor and the legislature on the department's activities  
31 under this act in the preceding year. The report shall include:

32 (a) The number of adverse events and incidents reported by medical  
33 facilities on a geographical basis and their outcomes;

34 (b) The information derived from the data collected including any  
35 recognized trends concerning patient safety; and

36 (c) Recommendations for statutory or regulatory changes that may  
37 help improve patient safety in the state.

1 The annual report shall be made available for public inspection and  
2 shall be posted on the department's web site;

3 (7) Conduct all activities under this section in a manner that  
4 preserves the confidentiality of documents, materials, or information  
5 made confidential by section 119 of this act.

6 NEW SECTION. **Sec. 118.** (1) Medical facilities licensed by the  
7 department shall have in place policies to assure that, when  
8 appropriate, information about unanticipated outcomes is provided to  
9 patients or their families or any surrogate decision makers identified  
10 pursuant to RCW 7.70.065. Notifications of unanticipated outcomes  
11 under this section do not constitute an acknowledgment or admission of  
12 liability, nor can the fact of notification or the content disclosed be  
13 introduced as evidence in a civil action.

14 (2) Beginning January 1, 2006, the department shall, during the  
15 annual survey of a licensed medical facility, ensure that the policy  
16 required in subsection (1) of this section is in place.

17 NEW SECTION. **Sec. 119.** When a report of an adverse event or  
18 incident under section 116 of this act is made by or through a  
19 coordinated quality improvement program under RCW 43.70.510 or  
20 70.41.200, or by a peer review committee under RCW 4.24.250,  
21 information and documents, including complaints and incident reports,  
22 created specifically for and collected and maintained by a quality  
23 improvement committee for the purpose of preparing a report of an  
24 adverse event or incident shall be subject to the confidentiality  
25 protections of those laws and RCW 42.17.310(1)(hh).

26 **PART II - MEDICAL DISCIPLINE**

27 **Disciplinary Hearings for Physicians and Physician Assistants**

28 NEW SECTION. **Sec. 201.** The legislature finds that professional  
29 discipline is a critical function of ensuring quality health care for  
30 the people of the state of Washington, and that an alternative  
31 disciplinary process for some professions will strengthen that process.

1       **Sec. 202.** RCW 18.130.090 and 1993 c 367 s 1 are each amended to  
2 read as follows:

3       (1) If the disciplining authority determines, upon investigation,  
4 that there is reason to believe a violation of RCW 18.130.180 has  
5 occurred, a statement of charge or charges shall be prepared and served  
6 upon the license holder or applicant at the earliest practical time.  
7 The statement of charge or charges shall be accompanied by a notice  
8 that the license holder or applicant may request a hearing to contest  
9 the charge or charges.

10       (2) For license holders and applicants under chapter 18.71 or  
11 18.71A RCW, the disciplining authority shall file the statement of  
12 charges with the superior court in the county in which the license  
13 holder provided the care or committed the act that is the subject of  
14 the complaint. The license holder or applicant must file a request for  
15 hearing with the superior court in which the statement of charges has  
16 been filed within twenty days after being served the statement of  
17 charges. If the twenty-day limit results in a hardship upon the  
18 license holder or applicant, he or she may request for good cause an  
19 extension not to exceed sixty additional days. If the superior court  
20 finds that there is good cause, it shall grant the extension. The  
21 failure to request a hearing constitutes a default, whereupon the  
22 superior court may enter a decision on the basis of the facts available  
23 to it. If a hearing is requested, the hearing shall be held pursuant  
24 to section 204 of this act.

25       (3) For license holders and applicants not covered by subsection  
26 (2) of this section, the license holder or applicant must file a  
27 request for hearing with the disciplining authority within twenty days  
28 after being served the statement of charges. If the twenty-day limit  
29 results in a hardship upon the license holder or applicant, he or she  
30 may request for good cause an extension not to exceed sixty additional  
31 days. If the disciplining authority finds that there is good cause, it  
32 shall grant the extension. The failure to request a hearing  
33 constitutes a default, whereupon the disciplining authority may enter  
34 a decision on the basis of the facts available to it.

35       (~~(2)~~) If a hearing is requested, the time of the hearing shall be  
36 fixed by the disciplining authority as soon as convenient, but the  
37 hearing shall not be held earlier than thirty days after service of the  
38 charges upon the license holder or applicant.

1        NEW SECTION.    **Sec. 203.**    A new section is added to chapter 18.130  
2    RCW to read as follows:

3        (1)    A complainant dissatisfied with the decision of the  
4    disciplining authority regarding a license holder or applicant under  
5    chapter 18.71 or 18.71A RCW may appeal that decision to the prosecuting  
6    attorney in the county in which the license holder provided the care or  
7    committed the act that is the subject of the complaint.    If the  
8    prosecuting attorney determines, upon investigation, that there is  
9    reason to believe a violation of RCW 18.130.180 has occurred, a  
10   statement of charge or charges shall be prepared and served upon the  
11   license holder or applicant at the earliest practical time.    The  
12   statement of charge or charges shall be accompanied by a notice that  
13   the license holder or applicant may request a hearing to contest the  
14   charge or charges.    The decision of the prosecuting attorney as to  
15   filing charges is final and may not be appealed by the complainant or  
16   disciplining authority in any forum.

17        (2)    The prosecuting attorney shall file the statement of charges  
18   with the superior court.    The license holder or applicant must file a  
19   request for hearing with the superior court in which the statement of  
20   charges has been filed within twenty days after being served the  
21   statement of charges.    If the twenty-day limit results in a hardship  
22   upon the license holder or applicant, he or she may request for good  
23   cause an extension not to exceed sixty additional days.    If the  
24   superior court finds that there is good cause, it shall grant the  
25   extension.    The failure to request a hearing constitutes a default,  
26   whereupon the superior court may enter a decision on the basis of the  
27   facts available to it.    If a hearing is requested, the hearing shall be  
28   held pursuant to section 204 of this act.

29        (3)    If the prosecuting attorney files a statement of charges, he or  
30   she shall also serve as the disciplining authority as to the settlement  
31   function in RCW 18.130.098.    All settlements are subject to the  
32   approval of the superior court in which the statement of charges was  
33   filed pursuant to this section or RCW 18.130.090.

34        NEW SECTION.    **Sec. 204.**    A new section is added to chapter 18.130  
35   RCW to read as follows:

36        (1)    If a disciplinary authority under RCW 18.130.090 or a  
37   prosecuting attorney under section 203 of this act files a statement of

1 charges in superior court, the superior court shall serve as the  
2 disciplinary authority for purposes of RCW 18.130.160 and shall serve  
3 as the hearing authority for purposes of RCW 18.130.170(1).

4 (2) The superior court shall hold hearings requested under RCW  
5 18.130.090 or section 203 of this act in accordance with the civil and  
6 related rules of the superior courts.

7 (3) The superior court shall grant an expedited hearing upon a  
8 petition filed by:

9 (a) The disciplinary authority or county prosecutor on the grounds  
10 of jeopardy to the health and safety of patients caused by delay; or

11 (b) The license holder on the grounds of undue prejudice caused by  
12 delay.

13 (4) Appeals from the decision of the superior court are governed by  
14 the court rules governing appeals in civil matters from the superior  
15 courts.

16 NEW SECTION. **Sec. 205.** The supreme court may implement sections  
17 201 through 204 of this act through court rule.

18 **License Revocation for Three Acts of Unprofessional Conduct**

19 **Sec. 206.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to  
20 read as follows:

21 Upon a finding, after hearing, that a license holder or applicant  
22 has committed unprofessional conduct or is unable to practice with  
23 reasonable skill and safety due to a physical or mental condition, the  
24 disciplining authority may issue an order providing for one or any  
25 combination of the following:

- 26 (1) Revocation of the license;
- 27 (2) Suspension of the license for a fixed or indefinite term;
- 28 (3) Restriction or limitation of the practice;
- 29 (4) Requiring the satisfactory completion of a specific program of  
30 remedial education or treatment;
- 31 (5) The monitoring of the practice by a supervisor approved by the  
32 disciplining authority;
- 33 (6) Censure or reprimand;

1 (7) Compliance with conditions of probation for a designated period  
2 of time;

3 (8) Payment of a fine for each violation of this chapter, not to  
4 exceed five thousand dollars per violation. Funds received shall be  
5 placed in the health professions account;

6 (9) Denial of the license request;

7 (10) Corrective action;

8 (11) Refund of fees billed to and collected from the consumer;

9 (12) A surrender of the practitioner's license in lieu of other  
10 sanctions, which must be reported to the federal data bank.

11 Except as otherwise provided in section 208 of this act, any of the  
12 actions under this section may be totally or partly stayed by the  
13 disciplining authority. In determining what action is appropriate, the  
14 disciplining authority must first consider what sanctions are necessary  
15 to protect or compensate the public. Only after such provisions have  
16 been made may the disciplining authority consider and include in the  
17 order requirements designed to rehabilitate the license holder or  
18 applicant. All costs associated with compliance with orders issued  
19 under this section are the obligation of the license holder or  
20 applicant.

21 The licensee or applicant may enter into a stipulated disposition  
22 of charges that includes one or more of the sanctions of this section,  
23 but only after a statement of charges has been issued and the licensee  
24 has been afforded the opportunity for a hearing and has elected on the  
25 record to forego such a hearing. The stipulation shall either contain  
26 one or more specific findings of unprofessional conduct or inability to  
27 practice, or a statement by the licensee acknowledging that evidence is  
28 sufficient to justify one or more specified findings of unprofessional  
29 conduct or inability to practice. The stipulation entered into  
30 pursuant to this subsection shall be considered formal disciplinary  
31 action for all purposes.

32 **Sec. 207.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to  
33 read as follows:

34 (1) Except for those acts of unprofessional conduct specified in  
35 section 208 of this act, prior to serving a statement of charges under  
36 RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a  
37 statement of allegations to the licensee or applicant along with a

1 detailed summary of the evidence relied upon to establish the  
2 allegations and a proposed stipulation for informal resolution of the  
3 allegations. These documents shall be exempt from public disclosure  
4 until such time as the allegations are resolved either by stipulation  
5 or otherwise.

6 (2) The disciplinary authority and the applicant or licensee may  
7 stipulate that the allegations may be disposed of informally in  
8 accordance with this subsection. The stipulation shall contain a  
9 statement of the facts leading to the filing of the complaint; the act  
10 or acts of unprofessional conduct alleged to have been committed or the  
11 alleged basis for determining that the applicant or licensee is unable  
12 to practice with reasonable skill and safety; a statement that the  
13 stipulation is not to be construed as a finding of either  
14 unprofessional conduct or inability to practice; an acknowledgement  
15 that a finding of unprofessional conduct or inability to practice, if  
16 proven, constitutes grounds for discipline under this chapter; and an  
17 agreement on the part of the licensee or applicant that the sanctions  
18 set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and  
19 (8), may be imposed as part of the stipulation, except that no fine may  
20 be imposed but the licensee or applicant may agree to reimburse the  
21 disciplinary authority the costs of investigation and processing the  
22 complaint up to an amount not exceeding one thousand dollars per  
23 allegation; and an agreement on the part of the disciplinary authority  
24 to forego further disciplinary proceedings concerning the allegations.  
25 A stipulation entered into pursuant to this subsection shall not be  
26 considered formal disciplinary action.

27 (3) If the licensee or applicant declines to agree to disposition  
28 of the charges by means of a stipulation pursuant to subsection (2) of  
29 this section, the disciplinary authority may proceed to formal  
30 disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

31 (4) Upon execution of a stipulation under subsection (2) of this  
32 section by both the licensee or applicant and the disciplinary  
33 authority, the complaint is deemed disposed of and shall become subject  
34 to public disclosure on the same basis and to the same extent as other  
35 records of the disciplinary authority. Should the licensee or  
36 applicant fail to pay any agreed reimbursement within thirty days of  
37 the date specified in the stipulation for payment, the disciplinary



1 authority may seek collection of the amount agreed to be paid in the  
2 same manner as enforcement of a fine under RCW 18.130.165.

3 NEW SECTION. **Sec. 208.** A new section is added to chapter 18.130  
4 RCW to read as follows:

5 (1) The disciplining authority shall revoke the license of a  
6 license holder who is found, in three unrelated orders under RCW  
7 18.130.110 in a ten-year period, to have engaged in three separate  
8 courses of unprofessional conduct based upon any combination of the  
9 following:

10 (a) Any violation of RCW 18.130.180(4) that causes or substantially  
11 contributes to the death of or severe injury to a patient or creates a  
12 significant risk of harm to the public;

13 (b) Any violation of RCW 18.130.180(6) that creates a significant  
14 risk of harm to the public;

15 (c) Any violation of RCW 18.130.180(7) that causes or substantially  
16 contributes to the death of or severe injury to a patient or creates a  
17 significant risk of harm to the public;

18 (d) Any violation of RCW 18.130.180(9);

19 (e) Any violation of RCW 18.130.180(17), except gross misdemeanors;

20 (f) Any violation of RCW 18.130.180(23) that causes or  
21 substantially contributes to the death of or severe injury to a patient  
22 or creates a significant risk of harm to the public;

23 (g) Any violation of RCW 18.130.180(24) based upon an act of abuse  
24 to a client or patient; and

25 (h) Any violation of RCW 18.130.180(24) based upon sexual contact  
26 with a client or patient.

27 (2) For the purposes of subsection (1) of this section, a ten-year  
28 period commences upon the completion of all conditions and obligations  
29 imposed for the acts identified in subsection (1)(a) through (h) of  
30 this section.

31 (3) An order that includes a finding of mitigating circumstances  
32 for an act of unprofessional conduct may be issued and, except for (a)  
33 of this subsection, applied one time for any license holder or  
34 applicant for a license, and if so, that order does not count as one of  
35 the three orders that triggers a license revocation for purposes of  
36 this section. A finding of mitigating circumstances under (a) of this  
37 subsection may be issued and applied as many times as the license

1 holder meets the criteria for such a finding and does not count as one  
2 of the three orders that triggers the revocation of a license for the  
3 purposes of this section. Except for (a) of this subsection, after a  
4 finding of mitigating circumstances is issued and applied, no  
5 subsequent orders under this section may consider any mitigating  
6 circumstances. The following mitigating circumstances may be  
7 considered:

8 (a) For subsection (1)(a) of this section, the act involved a high-  
9 risk procedure, there was no lower-risk alternative to that procedure,  
10 the patient was informed of the risks of the procedure and consented to  
11 the procedure anyway, and prior to the institution of disciplinary  
12 actions the license holder took appropriate remedial measures;

13 (b) There is a strong potential for rehabilitation of the license  
14 holder; or

15 (c) There is a strong potential for remedial education and training  
16 to prevent future harm to the public.

17 (4) Nothing in this section limits the ability of the disciplining  
18 authority to impose any sanction, including revocation, for a single  
19 violation of any subsection of RCW 18.130.180.

20 (5) Notwithstanding RCW 9.96A.020(1), revocation of a license under  
21 this section is not subject to a petition for reinstatement under RCW  
22 18.130.150.

23 **Burden of Proof for License Suspension or Revocation**

24 NEW SECTION. **Sec. 209.** The legislature finds that under the  
25 Washington Constitution, the legislative branch of government has  
26 plenary authority over medical practice and the right to set policy for  
27 the disciplining of health care practitioners. While medical  
28 professionals have a right to due process before their professional  
29 license may be taken away, citizens have equally significant concerns  
30 for protection against incompetent or dishonest practitioners. The  
31 legislature further finds that in carefully balancing the interests of  
32 all concerned, a substantial and significant evidence standard of proof  
33 most appropriately calibrates the balance of interests between the  
34 practitioner and the public.

1 NEW SECTION. **Sec. 210.** A new section is added to chapter 18.130  
2 RCW to read as follows:

3 Except as otherwise provided by statute or the provisions of this  
4 section, the burden of proof in all proceedings brought under this  
5 chapter is a preponderance of the evidence. In a disciplinary  
6 proceeding under this chapter involving the suspension or revocation of  
7 the license of a health care professional licensed under chapter 18.57  
8 or 18.71 RCW, the burden of proof is substantial and significant  
9 evidence. A substantial and significant evidence standard is a higher  
10 standard of proof than a preponderance of the evidence standard and a  
11 lower standard of proof than a clear and convincing evidence standard  
12 and shall be based on the kind of evidence that reasonably prudent  
13 persons are accustomed to relying on in the conduct of their affairs.

14 NEW SECTION. **Sec. 211.** In the event that the Washington supreme  
15 court or other court of competent jurisdiction rules or affirms that  
16 section 210 of this act is unconstitutional, then the prescribed  
17 standard of proof set forth in section 210 of this act takes effect  
18 upon the ratification of a state constitutional amendment that empowers  
19 the legislature to enact a standard of proof in health care  
20 professional disciplinary proceedings or upon the enactment by the  
21 United States congress of a law permitting such standard of proof,  
22 whichever occurs first.

23 **PART III - INSURANCE REFORM**

24 **Underwriting Standards**

25 NEW SECTION. **Sec. 301.** A new section is added to chapter 48.19  
26 RCW to read as follows:

27 (1) For the purposes of this section, "underwrite" means the  
28 process of selecting, rejecting, or pricing a risk, and includes each  
29 of these processes:

30 (a) Evaluation, selection, and classification of risk;

31 (b) Application of rates, rating rules, and classification plans to  
32 risks that are accepted; and

- 1 (c) Determining eligibility for:  
2 (i) Coverage provisions;  
3 (ii) Providing or limiting the amount of coverage or policy limits;  
4 or  
5 (iii) Premium payment plans.

6 (2) Each medical malpractice insurer must file its underwriting  
7 rules, guidelines, criteria, standards, or other information the  
8 insurer uses to underwrite medical malpractice coverage. However, an  
9 insurer is excluded from this requirement if the insurer is ordered  
10 into rehabilitation under chapter 48.31 or 48.99 RCW.

11 (a) Every filing of underwriting information must identify and  
12 explain:

13 (i) The class, type, and extent of coverage provided by the  
14 insurer;

15 (ii) Any changes that have occurred to the underwriting standards;  
16 and

17 (iii) How underwriting changes are expected to affect future  
18 losses.

19 (b) The information under (a) of this subsection must be filed with  
20 the commissioner at least thirty days before it becomes effective and  
21 is subject to public disclosure upon receipt by the commissioner.

22 NEW SECTION. **Sec. 302.** A new section is added to chapter 48.18  
23 RCW to read as follows:

24 (1) For the purposes of this section:

25 (a) "Adverse action" includes, but is not limited to, the  
26 following:

27 (i) Cancellation, denial, or nonrenewal of medical malpractice  
28 insurance coverage;

29 (ii) Charging a higher insurance premium for medical malpractice  
30 insurance than would have been charged, whether the charge is by any of  
31 the following:

32 (A) Application of a rating rule;

33 (B) Assignment to a rating tier that does not have the lowest  
34 available rates; or

35 (C) Placement with an affiliate company that does not offer the  
36 lowest rates available to the insured within the affiliate group of  
37 insurance companies; or

1 (iii) Any reduction or adverse or unfavorable change in the terms  
2 of coverage or amount of any medical malpractice insurance, including,  
3 but not limited to, the following: Coverage provided to the insured  
4 physician is not as broad in scope as coverage requested by the insured  
5 physician but is available to other insured physicians of the insurer  
6 or any affiliate.

7 (b) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

8 (c) "Claim" means a demand for payment by an allegedly injured  
9 third party under the terms and conditions of an insurance contract.

10 (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

11 (2) When an insurer takes adverse action against an insured, the  
12 insurer may consider the following factors only in combination with  
13 other substantive underwriting factors:

14 (a) An insured has inquired about the nature or scope of coverage  
15 under a medical malpractice insurance policy;

16 (b) An insured has notified the insurer, pursuant to the provisions  
17 of the insurance contract, about a potential claim, which did not  
18 ultimately result in the filing of a claim; or

19 (c) A claim was closed without payment.

## 20 **Cancellation or Nonrenewal of Liability Insurance Policies**

21 **Sec. 303.** RCW 48.18.290 and 1997 c 85 s 1 are each amended to read  
22 as follows:

23 (1) Cancellation by the insurer of any policy which by its terms is  
24 cancellable at the option of the insurer, or of any binder based on  
25 such policy which does not contain a clearly stated expiration date,  
26 may be effected as to any interest only upon compliance with the  
27 following:

28 (a)(i) For policies other than medical malpractice liability  
29 insurance: Written notice of such cancellation, accompanied by the  
30 actual reason therefor, must be actually delivered or mailed to the  
31 named insured not less than forty-five days prior to the effective date  
32 of the cancellation (~~except for cancellation of insurance policies~~  
33 ~~for~~);

34 (ii) For policies that provide medical malpractice liability  
35 insurance: Written notice of such cancellation, accompanied by the

1 actual reason therefore, must be actually delivered or mailed to the  
2 named insured not less than ninety days prior to the effective date of  
3 the cancellation;

4 (iii) For policies canceled due to nonpayment of premiums,  
5 ((which)) written notice ((shall be)) must be actually delivered or  
6 mailed to the named insured not less than ten days prior to ((such date  
7 and except for cancellation of fire insurance policies)) the effective  
8 date of the cancellation; and

9 (iv) For fire insurance policies canceled under chapter 48.53 RCW,  
10 ((which)) written notice ((shall not be)) must be actually delivered or  
11 mailed to the named insured not less than five days prior to ((such  
12 date)) the effective date of the cancellation;

13 (b) Like notice must also be so delivered or mailed to each  
14 mortgagee, pledgee, or other person shown by the policy to have an  
15 interest in any loss which may occur thereunder. For purposes of this  
16 subsection (1)(b), "delivered" includes electronic transmittal,  
17 facsimile, or personal delivery.

18 (2) The mailing of any such notice shall be effected by depositing  
19 it in a sealed envelope, directed to the addressee at his or her last  
20 address as known to the insurer or as shown by the insurer's records,  
21 with proper prepaid postage affixed, in a letter depository of the  
22 United States post office. The insurer shall retain in its records any  
23 such item so mailed, together with its envelope, which was returned by  
24 the post office upon failure to find, or deliver the mailing to, the  
25 addressee.

26 (3) The affidavit of the individual making or supervising such a  
27 mailing, shall constitute prima facie evidence of such facts of the  
28 mailing as are therein affirmed.

29 (4) The portion of any premium paid to the insurer on account of  
30 the policy, unearned because of the cancellation and in amount as  
31 computed on the pro rata basis, must be actually paid to the insured or  
32 other person entitled thereto as shown by the policy or by any  
33 endorsement thereon, or be mailed to the insured or such person as soon  
34 as possible, and no later than forty-five days after the date of notice  
35 of cancellation to the insured for homeowners', dwelling fire, and  
36 private passenger auto. Any such payment may be made by cash, or by  
37 check, bank draft, or money order.

1 (5) This section shall not apply to contracts of life or disability  
2 insurance without provision for cancellation prior to the date to which  
3 premiums have been paid, or to contracts of insurance procured under  
4 the provisions of chapter 48.15 RCW.

5 **Sec. 304.** RCW 48.18.2901 and 2002 c 347 s 1 are each amended to  
6 read as follows:

7 (1) Each insurer shall be required to renew any contract of  
8 insurance subject to RCW 48.18.290 unless one of the following  
9 situations exists:

10 (a) The insurer gives the named insured at least forty-five or  
11 ninety days' notice in writing as provided for in RCW 48.18.290(1)(a)  
12 (i) or (ii), that it (~~proposes to refuse to renew~~) will not renew the  
13 insurance contract upon its expiration date; and sets forth in that  
14 writing the actual reason for refusing to renew;

15 (b) At least twenty days prior to its expiration date, the insurer  
16 has communicated, either directly or through its agent, its willingness  
17 to renew in writing to the named insured and has included in that  
18 writing a statement of the amount of the premium or portion thereof  
19 required to be paid by the insured to renew the policy, and the insured  
20 fails to discharge when due his or her obligation in connection with  
21 the payment of such premium or portion thereof;

22 (c) The insured has procured equivalent coverage prior to the  
23 expiration of the policy period;

24 (d) The contract is evidenced by a written binder containing a  
25 clearly stated expiration date which has expired according to its  
26 terms; or

27 (e) The contract clearly states that it is not renewable, and is  
28 for a specific line, subclassification, or type of coverage that is not  
29 offered on a renewable basis. This subsection (1)(e) does not restrict  
30 the authority of the insurance commissioner under this code.

31 (2) Any insurer failing to include in the notice required by  
32 subsection (1)(b) of this section the amount of any increased premium  
33 resulting from a change of rates and an explanation of any change in  
34 the contract provisions shall renew the policy if so required by that  
35 subsection according to the rates and contract provisions applicable to  
36 the expiring policy. However, renewal based on the rates and contract  
37 provisions applicable to the expiring policy shall not prevent the

1 insurer from making changes in the rates and/or contract provisions of  
2 the policy once during the term of its renewal after at least twenty  
3 days' advance notice of such change has been given to the named  
4 insured.

5 (3) Renewal of a policy shall not constitute a waiver or estoppel  
6 with respect to grounds for cancellation which existed before the  
7 effective date of such renewal, or with respect to cancellation of fire  
8 policies under chapter 48.53 RCW.

9 (4) "Renewal" or "to renew" means the issuance and delivery by an  
10 insurer of a contract of insurance replacing at the end of the contract  
11 period a contract of insurance previously issued and delivered by the  
12 same insurer, or the issuance and delivery of a certificate or notice  
13 extending the term of a contract beyond its policy period or term.  
14 However, (a) any contract of insurance with a policy period or term of  
15 six months or less whether or not made continuous for successive terms  
16 upon the payment of additional premiums shall for the purpose of RCW  
17 48.18.290 and 48.18.293 through 48.18.295 be considered as if written  
18 for a policy period or term of six months; and (b) any policy written  
19 for a term longer than one year or any policy with no fixed expiration  
20 date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through  
21 48.18.295, be considered as if written for successive policy periods or  
22 terms of one year.

23 (5) A midterm blanket reduction in rate, approved by the  
24 commissioner, for medical malpractice insurance shall not be considered  
25 a renewal for purposes of this section.

26 **Medical Malpractice Closed Claim Reporting**

27 NEW SECTION. **Sec. 305.** The definitions in this section apply  
28 throughout this chapter unless the context clearly requires otherwise.

29 (1) "Claim" means a demand for payment of a loss caused by medical  
30 malpractice.

31 (a) Two or more claims, or a single claim naming multiple health  
32 care providers or facilities, arising out of a single injury or  
33 incident of medical malpractice is one claim.

34 (b) A series of related incidents of medical malpractice is one  
35 claim.



1 (2) "Claimant" means a person filing a claim against a health care  
2 provider or health care facility.

3 (3) "Closed claim" means a claim concluded with or without payment  
4 and for which all administrative activity has been finalized by the  
5 insuring entity or self-insurer.

6 (4) "Commissioner" means the insurance commissioner.

7 (5) "Health care facility" or "facility" means a clinic, diagnostic  
8 center, hospital, laboratory, mental health center, nursing home,  
9 office, surgical facility, treatment facility, or similar place where  
10 a health care provider provides health care to patients.

11 (6) "Health care provider" or "provider" means a physician licensed  
12 under chapter 18.71 RCW, an osteopathic physician licensed under  
13 chapter 18.57 RCW, a podiatric physician licensed under chapter 18.22  
14 RCW, a dentist licensed under chapter 18.32 RCW, a chiropractor  
15 licensed under chapter 18.25 RCW, an advance registered nurse  
16 practitioner licensed under chapter 18.79 RCW, a physician assistant  
17 licensed under chapter 18.71A RCW, and a naturopath licensed under  
18 chapter 18.36A RCW.

19 (7) "Insuring entity" means:

20 (a) An insurer;

21 (b) A joint underwriting association;

22 (c) A risk retention group; or

23 (d) An unauthorized insurer that provides surplus lines coverage.

24 (8) "Medical malpractice" means a negligent act, error, or omission  
25 in providing or failing to provide professional health care services  
26 that is actionable under chapter 7.70 RCW.

27 (9) "Self-insurer" means any health care provider, facility, or  
28 other individual or entity that assumes operational or financial risk  
29 for claims of medical malpractice.

30 NEW SECTION. **Sec. 306.** (1) Beginning April 1, 2006, every self-  
31 insurer or insuring entity that provides medical malpractice insurance  
32 to any facility or provider in Washington state must report to the  
33 commissioner any closed claim related to medical malpractice, if the  
34 claim resulted in a final:

35 (a) Judgment in any amount;

36 (b) Settlement or payment in any amount; or

1 (c) Disposition of a medical malpractice claim resulting in no  
2 indemnity payment on behalf of an insured.

3 (2) If a claim is not reported by an insuring entity or self-  
4 insurer under subsection (1) of this section due to limitations in the  
5 medical malpractice coverage of a facility or provider, the facility or  
6 provider must report the claim to the commissioner.

7 (3) Reports under this section must be filed with the commissioner  
8 within sixty days after the claim is closed by the insuring entity or  
9 self-insurer.

10 (4)(a) The commissioner may impose a fine of up to two hundred  
11 fifty dollars per day per case against any insuring entity that  
12 violates the requirements of this section. The total fine per case may  
13 not exceed ten thousand dollars.

14 (b) The department of health may impose a fine of up to two hundred  
15 fifty dollars per day per case against any facility or provider that  
16 violates the requirements of this section. The total fine per case may  
17 not exceed ten thousand dollars.

18 NEW SECTION. **Sec. 307.** The reports required under section 306 of  
19 this act must contain the following data in a form and with coding  
20 prescribed by the commissioner for each claim:

21 (1) A unique number assigned to the claim by the insuring entity or  
22 self-insurer to serve as an identifier for the claim;

23 (2) The type of health care provider, including the provider's  
24 medical specialty; the type of facility, if any, and the location  
25 within the facility where the injury occurred;

26 (3) The date of the event that resulted in the claim;

27 (4) The county or counties in which the event that resulted in the  
28 claim occurred;

29 (5) The date the claim was reported to the insuring entity, self-  
30 insurer, facility, or provider;

31 (6) The date of suit, if filed;

32 (7) The claimant's age and sex;

33 (8) Specific information about the judgment or settlement  
34 including:

35 (a) The date and amount of any judgment or settlement;

36 (b) Whether the settlement:

37 (i) Was the result of a judgment, arbitration, or mediation; and

- 1 (ii) Occurred before or after trial;
- 2 (c) For claims that result in a verdict or judgment that itemizes
- 3 damages:
- 4 (i) Economic damages, such as incurred and anticipated medical
- 5 expense and lost wages;
- 6 (ii) Noneconomic damages; and
- 7 (iii) Allocated loss adjustment expense, including but not limited
- 8 to court costs, attorneys' fees, and costs of expert witnesses;
- 9 (d) For claims that do not result in a verdict or judgment that
- 10 itemizes damages:
- 11 (i) Total damages; and
- 12 (ii) Allocated loss adjustment expense, including but not limited
- 13 to court costs, attorneys' fees, and costs of expert witnesses; and
- 14 (e) If there is no judgment or settlement:
- 15 (i) The date and reason for final disposition; and
- 16 (ii) The date the claim was closed; and
- 17 (9) The reason for the medical malpractice claim. The commissioner
- 18 shall use the same coding of reasons for malpractice claims as those
- 19 used for mandatory reporting to the national practitioner data bank, in
- 20 the federal department of health and human services, as provided in 42
- 21 U.S.C. Secs. 11131 and 11134, as amended.

22 NEW SECTION. **Sec. 308.** The commissioner must prepare aggregate  
23 statistical summaries of closed claims based on calendar year data  
24 submitted under section 306 of this act.

25 (1) At a minimum, data must be sorted by calendar year and calendar  
26 incident year. The commissioner may also decide to display data in  
27 other ways.

28 (2) The summaries must be available by March 31st of each year.

29 (3) Information included in an individual closed claim report  
30 submitted by an insurer or self-insurer under this chapter is  
31 confidential, is exempt from public disclosure, and may not be made  
32 available by the commissioner to the public.

33 NEW SECTION. **Sec. 309.** Beginning in 2006, the commissioner must  
34 prepare an annual report by June 30th that summarizes and analyzes the  
35 closed claim reports for medical malpractice filed under section 306 of

1 this act and the annual financial reports filed by insurers writing  
2 medical malpractice insurance in this state. The report must include:

3 (1) An analysis of closed claim reports of prior years for which  
4 data are collected and show:

5 (a) Trends in the frequency and severity of claims payments;

6 (b) An itemization of economic and noneconomic damages;

7 (c) An itemization of allocated loss adjustment expenses;

8 (d) The types of medical malpractice for which claims have been  
9 paid; and

10 (e) Any other information the commissioner determines illustrates  
11 trends in closed claims;

12 (2) An analysis of the medical malpractice insurance market in  
13 Washington state, including:

14 (a) An analysis of the financial reports of the insurers with a  
15 combined market share of at least ninety percent of net written medical  
16 malpractice premium in Washington state for the prior calendar year;

17 (b) A loss ratio analysis of medical malpractice insurance written  
18 in Washington state; and

19 (c) A profitability analysis of each insurer writing medical  
20 malpractice insurance;

21 (3) A comparison of loss ratios and the profitability of medical  
22 malpractice insurance in Washington state to other states based on  
23 financial reports filed with the national association of insurance  
24 commissioners and any other source of information the commissioner  
25 deems relevant;

26 (4) A summary of the rate filings for medical malpractice that have  
27 been approved by the commissioner for the prior calendar year,  
28 including an analysis of the trend of direct and incurred losses as  
29 compared to prior years;

30 (5) The commissioner must post reports required by this section on  
31 the internet no later than thirty days after they are due; and

32 (6) The commissioner may adopt rules that require insuring entities  
33 and self-insurers required to report under section 306(1) of this act  
34 to report data related to:

35 (a) The frequency and severity of open claims for the reporting  
36 period;

37 (b) The aggregate amounts reserved for incurred claims;

38 (c) Changes in reserves from the previous reporting period; and

1 (d) Any other information that helps the commissioner monitor  
2 losses and claims development in the Washington state medical  
3 malpractice insurance market.

4 NEW SECTION. **Sec. 310.** The commissioner shall adopt all rules  
5 needed to implement this chapter. To ensure that claimants, health  
6 care providers, health care facilities, and self-insurers cannot be  
7 individually identified when data is disclosed to the public, the  
8 commissioner shall adopt rules that require the protection of  
9 information that, in combination, could result in the ability to  
10 identify the claimant, health care provider, health care facility, or  
11 self-insurer in a particular claim or collection of claims.

12 NEW SECTION. **Sec. 311.** A new section is added to chapter 7.70 RCW  
13 to read as follows:

14 In any action filed under this chapter that results in a final:

- 15 (1) Judgment in any amount;
- 16 (2) Settlement or payment in any amount; or
- 17 (3) Disposition resulting in no indemnity payment,

18 the claimant or his or her attorney shall report to the office of the  
19 insurance commissioner on forms provided by the commissioner any court  
20 costs, attorneys' fees, or costs of expert witnesses incurred in  
21 pursuing the action.

22 NEW SECTION. **Sec. 312.** If the national association of insurance  
23 commissioners adopts model medical malpractice reporting standards, the  
24 insurance commissioner must analyze the model standards and report to  
25 the legislature on or before the December 1st subsequent to the  
26 adoption of the model standards. The report must include an analysis  
27 of any differences between the model standards and sections 305 through  
28 310 of this act and make recommendations, if any, regarding possible  
29 legislative changes. The report must be made to the house of  
30 representatives committees on health care; financial institutions and  
31 insurance; and judiciary and the senate committees on health and long-  
32 term care; financial institutions, housing and consumer protection; and  
33 judiciary.

1        NEW SECTION.    **Sec. 313.**    A new section is added to chapter 42.17  
2    RCW to read as follows:

3        Information in a closed claim report filed under section 307 of  
4    this act that alone or in combination could result in the ability to  
5    identify a claimant, health care provider, health care facility, or  
6    self-insurer involved in a particular claim is exempt from disclosure  
7    under this chapter.

8                                    **PART IV - MEDICAL MALPRACTICE PREMIUM ASSISTANCE**

9        NEW SECTION.    **Sec. 401.**    The department of health shall develop,  
10    in consultation with the department of revenue, a program to provide  
11    business and occupation tax credits for physicians who serve uninsured,  
12    medicare, and medicaid patients in a private practice or a reduced fee  
13    access program for the uninsured and shall submit proposed legislation  
14    to the legislature by December 15, 2005.

15                                    **PART V - CIVIL JUSTICE REFORM**

16                                    **Expert Witness Qualifications and Limits**

17        NEW SECTION.    **Sec. 501.**    A new section is added to chapter 7.70 RCW  
18    to read as follows:

19        (1) In an action against a health care provider under this chapter,  
20    an expert may not provide testimony at trial unless the expert meets  
21    the following criteria:

22        (a) Has expertise in the medical condition at issue in the action;  
23    and

24        (b) At the time of the occurrence of the incident at issue in the  
25    action, or at the time of retirement in the case of an expert who  
26    retired no sooner than five years prior to the time the action is  
27    commenced, was either:

28        (i) Engaged in active practice in the same or similar area of  
29    practice or specialty as the defendant; or

1 (ii) Teaching at an accredited medical school or an accredited or  
2 affiliated academic or clinical training program in the same or similar  
3 area of practice or specialty as the defendant, including instruction  
4 regarding the particular condition at issue.

5 (2) Upon motion of a party, the court may waive the requirements of  
6 subsection (1) of this section and allow an expert who does not meet  
7 those requirements to testify at trial if the court finds that:

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

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

13 NEW SECTION. **Sec. 502.** A new section is added to chapter 7.70 RCW  
14 to read as follows:

15 An expert opinion provided in the course of an action against a  
16 health care provider under this chapter must be corroborated by  
17 admissible evidence, such as, but not limited to, treatment or practice  
18 protocols or guidelines developed by medical specialty organizations,  
19 objective academic research, clinical trials or studies, or widely  
20 accepted clinical practices.

21 NEW SECTION. **Sec. 503.** A new section is added to chapter 7.70 RCW  
22 to read as follows:

23 In any action under this chapter, each party shall presumptively be  
24 entitled to only two independent experts on an issue, except upon a  
25 showing of good cause. The court, upon a showing of good cause, shall  
26 allow additional experts on an issue to be called as the court deems  
27 appropriate.

28 **Certificate of Merit**

29 NEW SECTION. **Sec. 504.** A new section is added to chapter 7.70 RCW  
30 to read as follows:

31 (1) In an action against an individual health care provider under  
32 this chapter for personal injury or wrongful death in which the injury  
33 is alleged to have been caused by an act or omission that violates the

1 accepted standard of care, the plaintiff must file a certificate of  
2 merit at the time of commencing the action. If the action is commenced  
3 within forty-five days of the expiration of the applicable statute of  
4 limitations, the plaintiff must file the certificate of merit within  
5 forty-five days of commencing the action.

6 (2) The certificate of merit must be executed by a health care  
7 provider who meets the qualifications of an expert under this chapter.  
8 If there is more than one defendant in the action, the person  
9 commencing the action must file a certificate of merit for each  
10 defendant.

11 (3) The certificate of merit must contain a statement that the  
12 person executing the certificate of merit believes, based on the  
13 information known at the time of executing the certificate of merit,  
14 that there is a reasonable probability that the defendant's conduct did  
15 not follow the accepted standard of care required to be exercised by  
16 the defendant.

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

20 (5)(a) Failure to file a certificate of merit that complies with  
21 the requirements of this section is grounds for dismissal of the case.

22 (b) If a case is dismissed for failure to file a certificate of  
23 merit that complies with the requirements of this section, the filing  
24 of the claim against the health care provider shall not be used against  
25 the health care provider in professional liability insurance rate  
26 setting, personal credit history, or professional licensing and  
27 credentialing.

## 28 **Statute of Limitations Reform**

29 **Sec. 505.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read  
30 as follows:

31 (1) Any civil action or arbitration for damages for injury or death  
32 occurring as a result of health care or related services, or the  
33 arranging for the provision of health care or related services, which  
34 is provided after June 25, 1976, against(÷



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

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

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

20 ~~representative;)) a health care provider as defined in RCW 7.70.020, or~~  
21 ~~a health care institution, based upon alleged professional negligence~~  
22 ~~shall be commenced within three years of the act or omission alleged to~~  
23 ~~have caused the injury, death, or condition, or within one year of the~~  
24 ~~time the patient or his or her representative or custodial parent or~~  
25 ~~guardian discovered or reasonably should have discovered that the~~  
26 ~~injury, death, or condition was caused by said act or omission,~~  
27 ~~whichever period ((~~expires later, except that in no event shall an~~~~  
28 ~~action be commenced more than eight years after said act or omission:~~  
29 ~~PROVIDED, That the time for commencement of an action is tolled upon~~  
30 ~~proof of fraud, intentional concealment, or the presence of a foreign~~  
31 ~~body not intended to have a therapeutic or diagnostic purpose or~~  
32 ~~effect, until the date the patient or the patient's representative has~~  
33 ~~actual knowledge of the act of fraud or concealment, or of the presence~~  
34 ~~of the foreign body; the patient or the patient's representative has~~  
35 ~~one year from the date of the actual knowledge in which to commence a~~  
36 ~~civil action for damages.~~

37       ~~For purposes of this section, notwithstanding RCW 4.16.190, the~~  
38 ~~knowledge of a custodial parent or guardian shall be imputed to a~~

1 ~~person under the age of eighteen years, and such imputed knowledge~~  
2 ~~shall operate to bar the claim of such minor to the same extent that~~  
3 ~~the claim of an adult would be barred under this section. Any action~~  
4 ~~not commenced in accordance with this section shall be barred.~~

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

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

12 (a) Upon proof of fraud, intentional concealment, or the presence  
13 of a foreign body not intended to have a therapeutic or diagnostic  
14 purpose or effect, in which case the patient or the patient's  
15 representative has one year from the date the patient or the patient's  
16 representative or custodial parent or guardian has actual knowledge of  
17 the act of fraud or concealment or of the presence of the foreign body  
18 within which to commence a civil action for damages.

19 (b) In the case of a minor, upon proof that the minor's custodial  
20 parent or guardian and the defendant or the defendant's insurer have  
21 committed fraud or collusion in the failure to bring an action on  
22 behalf of the minor, in which case the patient or the patient's  
23 representative has one year from the date the patient or the patient's  
24 representative other than the custodial parent or guardian who  
25 committed the fraud or collusion has actual knowledge of the fraud or  
26 collusion, or one year from the date of the minor's eighteenth  
27 birthday, whichever provides a longer period.

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

32 (3) For purposes of this section, the tolling provisions of RCW  
33 4.16.190 do not apply.

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

1       (5) This section applies to all causes of action for injury or  
2 death occurring as a result of health care or related services, or the  
3 arranging for the provision of health care or related services, filed  
4 on or after the effective date of this section. However, any action  
5 which, if filed on or after the effective date of this section, would  
6 have been timely under former law, but now would be barred under the  
7 chapter . . . , Laws of 2005 amendments contained in this section, may  
8 be brought within one year following the effective date of this  
9 section.

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

### 12                                   **Encouraging Early Settlement Offers**

13       NEW SECTION. Sec. 506. A new section is added to chapter 7.70 RCW  
14 to read as follows:

15           The definitions in this section apply throughout sections 507  
16 through 511 of this act unless the context clearly requires otherwise.

17           (1) "Allegedly responsible party" means a health care provider  
18 alleged by the claimant to be responsible for at least some portion of  
19 an injury to the claimant resulting from alleged professional  
20 negligence in the provision of health care.

21           (2) "Amount recovered" means the total compensation, including the  
22 reasonable value of nonmonetary compensation, that an attorney has  
23 obtained on behalf of a claimant through settlement, arbitration, or  
24 judgment, minus the reasonable costs and expenses incurred by the  
25 attorney in prosecuting or settling the claim.

26           (3) "Claimant" means any natural person who, in his or her own  
27 right, or vicariously, is seeking compensation in connection with a  
28 claim under this chapter for personal injury or wrongful death as a  
29 result of alleged professional negligence in the provision of health  
30 care.

31           (4) "Collateral source" means compensation or benefits paid or  
32 payable to the claimant or on the claimant's behalf, to compensate the  
33 claimant for the injury complained of, regardless of the right of  
34 recoupment of any other entity, through subrogation, trust agreement,  
35 lien, or otherwise.

1 (5) "Contingent fee" means compensation, however calculated, that  
2 is payable only if an amount is recovered.

3 (6) "Early settlement offer" means a settlement offer made in  
4 accordance with section 507 of this act.

5 (7) "Economic damages" has the meaning provided in RCW 4.56.250.

6 (8) "Entity" includes an individual or person.

7 (9) "Noneconomic damages" has the meaning provided in RCW 4.56.250.

8 NEW SECTION. **Sec. 507.** A new section is added to chapter 7.70 RCW  
9 to read as follows:

10 (1) In any civil action for damages brought under this chapter  
11 against a health care provider based on alleged professional  
12 negligence, an allegedly responsible party may make an early settlement  
13 offer at any time prior to one hundred twenty days after the claim is  
14 filed with a court. To qualify as an early settlement offer, the offer  
15 must include a good faith offer to compensate the claimant for the  
16 claimant's current and future economic damages suffered as a result of  
17 the allegedly responsible party's act or omission, less collateral  
18 source benefits available to the claimant, and for reasonable hourly  
19 attorneys' fees for the claimant. The early settlement offer must be  
20 in writing and communicated to the claimant by certified mail. The  
21 offer must remain open for acceptance for a minimum of thirty days from  
22 the date the offer is received by the claimant.

23 (2) An allegedly responsible party may amend or issue an additional  
24 early settlement offer prior to one hundred twenty days after the  
25 action is commenced. The claimant may extend the time for receiving  
26 the offer beyond this period.

27 (3) An attorney who receives an early settlement offer shall  
28 provide a true and complete copy of the offer to his or her client.

29 (4) A claimant who agrees in writing to an early settlement offer  
30 may not bring or continue a civil action, based on the same alleged  
31 professional negligence, against the allegedly responsible party who  
32 made the early settlement offer or any other allegedly responsible  
33 parties who joined in the early settlement offer under subsection (5)  
34 of this section.

35 (5) An offer under subsection (1) of this section may include other  
36 allegedly responsible parties who were involved in the events that gave  
37 rise to the civil action, regardless of the theory of liability on

1 which the claim is based, with their consent. If, after an early  
2 settlement offer is made and accepted, the participants in the offer  
3 dispute their relative contributions to the payments to be made to the  
4 claimant, such disputes shall be resolved through binding arbitration  
5 in accordance with chapter 7.04 RCW.

6 (6) The claimant may reject an offer of compensation made under  
7 subsection (1) of this section and elect to bring or maintain a civil  
8 action for damages. Upon rejection of an offer of compensation that  
9 complies with the requirements of subsection (1) of this section, the  
10 claimant may recover damages in the civil action only if the claimant  
11 proves by clear and convincing evidence that the allegedly responsible  
12 party caused the injury by reckless, willful, or wanton conduct.

13 NEW SECTION. **Sec. 508.** A new section is added to chapter 7.70 RCW  
14 to read as follows:

15 (1) An attorney who represents a person alleging personal injury or  
16 death resulting from professional negligence in the provision of health  
17 care, and who represents the person on a contingent-fee basis, shall  
18 send a demand for compensation by certified mail to each allegedly  
19 responsible party prior to commencing a court action. In the event  
20 that multiple allegedly responsible parties are known to the attorney,  
21 a demand must be sent on the same date to each party. The demand must  
22 specify the amount of compensation sought and must set forth the  
23 material facts, documentary evidence, and other information relevant to  
24 the demand, including:

25 (a) The name and address of the claimant or of the person on whose  
26 behalf the claim is being made;

27 (b) A brief description of how the injury or loss occurred;

28 (c) The names and, if known, the addresses and telephone numbers of  
29 all known witnesses to the injury or loss;

30 (d) Copies of photographs in the claimant's possession which relate  
31 to the injury or loss;

32 (e) The basis for claiming that the party to whom the demand is  
33 addressed is responsible or partially responsible for the injury or  
34 loss;

35 (f) A description of the nature of the injury or loss, including  
36 the dates and nature of the care or services provided, and the names

1 and addresses of all physicians and other health care providers that  
2 provided medical care or services to the claimant or injured party;

3 (g) Medical records relating to the injury, including those  
4 involving a prior injury or preexisting medical condition which would  
5 be discoverable by the allegedly responsible party during the course of  
6 litigation or, in lieu thereof, executed releases authorizing the  
7 allegedly responsible party to obtain the records directly from those  
8 health care providers who provided treatment to the claimant; and

9 (h) Documentation of any medical expenses, lost wages, personal  
10 losses, and other economic and noneconomic damages suffered as a  
11 consequence of the injury or loss.

12 (2) The attorney shall mail copies of each demand to the claimant  
13 and to each allegedly responsible party.

14 (3) A claimant's attorney who learns of an additional allegedly  
15 responsible party after making a demand for compensation under  
16 subsection (1) of this section shall send a demand for compensation to  
17 the newly discovered allegedly responsible party and simultaneously  
18 mail a copy of the demand to each of the other allegedly responsible  
19 parties and to the claimant.

20 (4) In the event that a claimant's attorney learns of an additional  
21 allegedly responsible party more than ninety days after making a demand  
22 for compensation under subsection (1) of this section, the attorney  
23 shall not be required to send a demand to that party nor do the fee  
24 limitations imposed under section 510 (1) and (2) of this act apply  
25 with regard to an amount recovered from that party, except as provided  
26 by this subsection. An attorney who fails as a result of a breach of  
27 the standard of care to learn of an additional allegedly responsible  
28 party within ninety days of sending a demand for compensation to  
29 another allegedly responsible party shall not collect a fee in excess  
30 of that allowed under section 510 (1) and (2) of this act with respect  
31 to an amount recovered from the additional allegedly responsible party.

32 NEW SECTION. **Sec. 509.** A new section is added to chapter 7.70 RCW  
33 to read as follows:

34 An allegedly responsible party is under no obligation to issue a  
35 response to a demand for compensation made under section 508 of this  
36 act. The fact that a demand for compensation was or was not made, the

1 fact that an early settlement offer was or was not made, and the amount  
2 of any demand or settlement offer made are inadmissible at a trial  
3 arising from the injury or loss.

4 NEW SECTION. **Sec. 510.** A new section is added to chapter 7.70 RCW  
5 to read as follows:

6 (1) An attorney who represents a claimant who has accepted an early  
7 settlement offer under section 507 of this act shall not collect an  
8 amount as compensation for the attorney's services that is more than  
9 the attorney's reasonable hourly fees for the services performed.

10 (2) An attorney who represents a claimant who has rejected or  
11 failed to accept an early settlement offer shall not collect a  
12 contingent fee that is greater than twenty percent of the amount of the  
13 early settlement offer plus the percentage of the amount recovered in  
14 excess of the early settlement offer as was agreed to by the claimant  
15 and the attorney.

16 (3) A claimant's attorney who has failed to make a demand for  
17 compensation under section 508 of this act, or who has omitted from the  
18 demand any information required under section 508 of this act of a  
19 material nature which the attorney had in his or her possession, or  
20 which was readily available to him or her, or of which the attorney had  
21 knowledge, shall not collect a contingent fee greater than twenty  
22 percent of the amount recovered.

23 (4) A claimant's attorney who has failed to provide his or her  
24 client a true and complete copy of an early settlement offer received  
25 by the attorney, as required under section 507 of this act, shall not  
26 collect a contingent fee greater than twenty percent of the amount  
27 recovered.

28 (5) An attorney shall disclose, plainly and in writing, to  
29 claimants whom the attorney proposes to represent on a contingent-fee  
30 basis: (a) The fee limitations imposed by this section; and (b) the  
31 fact that such limitations are maximum limits and that the attorney and  
32 claimant may negotiate a lower fee.

33 The attorney shall also provide to each claimant a copy of this  
34 act.

35 (6) The fee limitations imposed by this section may not be waived.

36 (7) This section applies to all attorneys practicing in this state,

1 including attorneys prosecuting claims filed in federal court, to the  
2 maximum extent permitted by federal law.

3 NEW SECTION. **Sec. 511.** A new section is added to chapter 7.70 RCW  
4 to read as follows:

5 A fiduciary relationship applies with respect to a fee agreement  
6 between an attorney and a claimant.

7 **Sec. 512.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
8 amended to read as follows:

9 (1) The court shall, in any action under this chapter, determine  
10 the reasonableness of each party's attorneys fees. The court shall  
11 take into consideration the following:

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

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

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

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

21 ~~((5))~~ (e) The time limitations imposed by the client or by the  
22 circumstances;

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

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

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

28 (2) An attorney's contingency fee is limited to the maximum  
29 permissible fee allowed under section 510 of this act.

30 **Collateral Source Payment Reform**

31 **Sec. 513.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each  
32 amended to read as follows:

33 (1) Any party may present evidence to the trier of fact that the



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

17 (2) Unless otherwise provided by state law or superseding federal  
18 law, there is no right of subrogation or reimbursement from the  
19 patient's or claimant's tort recovery with respect to compensation  
20 covered in subsection (1) of this section. This subsection does not  
21 apply to a subrogation or reimbursement right under a contract or other  
22 agreement entered into prior to the effective date of this act.

### 23 **Presuit Notice and Mandatory Mediation**

24 **Sec. 514.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to  
25 read as follows:

26 (1) No action for damages for injury or death occurring as a result  
27 of health care or related services, or the arranging for the provision  
28 of health care or related services, may be commenced unless the  
29 defendant has been given at least ninety days' notice of the intention  
30 to commence the action. If the notice is served within ninety days  
31 before the expiration of the applicable statute of limitations, the  
32 time for the commencement of the action must be extended ninety days  
33 from the service of the notice.

34 (2) The provisions of subsection (1) of this section are not

1 applicable with respect to any defendant whose name is unknown to the  
2 plaintiff at the time of filing the complaint and who is identified  
3 therein by a fictitious name.

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

11 ((+2)) (4) The supreme court shall by rule adopt procedures to  
12 implement mandatory mediation of actions under this chapter. The rules  
13 shall require mandatory mediation without exception and address, at a  
14 minimum:

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

22 (b) Appropriate limits on the amount or manner of compensation of  
23 mediators;

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

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

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

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

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

35 ((+3)) (5) Mediators shall not impose discovery schedules upon the  
36 parties.

37 (6) The supreme court shall by rule also adopt procedures for the

1 parties to certify to the court the manner of mediation used by the  
2 parties to comply with this section.

3 **Promoting Periodic Payments of Future Damages**

4 NEW SECTION. **Sec. 515.** A new section is added to chapter 7.70 RCW  
5 to read as follows:

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

8 (a) "Future damages" includes damages for future health care or  
9 related services, care or custody, loss of future earnings, loss of  
10 bodily function, or future pain and suffering of the judgment creditor.

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

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

30 (3)(a) The judgment ordering the payment of future damages by  
31 periodic payments must specify the recipient or recipients of the  
32 payments, the dollar amount of the payments, the interval between  
33 payments, and the number of payments or the period of time over which  
34 payments must be made. The payments are only subject to modification  
35 in the event of the death of the judgment creditor.

1 (b) In the event that the court finds that the judgment debtor has  
2 exhibited a continuing pattern of failing to make the payments, as  
3 specified in (a) of this subsection, the court shall find the judgment  
4 debtor in contempt of court and, in addition to the required periodic  
5 payments, shall order the judgment debtor to pay the judgment creditor  
6 all damages caused by the failure to make such periodic payments,  
7 including court costs and attorneys' fees.

8 (4) In the event of the death of the judgment creditor, the court,  
9 upon petition of any party in interest, shall modify the judgment to  
10 eliminate future periodic payments of damages awarded for future  
11 medical treatment, care or custody, loss of bodily function, or future  
12 pain and suffering of the judgment creditor. However, money damages  
13 awarded for loss of future earnings may not be reduced or payments  
14 terminated by reason of the death of the judgment creditor, but must be  
15 paid to persons to whom the judgment creditor owed a duty of support,  
16 as provided by law, immediately prior to his or her death. In such  
17 cases, the court that rendered the original judgment may, upon petition  
18 of any party in interest, modify the judgment to award and apportion  
19 the unpaid future damages in accordance with this subsection (4).

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

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

26 (7) It is intended in enacting this section to authorize, in  
27 actions for damages for injury occurring as a result of health care or  
28 related services, or the arranging for the provision of health care or  
29 related services, the entry of judgments that provide for the payment  
30 of future damages through periodic payments rather than lump-sum  
31 payments. By authorizing periodic payment judgments, it is further  
32 intended that the courts will utilize such judgments to provide  
33 compensation sufficient to meet the needs of an injured plaintiff and  
34 those persons who are dependent on the plaintiff for whatever period is  
35 necessary while eliminating the potential windfall from a lump-sum  
36 recovery that was intended to provide for the care of an injured  
37 plaintiff over an extended period who then dies shortly after the  
38 judgment is paid, leaving the balance of the judgment award to persons

1 and purposes for which it was not intended. It is also intended that  
2 all elements of the periodic payment program be specified with  
3 certainty in the judgment ordering such payments and that the judgment  
4 not be subject to modification at some future time that might alter the  
5 specifications of the original judgment, except in the event of the  
6 death of the judgment creditor.

7 **Joint and Several Liability Reform**

8 **Sec. 516.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
9 as follows:

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

31 (a) A party shall be responsible for the fault of another person or  
32 for payment of the proportionate share of another party where both were  
33 acting in concert or when a person was acting as an agent or servant of  
34 the party.

1        (b)(i) Except as provided in (b)(ii) of this subsection, if the  
2 trier of fact determines that the claimant or party suffering bodily  
3 injury or incurring property damages was not at fault, the defendants  
4 against whom judgment is entered shall be jointly and severally liable  
5 for the sum of their proportionate shares of the ((claimants  
6 [claimant's]) claimant's total damages.

7        (ii) (b)(i) of this subsection does not apply to a health care  
8 provider as defined in RCW 7.70.020 in an action for damages for injury  
9 or death occurring as a result of health care or related services, or  
10 the arranging for the provision of health care or related services,  
11 whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020,  
12 4.20.046, 4.24.010, or 48.43.545(1), any other applicable law, or any  
13 combination thereof, with respect to judgments for noneconomic damages.  
14 In all actions for damages for injury or death occurring as a result of  
15 health care or related services, or the arranging for the provision of  
16 health care or related services, the liability of a health care  
17 provider for noneconomic damages is several only. For the purposes of  
18 this subsection, "noneconomic damages" has the meaning given in RCW  
19 4.56.250.

20        (2) If a defendant is jointly and severally liable under one of the  
21 exceptions listed in subsection(~~s~~) (1)(a) or (~~(1)~~) (b) of this  
22 section, such defendant's rights to contribution against another  
23 jointly and severally liable defendant, and the effect of settlement by  
24 either such defendant, shall be determined under RCW 4.22.040,  
25 4.22.050, and 4.22.060.

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

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

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

34        **Sec. 517.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read  
35 as follows:

36        "Fault" includes acts or omissions, including misuse of a product,  
37 that are in any measure negligent or reckless toward the person or

1 property of the actor or others, or that subject a person to strict  
2 tort liability or liability on a product liability claim. The term  
3 also includes breach of warranty, unreasonable assumption of risk, and  
4 unreasonable failure to avoid an injury or to mitigate damages. Legal  
5 requirements of causal relation apply both to fault as the basis for  
6 liability and to contributory fault.

7 A comparison of fault for any purpose under RCW 4.22.005 through  
8 (~~4.22.060~~) 4.22.070 shall involve consideration of both the nature of  
9 the conduct of the parties to the action and the extent of the causal  
10 relation between such conduct and the damages.

### 11 **Preventing Frivolous Lawsuits**

12 NEW SECTION. **Sec. 518.** A new section is added to chapter 7.70 RCW  
13 to read as follows:

14 (1) In any action under this section, an attorney that has drafted,  
15 or assisted in drafting and filing an action, counterclaim,  
16 cross-claim, third-party claim, or a defense to a claim, upon signature  
17 and filing, certifies that to the best of the party's or attorney's  
18 knowledge, information, and belief, formed after reasonable inquiry it  
19 is not frivolous, and is well grounded in fact and is warranted by  
20 existing law or a good faith argument for the extension, modification,  
21 or reversal of existing law, and that it is not interposed for any  
22 improper purpose, such as to harass or to cause frivolous litigation.  
23 If an action is signed and filed in violation of this rule, the court,  
24 upon motion or upon its own initiative, may impose upon the person who  
25 signed it, a represented party, or both, an appropriate sanction, which  
26 may include an order to pay to the other party or parties the amount of  
27 the reasonable expenses incurred because of the filing of the action,  
28 counterclaim, cross-claim, third-party claim, or a defense to a claim,  
29 including a reasonable attorney fee. The procedures governing the  
30 enforcement of RCW 4.84.185 shall apply to this section.

31 (2) Within one hundred twenty days after filing a lawsuit under  
32 this chapter, the attorney of record, or the plaintiff if pro se, must  
33 file a certificate of merit. The certificate must state that the  
34 attorney or pro se plaintiff has consulted with a qualified expert who  
35 believes on a more probable than not basis that the claim set forth

1 satisfies at least one of the basis for recovery under this chapter.  
2 Upon a showing of good cause, a court may extend the time frame for  
3 filing the certificate for a period not to exceed sixty days.

4 NEW SECTION. **Sec. 519.** A new section is added to chapter 7.70 RCW  
5 to read as follows:

6 In any action brought under this chapter that is tried by jury, the  
7 judge shall present the following questions to the jury after the jury  
8 has delivered its verdict in the proceeding. The questions shall be  
9 considered and answered by the jury in a deliberative process and the  
10 results announced in open court.

11 (1) Do you as a jury believe any pleading, claim, or issue in this  
12 case was frivolous? To decide that a pleading, claim, or issue in this  
13 case was frivolous you must decide at least one of the following in the  
14 affirmative:

15 (a) The pleading, claim, or issue was primarily filed, brought, or  
16 raised by a party for an improper purpose. "Improper purpose" means  
17 that the pleading, claim, or issue was filed, brought, or raised with  
18 the purpose of harassing, embarrassing, or coercing another party,  
19 causing unnecessary delay, or needlessly increasing litigation costs.

20 (b) The pleading, claim, or issue was filed, brought, or raised in  
21 bad faith. "Bad faith" means that the party either knew reasonable  
22 grounds did not exist for filing, bringing, or raising the pleading,  
23 claim, or issue, or the party acted with reckless disregard as to  
24 whether or not reasonable grounds existed for filing, bringing, or  
25 raising the pleading, claim, or issue.

26 (2) If your answers to the question in both (a) and (b) of  
27 subsection (1) of this section are "No" do not proceed further. If  
28 your answer is "Yes" to a question in either (a) or (b) of subsection  
29 (1) of this section, you must make one of the following  
30 recommendations:

31 (a) We recommend that . . . . . (name of party) be required to  
32 pay sanctions in the amount of . . . . . dollars, payable to . . . . .  
33 (name of party) as a result of filing, bringing, or raising a frivolous  
34 pleading, claim, or issue.

35 (b) We do not believe that a monetary sanction should be imposed  
36 against . . . . . (name of party) for filing, bringing, or raising a  
37 frivolous pleading, claim, or issue.



1 (3) The court shall take the jury's recommendation under  
2 consideration in deciding whether to impose sanctions against a party  
3 for filing, bringing, or raising a frivolous pleading, claim, or issue.  
4 The court shall enter into the record written findings and conclusions  
5 in accepting or rejecting the jury's recommendations.

6 (4) In addition to any other remedies provided in RCW 4.84.185 or  
7 by court rule, sanctions that may be imposed under this section at the  
8 discretion of the court for filing, bringing, or raising a frivolous  
9 pleading, claim, or issue include the payment of reasonable costs and  
10 reasonable attorneys' fees of the other party caused in responding to  
11 the frivolous pleading, claim, or issue, and a monetary penalty on the  
12 party or party's attorney who brought the frivolous pleading, claim, or  
13 issue, and the firm with which the attorney is employed or associated.

14 **PART VI - MISCELLANEOUS PROVISIONS**

15 NEW SECTION. **Sec. 601.** The index, part headings, and subheadings  
16 used in this act are not any part of the law.

17 NEW SECTION. **Sec. 602.** (1) Sections 115 through 119 of this act  
18 constitute a new chapter in Title 70 RCW.

19 (2) Sections 305 through 310 of this act constitute a new chapter  
20 in Title 48 RCW.

21 NEW SECTION. **Sec. 603.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 604.** This act constitutes an alternative to  
26 Initiative 330. The secretary of state shall place this act on the  
27 ballot in conjunction with Initiative 330 at the next regular general  
28 election.

29 NEW SECTION. **Sec. 605.** This act constitutes an alternative to  
30 Initiative 336. The secretary of state shall place this act on the

1 ballot in conjunction with Initiative 336 at the next regular general  
2 election.

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