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**SENATE BILL 6072**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senators Brandland and Mulliken

Read first time 03/02/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to civil liability reform; amending RCW 4.22.070,  
2 4.22.015, 5.64.010, 4.56.250, 4.16.350, 7.70.100, 7.70.070, 43.70.110,  
3 43.70.250, and 4.24.260; adding new sections to chapter 4.56 RCW;  
4 adding new sections to chapter 7.70 RCW; adding a new section to  
5 chapter 7.04 RCW; adding a new section to chapter 4.24 RCW; adding new  
6 sections to chapter 48.19 RCW; adding new sections to chapter 43.70  
7 RCW; adding a new chapter to Title 48 RCW; adding a new chapter to  
8 Title 70 RCW; creating new sections; prescribing penalties; and  
9 providing an effective date.

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

11 **PART 1**

12 **MEDICAL MALPRACTICE PREMIUM ASSISTANCE**

13 NEW SECTION. **Sec. 101.** The department of health shall develop, in  
14 consultation with the department of revenue, a program to provide  
15 business and occupation tax credits for physicians who serve uninsured,  
16 medicare, and medicaid patients in a private practice or a reduced fee  
17 access program for the uninsured and shall submit proposed legislation  
18 to the legislature by December 15, 2005.

1 PART 2

2 CIVIL LIABILITY REFORM

3 Sec. 201. RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
4 as follows:

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

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

35 (2) If a defendant is jointly and severally liable under ~~((one of))~~  
36 the exception~~((s))~~ listed in subsection~~((s))~~ (1)~~((a) or (1)(b))~~ of  
37 this section, such defendant's rights to contribution against another

1 jointly and severally liable defendant, and the effect of settlement by  
2 either such defendant, shall be determined under RCW 4.22.040,  
3 4.22.050, and 4.22.060.

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

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

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

12 **Sec. 202.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read  
13 as follows:

14 "Fault" includes acts or omissions, including misuse of a product,  
15 that are in any measure negligent or reckless toward the person or  
16 property of the actor or others, or that subject a person to strict  
17 tort liability or liability on a product liability claim. The term  
18 also includes breach of warranty, unreasonable assumption of risk, and  
19 unreasonable failure to avoid an injury or to mitigate damages. Legal  
20 requirements of causal relation apply both to fault as the basis for  
21 liability and to contributory fault.

22 A comparison of fault for any purpose under RCW 4.22.005 through  
23 (~~4.22.060~~) 4.22.070 shall involve consideration of both the nature of  
24 the conduct of the parties to the action and the extent of the causal  
25 relation between such conduct and the damages.

26 **Sec. 203.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each  
27 amended to read as follows:

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

31 ~~(1) A person licensed by this state to provide health care or~~  
32 ~~related services, including, but not limited to, a physician,~~  
33 ~~osteopathic physician, dentist, nurse, optometrist, podiatrist,~~  
34 ~~chiropractor, physical therapist, psychologist, pharmacist, optician,~~  
35 ~~physician's assistant, osteopathic physician's assistant, nurse~~

1 practitioner, or physician's trained mobile intensive care paramedic,  
2 including, in the event such person is deceased, his estate or personal  
3 representative;

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

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

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

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

25 (b) Any and all statements or affirmations regarding remedial  
26 actions that may be taken to address the act or omission that is the  
27 basis for the allegation of negligence;

28 which were in the past or are made by a health care provider to the  
29 injured person, a relative of the injured person, or a representative  
30 of the injured person and which relate to the discomfort, pain,  
31 suffering, injury, or death of the injured person as the result of the  
32 alleged professional negligence are not admissible as evidence.

33 (3) For the purposes of this section:

34 (a) "Health care provider" has the same meaning provided in RCW  
35 7.70.020.

36 (b) "Relative" means:

37 (i) An injured person's spouse, parent, grandparent, stepfather,

1 stepmother, child, grandchild, brother, sister, half brother, half  
2 sister, or spouse's parents;

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

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

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

11 **Sec. 204.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to  
12 read as follows:

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

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

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

27 (c) "Bodily injury" means physical injury, sickness, or disease,  
28 including death.

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

31 (2) In no action seeking damages for personal injury or death may  
32 a claimant recover a judgment for noneconomic damages exceeding an  
33 amount determined by multiplying 0.43 by the average annual wage and by  
34 the life expectancy of the person incurring noneconomic damages, as the  
35 life expectancy is determined by the life expectancy tables adopted by  
36 the insurance commissioner. For purposes of determining the maximum  
37 amount allowable for noneconomic damages, a claimant's life expectancy

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

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

10 NEW SECTION. **Sec. 205.** A new section is added to chapter 4.56 RCW  
11 to read as follows:

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

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

30 NEW SECTION. **Sec. 206.** A new section is added to chapter 4.56 RCW  
31 to read as follows:

32 In the event that the Washington state supreme court or other court  
33 of competent jurisdiction rules or affirms that section 205 of this act  
34 is unconstitutional, then the prescribed cap on noneconomic damages  
35 takes effect upon the ratification of a state constitutional amendment

1 that empowers the legislature to place limits on the amount of  
2 noneconomic damages recoverable in any or all civil causes of action.

3 **Sec. 207.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read  
4 as follows:

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

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

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

19 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or  
20 institution employing one or more persons described in (a) of this  
21 subsection ~~((1) of this section)~~, including, but not limited to, a  
22 hospital, clinic, health maintenance organization, ~~((or))~~ nursing home,  
23 or boarding home; or an officer, director, employee, or agent thereof  
24 acting in the course and scope of his or her employment, including, in  
25 the event such officer, director, employee, or agent is deceased, his  
26 or her estate or personal representative;

27 based upon alleged professional negligence shall be commenced within  
28 three years of the act or omission alleged to have caused the injury or  
29 condition, or one year of the time the patient or his or her  
30 representative or custodial parent or guardian discovered or reasonably  
31 should have discovered that the injury or condition was caused by said  
32 act or omission, whichever period ~~((expires later, except that in no~~  
33 ~~event shall an action be commenced more than eight years after said act~~  
34 ~~or omission: PROVIDED, That the time for commencement of an action is~~  
35 ~~tolled upon proof of fraud, intentional concealment, or the presence of~~  
36 ~~a foreign body not intended to have a therapeutic or diagnostic purpose~~  
37 ~~or effect, until the date the patient or the patient's representative~~

1 ~~has actual knowledge of the act of fraud or concealment, or of the~~  
2 ~~presence of the foreign body; the patient or the patient's~~  
3 ~~representative has one year from the date of the actual knowledge in~~  
4 ~~which to commence a civil action for damages.~~

5 ~~For purposes of this section, notwithstanding RCW 4.16.190, the~~  
6 ~~knowledge of a custodial parent or guardian shall be imputed to a~~  
7 ~~person under the age of eighteen years, and such imputed knowledge~~  
8 ~~shall operate to bar the claim of such minor to the same extent that~~  
9 ~~the claim of an adult would be barred under this section. Any action~~  
10 ~~not commenced in accordance with this section shall be barred.~~

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

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

18 (a) Upon proof of fraud, intentional concealment, or the presence  
19 of a foreign body not intended to have a therapeutic or diagnostic  
20 purpose or effect, in which case the patient or the patient's  
21 representative has one year from the date the patient or the patient's  
22 representative or custodial parent or guardian has actual knowledge of  
23 the act of fraud or concealment or of the presence of the foreign body  
24 in which to commence a civil action for damages.

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

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

34 (3) Any action not commenced in accordance with this section is  
35 barred.

36 (4) For purposes of this section, the tolling provisions of RCW  
37 4.16.190 do not apply.



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

6       NEW SECTION. **Sec. 208.** A new section is added to chapter 7.70 RCW  
7 to read as follows:

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

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

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

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

36       (b) In the event that the court finds that the judgment debtor has  
37 exhibited a continuing pattern of failing to make the payments, as

1 specified in (a) of this subsection, the court shall find the judgment  
2 debtor in contempt of court and, in addition to the required periodic  
3 payments, shall order the judgment debtor to pay the judgment creditor  
4 all damages caused by the failure to make such periodic payments,  
5 including court costs and attorneys' fees.

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

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

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

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

1           **Sec. 209.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to  
2 read as follows:

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

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

13           (3) After the filing of the ninety-day presuit notice, and before  
14 a superior court trial, all causes of action, whether based in tort,  
15 contract, or otherwise, for damages arising from injury occurring as a  
16 result of health care provided after July 1, 1993, shall be subject to  
17 mandatory mediation prior to trial.

18           (~~(+2)~~) (4) The supreme court shall by rule adopt procedures to  
19 implement mandatory mediation of actions under this chapter. The rules  
20 shall require mandatory mediation without exception and address, at a  
21 minimum:

22           (a) Procedures for the appointment of, and qualifications of,  
23 mediators. A mediator shall have experience or expertise related to  
24 actions arising from injury occurring as a result of health care, and  
25 be a member of the state bar association who has been admitted to the  
26 bar for a minimum of five years or who is a retired judge. The parties  
27 may stipulate to a nonlawyer mediator. The court may prescribe  
28 additional qualifications of mediators;

29           (b) Appropriate limits on the amount or manner of compensation of  
30 mediators;

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

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

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

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

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

5 (~~(3)~~) (5) Mediators shall not impose discovery schedules upon the  
6 parties.

7 (6) The supreme court shall by rule also adopt procedures for the  
8 parties to certify to the court the manner of mediation used by the  
9 parties to comply with this section.

10 NEW SECTION. Sec. 210. A new section is added to chapter 7.04 RCW  
11 to read as follows:

12 (1) A contract for health care services that contains a provision  
13 for arbitration of a dispute as to professional negligence of a health  
14 care provider under chapter 7.70 RCW must have the provision as the  
15 first article of the contract and must be expressed in the following  
16 language:

17 "It is understood that any dispute as to medical malpractice that  
18 is as to whether any medical services rendered under this contract were  
19 unnecessary or unauthorized or were improperly, negligently, or  
20 incompetently rendered, will be determined by submission to arbitration  
21 as provided by Washington law, and not by a lawsuit or resort to court  
22 process except as Washington law provides for judicial review of  
23 arbitration proceedings. Both parties to this contract, by entering  
24 into it, are giving up their constitutional right to have such a  
25 dispute decided in a court of law before a jury, and instead are  
26 accepting the use of arbitration."

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

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

34 (3) Once signed, such a contract governs all subsequent open-book  
35 account transactions for medical services for which the contract was  
36 signed until or unless rescinded by written notice within thirty days

1 of signature. Written notice of such rescission may be given by a  
2 guardian or other legal representative of the patient if the patient is  
3 incapacitated or a minor.

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

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

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

14 NEW SECTION. **Sec. 211.** A new section is added to chapter 4.24 RCW  
15 to read as follows:

16 (1) A certificate of merit shall be filed by the claimant's  
17 attorney as specified in subsection (2) of this section within ninety  
18 days of filing or service, whichever occurs later, of any action  
19 asserting a claim, cross-claim, counter-claim, or third party claim for  
20 damages arising out of: The failure to comply with the standard of  
21 care by a person licensed, registered, or certified under Title 18 RCW;  
22 the negligence of a health care facility as defined in RCW 48.43.005;  
23 or a product liability claim under chapter 7.72 RCW. The court may,  
24 for good cause shown, extend the period of time within which filing of  
25 the certificate is required. In no event shall the period of time for  
26 filing the certificate of merit exceed one hundred twenty days from the  
27 date of filing or service, whichever occurs later.

28 (2) The certificate filed by the claimant's attorney shall consist  
29 of the declaration of a qualified expert. The declaration shall  
30 include:

31 (a) The name, address, and credentials of claimant's expert;

32 (b) The expert's statement that the expert has reviewed the facts  
33 of the case, is knowledgeable of the relevant issues involved, and who:

34 (i) Holds a license, certificate, or registration issued by this  
35 state or another state in the same profession as that of the person  
36 against whom the claim is filed, and who practices in the same

1 specialty or subspecialty as the person against whom the claim is  
2 filed; or

3 (ii) Has expertise in those areas requiring expert testimony in a  
4 product liability claim or in an action against a health care facility;

5 (c) The expert's statement of willingness and availability to  
6 testify to admissible facts, standard of care, or opinions regarding  
7 the case; and

8 (d) The expert's statement that on the basis of preliminary review  
9 and consultation, that there is reasonable and meritorious cause for  
10 the filing of the action.

11 (3) Where a certificate is required under this section, and where  
12 there are claims against multiple persons or entities, separate  
13 certificates must be filed for each party qualified under subsection  
14 (1) of this section. As appropriate, the same expert may file multiple  
15 declarations provided that each declaration meets the requirements of  
16 subsection (2) of this section.

17 (4) Persons identified in subsection (1) of this section against  
18 whom a claim has been asserted are not required to file an answer to  
19 that claim until thirty days after filing the certificate required in  
20 subsection (2) of this section.

21 (5) The provisions of this section are not applicable to a pro se  
22 claimant until such a time as an attorney appears on the claimant's  
23 behalf.

24 (6) A violation of this section is grounds for dismissal of the  
25 action; and a court of competent jurisdiction may sanction the claimant  
26 or the claimant's attorney for violating this section.

27 NEW SECTION. **Sec. 212.** Section 211 of this act applies to all  
28 actions for damages filed on or after the effective date of this  
29 section.

30 **Sec. 213.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
31 amended to read as follows:

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

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

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

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

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

10       ~~((5))~~ (e) The time limitations imposed by the client or by the  
11 circumstances;

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

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

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

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

21       (i) Forty percent of the first fifty thousand dollars recovered;  
22       (ii) Thirty-three and one-third percent of the next fifty thousand  
23 dollars recovered;

24       (iii) Twenty-five percent of the next five hundred thousand dollars  
25 recovered;

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

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

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

35       (d) For purposes of this subsection, "recovered" means the net sum  
36 recovered after deducting any disbursements or costs incurred in  
37 connection with prosecution or settlement of the claim. Costs of

1 medical care incurred by the plaintiff and the attorneys' office  
2 overhead costs or charges are not deductible disbursements or costs for  
3 such purposes.

4 (3) This section applies to all agreements for attorneys' fees  
5 entered into or modified after the effective date of this section.

6 **PART 3**

7 **INSURANCE INDUSTRY IMPROVEMENTS**

8 NEW SECTION. Sec. 301. A new section is added to chapter 48.19  
9 RCW to read as follows:

10 (1) The insurance commissioner shall notify the public of any rate  
11 filing by an insurer for a rate change affecting medical malpractice  
12 that is less than fifteen percent of the then applicable rate. The  
13 filing is approved forty-five days after public notice unless:

14 (a) A consumer or his or her representative requests a hearing  
15 within thirty days of public notice and the commissioner grants the  
16 hearing;

17 (b) The commissioner on his or her own motion determines to hold a  
18 hearing; or

19 (c) The commissioner disapproves the filing.

20 (2) If the rate filing increase is fifteen percent or greater, the  
21 commissioner shall order a public hearing. Any person shall have the  
22 right to intervene and participate as a party or have the right to  
23 comment at the public hearing.

24 (3) If rate hearings are commenced under subsection (1) or (2) of  
25 this section, the applicant may not use the rates until the  
26 commissioner approves the filing, either as originally submitted or as  
27 amended, after the public hearing and consistent with the requirements  
28 of this section.

29 (4) If a judicial proceeding directly involving the rate filing and  
30 initiated by the insurer or an intervener begins, the commissioner has  
31 thirty days after conclusion of the judicial proceedings to approve or  
32 disapprove the rate filing. The commissioner may disapprove an  
33 application without a hearing if a stay is in effect barring the  
34 commissioner from holding a hearing.

35 (5) Upon a final determination of a disapproval or amendment of a



1 rate filing under this section, the insurer must issue an endorsement  
2 changing the rate to comply with the commissioner's disapproval. The  
3 endorsement is effective on the date the rate is no longer effective.

4 (6) The public notice required under subsections (1) and (2) of  
5 this section must be made via distribution to the news media, posting  
6 on the web site maintained by the commissioner, and by mail to any  
7 member of the public who requests placement on a mailing list  
8 maintained by the commissioner for this purpose.

9 (7) All medical malpractice insurance rate filings and related  
10 material submitted to the commissioner by the insurer under this  
11 section are available for public inspection pursuant to the public  
12 disclosure act, chapter 42.17 RCW.

13 (8) Hearings and other administrative proceedings arising under  
14 this section must be conducted under chapter 34.05 RCW.

15 NEW SECTION. **Sec. 302.** A new section is added to chapter 48.19  
16 RCW to read as follows:

17 (1) With respect to administrative or legal proceedings authorized  
18 by or arising under section 301 of this act, any person may:

19 (a) Initiate or intervene as a party, or comment in writing or in  
20 person at any public hearing on the proceedings; or

21 (b) Challenge any action of the insurance commissioner.

22 (2) The commissioner or a court shall award reasonable advocacy and  
23 witness fees and expenses to any person who demonstrates that:

24 (a) The person represents the interests of consumers; and

25 (b) The person made a substantial contribution to the adoption of  
26 any order, rule, or decision by the commissioner or a court.

27 (3) When an award of fees or expenses under this section occurs in  
28 a proceeding related to a rate application, the award must be paid by  
29 the applicant.

30 NEW SECTION. **Sec. 303.** The definitions in this section apply  
31 throughout this chapter unless the context clearly requires otherwise.

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

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

1 (b) A series of related incidents of medical malpractice is one  
2 claim.

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

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

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

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

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

21 (7) "Insuring entity" means:

- 22 (a) An insurer;
- 23 (b) A joint underwriting association;
- 24 (c) A risk retention group; or
- 25 (d) An unauthorized insurer that provides surplus lines coverage.

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

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

32 NEW SECTION. **Sec. 304.** (1) Beginning April 1, 2006, every self-  
33 insurer or insuring entity that provides medical malpractice insurance  
34 to any facility or provider in Washington state must report to the  
35 commissioner any closed claim related to medical malpractice, if the  
36 claim resulted in a final:

- 37 (a) Judgment in any amount;

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

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

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

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

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

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

19 NEW SECTION. **Sec. 305.** The reports required under section 304 of  
20 this act must contain the following data in a form prescribed by the  
21 commissioner for each claim:

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

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

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

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

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

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

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

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

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

37 (b) Whether the settlement:

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

23 NEW SECTION. **Sec. 306.** The commissioner must prepare aggregate  
24 statistical summaries of closed claims based on calendar year data  
25 submitted under section 304 of this act.

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

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

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

34 NEW SECTION. **Sec. 307.** Beginning in 2006, the commissioner must  
35 prepare an annual report by June 30th that summarizes and analyzes the

1 closed claim reports for medical malpractice filed under section 304 of  
2 this act and the annual financial reports filed by insurers writing  
3 medical malpractice insurance in this state. The report must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (6) The commissioner may adopt rules that require insuring entities  
34 and self-insurers required to report under section 304(1) of this act  
35 to report data related to:

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

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

- 1 (c) Changes in reserves from the previous reporting period; and
- 2 (d) Any other information that helps the commissioner monitor
- 3 losses and claims development in the Washington state medical
- 4 malpractice insurance market.

5 NEW SECTION. **Sec. 308.** The commissioner shall adopt all rules  
6 needed to implement this chapter. To ensure that claimants, health  
7 care providers, health care facilities, and self-insurers cannot be  
8 individually identified when data is disclosed to the public, the  
9 commissioner shall adopt rules that require the protection of  
10 information that, in combination, could result in the ability to  
11 identify the claimant, health care provider, health care facility, or  
12 self-insurer in a particular claim or collection of claims.

13 NEW SECTION. **Sec. 309.** A new section is added to chapter 7.70 RCW  
14 to read as follows:

15 In any action filed under this chapter that results in a final:  
16 (1) Judgment in any amount;  
17 (2) Settlement or payment in any amount; or  
18 (3) Disposition resulting in no indemnity payment,  
19 the claimant or his or her attorney shall report to the office of the  
20 insurance commissioner on forms provided by the commissioner any court  
21 costs, attorneys' fees, or costs of expert witnesses incurred in  
22 pursuing the action.

23 NEW SECTION. **Sec. 310.** (1) The legislature finds that the  
24 advances in medical technology, diagnosis, and treatment have resulted  
25 in great strides in maintaining and improving the health of  
26 Washingtonians. Yet those advances substantially increase the  
27 complexity of our health care delivery system and increase the risk  
28 that medical errors will occur. The legislature further finds that our  
29 health care and medical liability systems are not structured to promote  
30 disclosure and analysis of medical errors, whether they result in  
31 patient harm or not. Each medical error provides an opportunity to  
32 learn how to avoid future errors.

33 (2) The legislature intends to promote full disclosure of medical  
34 errors and adverse health events, and to use the experience and  
35 knowledge gained from analysis of those events to advance patient

1 safety in a nonpunitive manner. The legislature further intends to  
2 promote full disclosure of medical errors to patients by substantially  
3 reducing the risk of liability exposure associated with such  
4 disclosure.

5 NEW SECTION. **Sec. 311.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Adverse event" means any of the following events or  
8 occurrences:

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

12 (b) A patient suicide while the patient was under care in the  
13 hospital;

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

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

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

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

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

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

26 The term does not include an incident.

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

31 (3) "Childbirth center" means a facility licensed under chapter  
32 18.46 RCW.

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

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

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

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

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

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

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

14 The term does not include an adverse event.

15 (9) "Medical facility" means an ambulatory surgical facility,  
16 childbirth center, hospital, psychiatric hospital, or correctional  
17 medical facility.

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

20 NEW SECTION. **Sec. 312.** (1) Each medical facility shall report to  
21 the department the occurrence of any adverse event. The report must be  
22 submitted to the department within forty-five days after occurrence of  
23 the event has been confirmed.

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

32 (3) Any medical facility or health care worker may report an  
33 incident to the department. The report shall be filed in a format  
34 specified by the department after consultation with medical facilities  
35 and shall identify the facility but shall not include any identifying  
36 information for any of the health care professionals, facility  
37 employees, or patients involved. This provision does not modify the



1 duty of a hospital to make a report to the department of health or a  
2 disciplinary authority if a licensed practitioner has committed  
3 unprofessional conduct as defined in RCW 18.130.180.

4 (4) If, in the course of investigating a complaint received from an  
5 employee of a licensed medical facility, the department determines that  
6 the facility has not undertaken efforts to investigate the occurrence  
7 of an adverse event, the department shall direct the facility to  
8 undertake an investigation of the event. If a complaint related to a  
9 potential adverse event involves care provided in an ambulatory  
10 surgical facility, the department shall notify the facility and request  
11 that they undertake an investigation of the event. The protections of  
12 RCW 43.70.075 apply to complaints related to adverse events or  
13 incidents that are submitted in good faith by employees of medical  
14 facilities.

15 NEW SECTION. **Sec. 313.** The department shall:

16 (1) Receive reports of adverse events and incidents under section  
17 312 of this act;

18 (2) Investigate adverse events;

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

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

23 (5) Directly or by contract:

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

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

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

33 (d) Issue recommendations to medical facilities on a facility-  
34 specific or on a statewide basis regarding changes, trends, and  
35 improvements in health care practices and procedures for the purpose of  
36 reducing the number and severity of adverse events and incidents.  
37 Prior to issuing recommendations, consideration shall be given to the

1 following factors: Expectation of improved quality care,  
2 implementation feasibility, other relevant implementation practices,  
3 and the cost impact to patients, payers, and medical facilities.  
4 Statewide recommendations shall be issued to medical facilities on a  
5 continuing basis and shall be published and posted on the department's  
6 publicly accessible web site. The recommendations made to medical  
7 facilities under this section shall not be considered mandatory for  
8 licensure purposes unless they are adopted by the department as rules  
9 pursuant to chapter 34.05 RCW; and

10 (e) Monitor implementation of reporting systems addressing adverse  
11 events or their equivalent in other states and make recommendations to  
12 the governor and the legislature as necessary for modifications to this  
13 chapter to keep the system as nearly consistent as possible with  
14 similar systems in other states;

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

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

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

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

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

26 (7) Conduct all activities under this section in a manner that  
27 preserves the confidentiality of documents, materials, or information  
28 made confidential by section 315 of this act.

29 NEW SECTION. **Sec. 314.** (1) Medical facilities licensed by the  
30 department shall have in place policies to assure that, when  
31 appropriate, information about unanticipated outcomes is provided to  
32 patients or their families or any surrogate decision makers identified  
33 pursuant to RCW 7.70.065. Notifications of unanticipated outcomes  
34 under this section do not constitute an acknowledgment or admission of  
35 liability, nor can the fact of notification or the content disclosed be  
36 introduced as evidence in a civil action.

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

4 NEW SECTION. **Sec. 315.** When a report of an adverse event or  
5 incident under section 312 of this act is made by or through a  
6 coordinated quality improvement program under RCW 43.70.510 or  
7 70.41.200, or by a peer review committee under RCW 4.24.250,  
8 information and documents, including complaints and incident reports,  
9 created specifically for and collected and maintained by a quality  
10 improvement committee for the purpose of preparing a report of an  
11 adverse event or incident shall be subject to the confidentiality  
12 protections of those laws and RCW 42.17.310(1)(hh).

13 **Sec. 316.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended  
14 to read as follows:

15 (1) The secretary shall charge fees to the licensee for obtaining  
16 a license. After June 30, 1995, municipal corporations providing  
17 emergency medical care and transportation services pursuant to chapter  
18 18.73 RCW shall be exempt from such fees, provided that such other  
19 emergency services shall only be charged for their pro rata share of  
20 the cost of licensure and inspection, if appropriate. The secretary  
21 may waive the fees when, in the discretion of the secretary, the fees  
22 would not be in the best interest of public health and safety, or when  
23 the fees would be to the financial disadvantage of the state.

24 (2) Except as provided in section 318 of this act, fees charged  
25 shall be based on, but shall not exceed, the cost to the department for  
26 the licensure of the activity or class of activities and may include  
27 costs of necessary inspection.

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

31 **Sec. 317.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to  
32 read as follows:

33 It shall be the policy of the state of Washington that the cost of  
34 each professional, occupational, or business licensing program be fully  
35 borne by the members of that profession, occupation, or business. The

1 secretary shall from time to time establish the amount of all  
2 application fees, license fees, registration fees, examination fees,  
3 permit fees, renewal fees, and any other fee associated with licensing  
4 or regulation of professions, occupations, or businesses administered  
5 by the department. In fixing (~~said~~) such fees, the secretary shall  
6 set the fees for each program at a sufficient level to defray the costs  
7 of administering that program and the patient safety fee established in  
8 section 318 of this act. All such fees shall be fixed by rule adopted  
9 by the secretary in accordance with the provisions of the  
10 administrative procedure act, chapter 34.05 RCW.

11 NEW SECTION. Sec. 318. A new section is added to chapter 43.70  
12 RCW to read as follows:

13 (1) The secretary shall increase the licensing fee established  
14 under RCW 43.70.110 by two dollars per year for the health care  
15 professionals designated in subsection (2) of this section and by two  
16 dollars per licensed bed per year for the health care facilities  
17 designated in subsection (2) of this section. Proceeds of the patient  
18 safety fee must be deposited into the patient safety account in section  
19 322 of this act and dedicated to patient safety and medical error  
20 reduction efforts that have been proven to improve, or have a  
21 substantial likelihood of improving, the quality of care provided by  
22 health care professionals and facilities.

23 (2) Health care professionals and facilities subject to the one  
24 percent patient safety fee are:

25 (a) The following health care professionals licensed under Title 18  
26 RCW:

27 (i) Advanced registered nurse practitioners, registered nurses, and  
28 licensed practical nurses licensed under chapter 18.79 RCW;

29 (ii) Chiropractors licensed under chapter 18.25 RCW;

30 (iii) Dentists licensed under chapter 18.32 RCW;

31 (iv) Midwives licensed under chapter 18.50 RCW;

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

33 (vi) Nursing home administrators licensed under chapter 18.52 RCW;

34 (vii) Optometrists licensed under chapter 18.53 RCW;

35 (viii) Osteopathic physicians licensed under chapter 18.57 RCW;

36 (ix) Osteopathic physicians' assistants licensed under chapter  
37 18.57A RCW;

- 1 (x) Pharmacists and pharmacies licensed under chapter 18.64 RCW;  
2 (xi) Physicians licensed under chapter 18.71 RCW;  
3 (xii) Physician assistants licensed under chapter 18.71A RCW;  
4 (xiii) Podiatrists licensed under chapter 18.22 RCW; and  
5 (xiv) Psychologists licensed under chapter 18.83 RCW; and  
6 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric  
7 hospitals licensed under chapter 71.12 RCW.

8 NEW SECTION. **Sec. 319.** A new section is added to chapter 7.70 RCW  
9 to read as follows:

10 (1) One percent of the present value of the settlement or verdict  
11 in any action for damages based upon injuries resulting from health  
12 care shall be deducted from the settlement or verdict as a patient  
13 safety set aside. Proceeds of the patient safety set aside shall be  
14 distributed by the department of health in the form of grants, loans,  
15 or other appropriate arrangements to support strategies that have been  
16 proven to reduce medical errors and enhance patient safety as provided  
17 in section 318 of this act.

18 (2) Patient safety set asides shall be transmitted to the secretary  
19 of the department of health for deposit into the patient safety account  
20 established in section 322 of this act.

21 (3) The supreme court shall by rule adopt procedures to implement  
22 this section.

23 NEW SECTION. **Sec. 320.** A new section is added to chapter 43.70  
24 RCW to read as follows:

25 (1) Patient safety fee and set aside proceeds shall be administered  
26 by the department, after seeking input from health care providers  
27 engaged in direct patient care activities, health care facilities, and  
28 other interested parties. In developing criteria for the award of  
29 grants, loans, or other appropriate arrangements under this section,  
30 the department shall rely primarily upon evidence-based practices to  
31 improve patient safety that have been identified and recommended by  
32 governmental and private organizations, including, but not limited to:

- 33 (a) The federal agency for health care quality and research;  
34 (b) The federal institute of medicine;  
35 (c) The joint commission on accreditation of health care  
36 organizations; and

1 (d) The national quality forum.

2 (2) Projects that have been proven to reduce medical errors and  
3 enhance patient safety shall receive priority for funding over those  
4 that are not proven, but have a substantial likelihood of reducing  
5 medical errors and enhancing patient safety. All project proposals  
6 must include specific performance and outcome measures by which to  
7 evaluate the effectiveness of the project. Project proposals that do  
8 not propose to use a proven patient safety strategy must include, in  
9 addition to performance and outcome measures, a detailed description of  
10 the anticipated outcomes of the project based upon any available  
11 related research and the steps for achieving those outcomes.

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

14 NEW SECTION. **Sec. 321.** A new section is added to chapter 43.70  
15 RCW to read as follows:

16 The secretary may solicit and accept grants or other funds from  
17 public and private sources to support patient safety and medical error  
18 reduction efforts under this act. Any grants or funds received may be  
19 used to enhance these activities as long as program standards  
20 established by the secretary are maintained.

21 NEW SECTION. **Sec. 322.** A new section is added to chapter 43.70  
22 RCW to read as follows:

23 The patient safety account is created in the custody of the state  
24 treasurer. All receipts from contributions authorized in sections 318  
25 and 319 of this act must be deposited into the account. Expenditures  
26 from the account may be used only for the purposes of this act. Only  
27 the secretary or the secretary's designee may authorize expenditures  
28 from the account. The account is subject to allotment procedures under  
29 chapter 43.88 RCW, but an appropriation is not required for  
30 expenditures.

31 NEW SECTION. **Sec. 323.** A new section is added to chapter 43.70  
32 RCW to read as follows:

33 By December 1, 2007, the department shall report the following  
34 information to the governor and the health policy and fiscal committees  
35 of the legislature:

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

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

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

9 **Sec. 324.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended  
10 to read as follows:

11 ~~((Physicians licensed under chapter 18.71 RCW, dentists licensed  
12 under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64  
13 RCW))~~ Any member of a health profession listed under RCW 18.130.040  
14 who, in good faith, makes a report, files charges, or presents evidence  
15 against another member of ((their)) a health profession based on the  
16 claimed ((incompetency or gross misconduct)) unprofessional conduct as  
17 provided in RCW 18.130.180 or inability to practice with reasonable  
18 skill and safety to consumers by reason of any physical or mental  
19 condition as provided in RCW 18.130.170 of such person before the  
20 ((medical quality assurance commission established under chapter 18.71  
21 RCW, in a proceeding under chapter 18.32 RCW, or to the board of  
22 pharmacy under RCW 18.64.160)) agency, board, or commission responsible  
23 for disciplinary activities for the person's profession under chapter  
24 18.130 RCW, shall be immune from civil action for damages arising out  
25 of such activities. A person prevailing upon the good faith defense  
26 provided for in this section is entitled to recover expenses and  
27 reasonable attorneys' fees incurred in establishing the defense.

28 NEW SECTION. **Sec. 325.** The uniform disciplinary act provides a  
29 consistent process for addressing acts of unprofessional conduct  
30 affecting fifty-nine health professions regulated by the state. The  
31 disciplinary authorities include the secretary of health and sixteen  
32 boards and commissions charged with protecting the health and safety of  
33 patients from unprofessional conduct. It is recognized nationally as  
34 a model law and has worked well over time to provide uniformity and  
35 efficiency to the disciplinary process.





1        NEW SECTION.    **Sec. 403.**    Sections 303 through 308 of this act  
2    constitute a new chapter in Title 48 RCW.

3        NEW SECTION.    **Sec. 404.**    Sections 310 through 315 of this act  
4    constitute a new chapter in Title 70 RCW.

5        NEW SECTION.    **Sec. 405.**    Section 312 of this act takes effect April  
6    1, 2006.

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