

---

SENATE BILL 6063

---

State of Washington

59th Legislature

2005 Regular Session

By Senator Brandland

Read first time 02/28/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to actions against health care providers; amending  
2 RCW 4.56.250 and 7.70.070; adding new sections to chapter 4.56 RCW; and  
3 creating a new section.

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

5 **Sec. 1.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read  
6 as follows:

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

9 (a) "Economic damages" means objectively verifiable monetary  
10 losses, including medical expenses, loss of earnings, burial costs,  
11 loss of use of property, cost of replacement or repair, cost of  
12 obtaining substitute domestic services, loss of employment, and loss of  
13 business or employment opportunities.

14 (b) "Noneconomic damages" means subjective, nonmonetary losses,  
15 including((~~r~~)) but not limited to pain, suffering, inconvenience,  
16 mental anguish, disability or disfigurement incurred by the injured  
17 party, loss of ability to enjoy life, emotional distress, loss of  
18 society and companionship, loss of consortium, injury to reputation and

1 humiliation, (~~and~~) destruction of the parent-child relationship, and  
2 other nonpecuniary damages of any type.

3 (c) "Bodily injury" means physical injury, sickness, or disease,  
4 including death.

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

7 (2) In no action seeking damages for personal injury or death may  
8 a claimant recover a judgment for noneconomic damages exceeding an  
9 amount determined by multiplying 0.43 by the average annual wage and by  
10 the life expectancy of the person incurring noneconomic damages, as the  
11 life expectancy is determined by the life expectancy tables adopted by  
12 the insurance commissioner. For purposes of determining the maximum  
13 amount allowable for noneconomic damages, a claimant's life expectancy  
14 shall not be less than fifteen years. The limitation contained in this  
15 subsection applies to all claims for noneconomic damages made by a  
16 claimant who incurred bodily injury. Claims for loss of consortium,  
17 loss of society and companionship, destruction of the parent-child  
18 relationship, and all other derivative claims asserted by persons who  
19 did not sustain bodily injury are to be included within the limitation  
20 on claims for noneconomic damages arising from the same bodily injury.

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

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.56 RCW  
24 to read as follows:

25 (1) In an action or arbitration for damages for injury or death  
26 occurring as a result of health care, or arranging for the provision of  
27 health care, whether brought under chapter 7.70 RCW, or under RCW  
28 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or  
29 any combination thereof, the total amount of noneconomic damages may  
30 not exceed one million dollars.

31 (2) The limitation on noneconomic damages contained in subsection  
32 (1) of this section includes all noneconomic damages claimed by or on  
33 behalf of the person whose injury or death occurred as a result of  
34 health care or arranging for the provision of health care, as well as  
35 all claims for loss of consortium, loss of society and companionship,  
36 destruction of the parent-child relationship, and other derivative  
37 claims asserted by or on behalf of others arising from the same injury

1 or death. If the jury's assessment of noneconomic damages exceeds the  
2 limitation contained in subsection (1) of this section, nothing in RCW  
3 4.44.450 precludes the court from entering a judgment that limits the  
4 total amount of noneconomic damages to those limits provided in  
5 subsection (1) of this section.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.56 RCW  
7 to read as follows:

8 In the event that the Washington state supreme court or other court  
9 of competent jurisdiction rules or affirms that section 2 of this act  
10 is unconstitutional, then the prescribed cap on noneconomic damages  
11 takes effect upon the ratification of a state constitutional amendment  
12 that empowers the legislature to place limits on the amount of  
13 noneconomic damages recoverable in any or all civil causes of action.

14 **Sec. 4.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
15 amended to read as follows:

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

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

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

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

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

28 ~~((5))~~ (e) The time limitations imposed by the client or by the  
29 circumstances;

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

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

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

35 (2) In no event may the fee charged, whether fixed or contingent,

1 for representing a person in connection with an action for damages  
2 against a health care provider based upon professional negligence  
3 exceed ten thousand dollars per hour.

4 NEW SECTION. **Sec. 5.** Section 4 of this act applies to all  
5 agreements for attorneys' fees entered into or modified after the  
6 effective date of this section.

--- END ---