
HOUSE BILL 1360

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By Representatives Schmick, Hinkle, Bailey, McCune, Warnick, Wilcox, Short, Haler, Taylor, Kristiansen, Angel, Johnson, Condotta, Klippert, Dammeier, and Smith

Read first time 01/19/11. Referred to Committee on Judiciary.

1 AN ACT Relating to health care liability reform; amending RCW
2 4.22.070, 4.22.015, 4.56.250, 4.16.350, 7.70.150, and 7.70.070; adding
3 a new section to chapter 4.56 RCW; adding a new section to chapter
4 7.04A RCW; adding new sections to chapter 7.70 RCW; creating new
5 sections; and prescribing penalties.

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

7 **PART I**

8 **CIVIL JUSTICE REFORM**

9 **Joint and Several Liability**

10 **Sec. 101.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
11 as follows:

12 (1) In all actions involving fault of more than one entity, the
13 trier of fact shall determine the percentage of the total fault which
14 is attributable to every entity which caused the claimant's damages
15 except entities immune from liability to the claimant under Title 51
16 RCW. The sum of the percentages of the total fault attributed to at-
17 fault entities shall equal one hundred percent. The entities whose
18 fault shall be determined include the claimant or person suffering

1 personal injury or incurring property damage, defendants, third-party
2 defendants, entities (~~((released by))~~) who have entered into a release,
3 covenant not to sue, covenant not to enforce judgment, or similar
4 agreement with the claimant, entities with any other individual defense
5 against the claimant, and entities immune from liability to the
6 claimant, but shall not include those entities immune from liability to
7 the claimant under Title 51 RCW. Judgment shall be entered against
8 each defendant except those entities who have (~~((been released by))~~)
9 entered into a release, covenant not to sue, covenant not to enforce
10 judgment, or similar agreement with the claimant or are immune from
11 liability to the claimant or have prevailed on any other individual
12 defense against the claimant in an amount which represents that party's
13 proportionate share of the claimant's total damages. The liability of
14 each defendant shall be several only and shall not be joint except:

15 (a) A party shall be responsible for the fault of another person or
16 for payment of the proportionate share of another party where both were
17 acting in concert or when a person was acting as an agent or servant of
18 the party.

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

25 (ii) (b)(i) of this subsection does not apply to a health care
26 provider as defined in RCW 7.70.020 in an action for damages for injury
27 or death occurring as a result of health care or related services, or
28 the arranging for the provision of health care or related services,
29 whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020,
30 4.20.046, 4.24.010, or 48.43.545(1), any other applicable law, or any
31 combination thereof, with respect to judgments for noneconomic damages.
32 In all actions for damages for injury or death occurring as a result of
33 health care or related services, or the arranging for the provision of
34 health care or related services, the liability of a health care
35 provider for noneconomic damages is several only. For the purposes of
36 this subsection, "noneconomic damages" has the meaning given in RCW
37 4.56.250.

1 (2) If a defendant is jointly and severally liable under one of the
2 exceptions listed in subsection(~~(s)~~) (1)(a) or (~~(1)~~) (b) of this
3 section, such defendant's rights to contribution against another
4 jointly and severally liable defendant, and the effect of settlement by
5 either such defendant, shall be determined under RCW 4.22.040,
6 4.22.050, and 4.22.060.

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

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

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

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

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

25 A comparison of fault for any purpose under RCW 4.22.005 through
26 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of
27 the conduct of the parties to the action and the extent of the causal
28 relation between such conduct and the damages.

29 **Noneconomic Damages**

30 **Sec. 103.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to
31 read as follows:

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

34 (a) "Economic damages" means objectively verifiable monetary
35 losses, including medical expenses, loss of earnings, burial costs,

1 loss of use of property, cost of replacement or repair, cost of
2 obtaining substitute domestic services, loss of employment, and loss of
3 business or employment opportunities.

4 (b) "Noneconomic damages" means subjective, nonmonetary losses,
5 including(~~(7)~~) but not limited to pain, suffering, inconvenience,
6 mental anguish, disability or disfigurement incurred by the injured
7 party, loss of ability to enjoy life, emotional distress, loss of
8 society and companionship, loss of consortium, injury to reputation and
9 humiliation, (~~and~~) destruction of the parent-child relationship, and
10 other nonpecuniary damages of any type.

11 (c) "Bodily injury" means physical injury, sickness, or disease,
12 including death.

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

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

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

31 NEW SECTION. Sec. 104. A new section is added to chapter 4.56 RCW
32 to read as follows:

33 The prescribed cap on noneconomic damages in RCW 4.56.250 takes
34 effect upon the earliest of the following events: (1) The Washington
35 supreme court or other court of competent jurisdiction rules or affirms
36 that RCW 4.56.250 is constitutional; or (2) the ratification of a state

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

4 **Statute of Limitations Reform**

5 **Sec. 105.** RCW 4.16.350 and 2006 c 8 s 302 are each amended to read
6 as follows:

7 (1) Any civil action or arbitration for damages for injury or death
8 occurring as a result of health care or related services, or the
9 arranging for the provision of health care or related services, which
10 is provided after June 25, 1976, against(~~(~~

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

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

23 ~~(3) An entity, whether or not incorporated, facility, or~~
24 ~~institution employing one or more persons described in subsection (1)~~
25 ~~of this section, including, but not limited to, a hospital, clinic,~~
26 ~~health maintenance organization, or nursing home; or an officer,~~
27 ~~director, employee, or agent thereof acting in the course and scope of~~
28 ~~his employment, including, in the event such officer, director,~~
29 ~~employee, or agent is deceased, his estate or personal~~
30 ~~representative;)) a health care provider as defined in RCW 7.70.020, or~~

31 a health care institution, based upon alleged professional negligence
32 shall be commenced within three years of the act or omission alleged to
33 have caused the injury, death, or condition, or within one year of the
34 time the patient or his or her representative or custodial parent or
35 guardian discovered or reasonably should have discovered that the
36 injury, death, or condition was caused by said act or omission,

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

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

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

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

24 (a) Upon proof of fraud, intentional concealment, or the presence
25 of a foreign body not intended to have a therapeutic or diagnostic
26 purpose or effect, in which case the patient or the patient's
27 representative has one year from the date the patient or the patient's
28 representative or custodial parent or guardian has actual knowledge of
29 the act of fraud or concealment or of the presence of the foreign body
30 within which to commence a civil action for damages.

31 (b) In the case of a minor, upon proof that the minor's custodial
32 parent or guardian and the defendant or the defendant's insurer have
33 committed fraud or collusion in the failure to bring an action on
34 behalf of the minor, in which case the patient or the patient's
35 representative has one year from the date the patient or the patient's
36 representative other than the custodial parent or guardian who
37 committed the fraud or collusion has actual knowledge of the fraud or

1 collusion, or one year from the date of the minor's eighteenth
2 birthday, whichever provides a longer period.

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

7 (3) For purposes of this section, the tolling provisions of RCW
8 4.16.190 do not apply.

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

14 (5) This section applies to all causes of action for injury or
15 death occurring as a result of health care or related services, or the
16 arranging for the provision of health care or related services, filed
17 on or after the effective date of this section. However, any action
18 which, if filed on or after the effective date of this section, would
19 have been timely under former law, but now would be barred under the
20 chapter . . . , Laws of 2011 (this act) amendments contained in this
21 section, may be brought within one year following the effective date of
22 this section.

23 (6) Any action not commenced in accordance with this section is
24 barred.

25 **Attorneys' Fees Upon Summary Judgment Dismissal**

26 **Sec. 106.** RCW 7.70.150 and 2006 c 8 s 304 are each amended to read
27 as follows:

28 (1) In an action against (~~an individual~~) a health care provider
29 under this chapter for personal injury or wrongful death (~~in which the~~
30 ~~injury is alleged to have been caused by an act or omission that~~
31 ~~violates the accepted standard of care, the plaintiff must file a~~
32 ~~certificate of merit at the time of commencing the action. If the~~
33 ~~action is commenced within forty five days prior to the expiration of~~
34 ~~the applicable statute of limitations, the plaintiff must file the~~
35 ~~certificate of merit no later than forty five days after commencing))
36 the court shall award reasonable attorneys' fees to a health care~~

1 provider who obtains a summary judgment dismissal. The fees shall also
2 be awarded to a health care provider who receives a voluntary dismissal
3 after filing a motion for summary judgment. Reasonable attorneys' fees
4 include all reasonable expenses incurred in defending the action.

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

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

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

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

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

27 **Promoting Periodic Payments of Future Damages**

28 NEW SECTION. Sec. 107. (1) The definitions in this subsection
29 apply throughout this section unless the context clearly requires
30 otherwise.

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

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

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

18 (3)(a) The judgment ordering the payment of future damages by
19 periodic payments must specify the recipient or recipients of the
20 payments, the dollar amount of the payments, the interval between
21 payments, and the number of payments or the period of time over which
22 payments must be made. The payments are only subject to modification
23 in the event of the death of the judgment creditor.

24 (b) In the event that the court finds that the judgment debtor has
25 exhibited a continuing pattern of failing to make the payments, as
26 specified in (a) of this subsection, the court shall find the judgment
27 debtor in contempt of court and, in addition to the required periodic
28 payments, shall order the judgment debtor to pay the judgment creditor
29 all damages caused by the failure to make such periodic payments,
30 including court costs and attorneys' fees.

31 (4) In the event of the death of the judgment creditor, the court,
32 upon petition of any party in interest, shall modify the judgment to
33 eliminate future periodic payments of damages awarded for future
34 medical treatment, care or custody, loss of bodily function, or future
35 pain and suffering of the judgment creditor. However, money damages
36 awarded for loss of future earnings may not be reduced or payments
37 terminated by reason of the death of the judgment creditor, but must be
38 paid to persons to whom the judgment creditor owed a duty of support,

1 as provided by law, immediately prior to his or her death. In such
2 cases, the court that rendered the original judgment may, upon petition
3 of any party in interest, modify the judgment to award and apportion
4 the unpaid future damages in accordance with this subsection (4).

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

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

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

30 NEW SECTION. **Sec. 108.** A new section is added to chapter 7.04A
31 RCW to read as follows:

32 (1) A contract for health care services that contains a provision
33 for arbitration of a claim against a health care provider arising from
34 the delivery of health care under chapter 7.70 RCW must have the
35 provision as the first article of the contract and must be expressed in
36 the following language:

1 "It is understood that any dispute as to medical malpractice that
2 is as to whether any medical services rendered under this contract were
3 unnecessary or unauthorized or were improperly, negligently, or
4 incompetently rendered, will be determined by submission to arbitration
5 as provided by Washington law, and not by a lawsuit or resort to court
6 process except as Washington law provides for judicial review of
7 arbitration proceedings. Both parties to this contract, by entering
8 into it, are giving up their constitutional right to have such a
9 dispute decided in a court of law before a jury, and instead are
10 accepting the use of arbitration."

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

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

18 (3) Once signed, such a contract governs all subsequent open-book
19 account transactions for medical services for which the contract was
20 signed until or unless rescinded by written notice within thirty days
21 of signature. Written notice of such rescission may be given by a
22 guardian or other legal representative of the patient if the patient is
23 incapacitated or a minor.

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

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

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

34 **Encouraging Early Settlement Offers**

35 NEW SECTION. **Sec. 109.** The definitions in this section apply

1 throughout sections 110 through 114 of this act unless the context
2 clearly requires otherwise.

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

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

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

17 (4) "Collateral source" means compensation or benefits paid or
18 payable to the claimant or on the claimant's behalf, to compensate the
19 claimant for the injury complained of, regardless of the right of
20 recoupment of any other entity, through subrogation, trust agreement,
21 lien, or otherwise.

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

24 (6) "Early settlement offer" means a settlement offer made in
25 accordance with section 110 of this act.

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

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

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

29 NEW SECTION. **Sec. 110.** (1) In any civil action for damages
30 brought under this chapter against a health care provider based on the
31 provision of health care, an allegedly responsible party may make an
32 early settlement offer at any time prior to one hundred twenty days
33 after the claim is filed with a court. To qualify as an early
34 settlement offer, the offer must include a good faith offer to
35 compensate the claimant for the claimant's current and future economic
36 damages suffered as a result of the allegedly responsible party's act
37 or omission, less collateral source benefits available to the claimant,

1 and for reasonable hourly attorneys' fees for the claimant. The early
2 settlement offer must be in writing and communicated to the claimant by
3 certified mail. The offer must remain open for acceptance for a
4 minimum of thirty days from the date the offer is received by the
5 claimant.

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

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

12 (4) A claimant who agrees in writing to an early settlement offer
13 may not bring or continue a civil action, based on the same alleged
14 occurrence, against the allegedly responsible party who made the early
15 settlement offer or any other allegedly responsible parties who joined
16 in the early settlement offer under subsection (5) of this section.

17 (5) An offer under subsection (1) of this section may include other
18 allegedly responsible parties who were involved in the events that gave
19 rise to the civil action, regardless of the theory of liability on
20 which the claim is based, with their consent. If, after an early
21 settlement offer is made and accepted, the participants in the offer
22 dispute their relative contributions to the payments to be made to the
23 claimant, such disputes shall be resolved through binding arbitration
24 in accordance with chapter 7.04A RCW.

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

32 NEW SECTION. **Sec. 111.** (1) An attorney who represents a person
33 alleging personal injury or death resulting from the provision of
34 health care, and who represents the person on a contingent-fee basis,
35 shall send a demand for compensation by certified mail to each
36 allegedly responsible party prior to commencing a court action. In the
37 event that multiple allegedly responsible parties are known to the

1 attorney, a demand must be sent on the same date to each party. The
2 demand must specify the amount of compensation sought and must set
3 forth the material facts, documentary evidence, and other information
4 relevant to the demand, including:

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

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

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

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

12 (e) The basis for claiming that the party to whom the demand is
13 addressed is responsible or partially responsible for the injury or
14 loss;

15 (f) A description of the nature of the injury or loss, including
16 the dates and nature of the care or services provided, and the names
17 and addresses of all physicians and other health care providers that
18 provided medical care or services to the claimant or injured party;

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

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

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

30 (3) A claimant's attorney who learns of an additional allegedly
31 responsible party after making a demand for compensation under
32 subsection (1) of this section shall send a demand for compensation to
33 the newly discovered allegedly responsible party and simultaneously
34 mail a copy of the demand to each of the other allegedly responsible
35 parties and to the claimant.

36 (4) In the event that a claimant's attorney learns of an additional
37 allegedly responsible party more than ninety days after making a demand
38 for compensation under subsection (1) of this section, the attorney

1 shall not be required to send a demand to that party nor do the fee
2 limitations imposed under section 113 (1) and (2) of this act apply
3 with regard to an amount recovered from that party, except as provided
4 by this subsection. An attorney who fails as a result of a breach of
5 the standard of care to learn of an additional allegedly responsible
6 party within ninety days of sending a demand for compensation to
7 another allegedly responsible party shall not collect a fee in excess
8 of that allowed under section 113 (1) and (2) of this act with respect
9 to an amount recovered from the additional allegedly responsible party.

10 NEW SECTION. **Sec. 112.** An allegedly responsible party is under no
11 obligation to issue a response to a demand for compensation made under
12 section 111 of this act. The fact that a demand for compensation was
13 or was not made, the fact that an early settlement offer was or was not
14 made, and the amount of any demand or settlement offer made are
15 inadmissible at a trial arising from the injury or loss.

16 NEW SECTION. **Sec. 113.** (1) An attorney who represents a claimant
17 who has accepted an early settlement offer under section 110 of this
18 act shall not collect an amount as compensation for the attorney's
19 services that is more than the attorney's reasonable hourly fees for
20 the services performed.

21 (2) An attorney who represents a claimant who has rejected or
22 failed to accept an early settlement offer shall not collect a
23 contingent fee that is greater than twenty percent of the amount of the
24 early settlement offer plus the percentage of the amount recovered in
25 excess of the early settlement offer as was agreed to by the claimant
26 and the attorney.

27 (3) A claimant's attorney who has failed to make a demand for
28 compensation under section 111 of this act, or who has omitted from the
29 demand any information required under section 111 of this act of a
30 material nature which the attorney had in his or her possession, or
31 which was readily available to him or her, or of which the attorney had
32 knowledge, shall not collect a contingent fee greater than twenty
33 percent of the amount recovered.

34 (4) A claimant's attorney who has failed to provide his or her
35 client a true and complete copy of an early settlement offer received

1 by the attorney, as required under section 110 of this act, shall not
2 collect a contingent fee greater than twenty percent of the amount
3 recovered.

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

9 The attorney shall also provide to each claimant a copy of this
10 act.

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

12 (7) This section applies to all attorneys practicing in this state,
13 including attorneys prosecuting claims filed in federal court, to the
14 maximum extent permitted by federal law.

15 NEW SECTION. **Sec. 114.** A fiduciary relationship applies with
16 respect to a fee agreement between an attorney and a claimant.

17 **Sec. 115.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
18 amended to read as follows:

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

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

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

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

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

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

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

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

1 ((+8)) (h) Whether the fee is fixed or contingent.

2 (2) An attorney's contingency fee is limited to the maximum
3 permissible fee allowed under section 113 of this act.

4 NEW SECTION. Sec. 116. In any action brought under this chapter
5 that is tried by jury, the judge shall present the following questions
6 to the jury after the jury has delivered its verdict in the proceeding.
7 The questions shall be considered and answered by the jury in a
8 deliberative process and the results announced in open court.

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

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

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

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

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

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

36 (3) The court shall take the jury's recommendation under
37 consideration in deciding whether to impose sanctions against a party

1 for filing, bringing, or raising a frivolous pleading, claim, or issue.
2 The court shall enter into the record written findings and conclusions
3 in accepting or rejecting the jury's recommendations.

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

12 **PART II**

13 **MEDICAL MALPRACTICE PREMIUM ASSISTANCE**

14 NEW SECTION. **Sec. 201.** The department of health shall develop, in
15 consultation with the department of revenue, a program to provide
16 business and occupation tax credits for physicians who serve uninsured,
17 medicare, and medicaid patients in a private practice or a reduced fee
18 access program for the uninsured and shall submit proposed legislation
19 to the legislature by December 15, 2011.

20 **PART III**

21 **MISCELLANEOUS**

22 NEW SECTION. **Sec. 301.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 302.** Sections 107, 109 through 114, and 116 of
27 this act are each added to chapter 7.70 RCW.

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