

INITIATIVE 331

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 331 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to civil liability reform; amending RCW 4.56.250,
2 7.70.020, 7.70.070, 7.70.100, 4.16.350, 7.70.080, 74.34.200, 4.22.070,
3 and 4.22.015; adding a new section to chapter 4.56 RCW; adding a new
4 section to chapter 7.04 RCW; adding new sections to chapter 7.70 RCW;
5 and creating new sections.

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

7 **PART 1**

8 **HEALTH CARE LIABILITY REFORM**

9 **Sec. 101.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to
10 read as follows:

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

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

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

8 (c) "Bodily injury" means physical injury, sickness, or disease,
9 including death.

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

12 (2) Except as provided in section 102 of this act, in no action
13 seeking damages for personal injury or death may a claimant recover a
14 judgment for noneconomic damages exceeding an amount determined by
15 multiplying 0.43 by the average annual wage and by the life expectancy
16 of the person incurring noneconomic damages, as the life expectancy is
17 determined by the life expectancy tables adopted by the insurance
18 commissioner. For purposes of determining the maximum amount allowable
19 for noneconomic damages, a claimant's life expectancy shall not be less
20 than fifteen years. The limitation contained in this subsection
21 applies to all claims for noneconomic damages made by a claimant who
22 incurred bodily injury. Claims for loss of consortium, loss of society
23 and companionship, destruction of the parent-child relationship, and
24 all other derivative claims asserted by persons who did not sustain
25 bodily injury are to be included within the limitation on claims for
26 noneconomic damages arising from the same bodily injury.

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

29 NEW SECTION. Sec. 102. A new section is added to chapter 4.56 RCW
30 to read as follows:

31 (1) In any action or arbitration for damages for injury or death
32 occurring as a result of health care or related services, or the
33 arranging for the provision of health care or related services, whether
34 brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046,
35 4.20.060, 4.24.010, or 48.43.545(1), any other applicable law, or any
36 combination thereof, that is based upon the alleged wrongful acts or
37 omissions of one or more health care professionals, whether or not
38 those health care professionals are named as defendants, the total

1 combined civil liability for noneconomic damages for all health care
2 professionals, all persons, entities, and health care institutions for
3 whose conduct the health care professionals could be held liable, and
4 all persons, entities, and health care institutions that could be held
5 liable for the conduct of any health care professionals, shall not
6 exceed three hundred fifty thousand dollars for each claimant,
7 regardless of the number of health care professionals, health care
8 providers, or health care institutions against whom the claim for
9 injury or death is or could have been asserted or the number of
10 separate causes of action on which the claim is based.

11 (2) Any and all health care institutions against whom liability is
12 imposed based upon a wrongful act or omission of any health care
13 professional are specifically included within the limitation on
14 liability for noneconomic damages contained in subsection (1) of this
15 section, even if the health care institution also is or could be held
16 liable for a wrongful act or omission of a person other than a health
17 care professional, another health care institution, or a related
18 entity, facility, or institution.

19 (3) If, in an action or arbitration for injury or death occurring
20 as a result of health care or related services, or the arranging for
21 health care or related services, whether brought under chapter 7.70
22 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or
23 48.43.545(1), any other applicable law, or any combination thereof, one
24 or more health care institutions are liable for any wrongful acts or
25 omissions of persons other than health care professionals, but are not
26 liable for any alleged wrongful act or omission of any health care
27 professional, the total civil liability for noneconomic damages for
28 each such health care institution, including all persons, entities, and
29 other health care institutions for whose conduct the health care
30 institution could be liable, shall not exceed three hundred fifty
31 thousand dollars for each claimant, and the total combined limit of
32 civil liability for noneconomic damages for all health care
33 institutions, including all persons, entities, and other health care
34 institutions for whose conduct the health care institutions could be
35 held liable, shall not exceed seven hundred thousand dollars for each
36 claimant, regardless of the number of health care institutions, health
37 care professionals, or health care providers against whom the claim for
38 damages for injury or death is or could have been asserted or the
39 number of separate causes of action on which the claim is based.

1 (4) A claimant shall not be permitted to obtain more than one
2 recovery of noneconomic damages by splitting his or her claim or cause
3 of action for damages for injury or death occurring as a result of
4 health care or related services, or the arranging for the provision of
5 health care or related services, or by bringing separate actions for
6 such injury or death against more than one health care professional or
7 health care institution. A claimant who has recovered noneconomic
8 damages in one action for damages for injury or death occurring as a
9 result of health care or related services, or the arranging for the
10 provision of health care or related services, shall be precluded from
11 seeking or recovering additional noneconomic damages for the injury or
12 death in any other action.

13 (5) If the jury's assessment of noneconomic damages exceeds the
14 limitations contained in subsection (1), (2), or (3) of this section,
15 nothing in RCW 4.44.450 precludes the court from entering a judgment
16 that limits the total amount of noneconomic damages to those limits
17 provided in subsections (1), (2), and (3) of this section.

18 (6) If a case is tried to a jury, the jury shall not be informed of
19 the limitations on noneconomic damages contained in subsections (1),
20 (2), and (3) of this section.

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

23 (a) "Claimant" means a person, including a decedent's estate,
24 seeking or who has sought recovery of damages in an action or
25 arbitration for injury or death occurring as a result of health care or
26 related services, or the arranging for the provision of health care or
27 related services. All persons claiming to have sustained damages as a
28 result of the injury or death of a single person are considered a
29 single claimant, and the limitations on noneconomic damages specified
30 in subsections (1), (2), and (3) of this section shall include all
31 noneconomic damages claimed by or on behalf of the person whose injury
32 or death occurred as a result of health care or related services, or
33 the arranging for the provision of health care or related services, as
34 well as all claims for noneconomic damages asserted by or on behalf of
35 others arising from the same injury or death.

36 (b) "Economic damages" has the meaning set forth in RCW
37 4.56.250(1)(a).

38 (c) "Health care institution" means any entity, whether or not
39 incorporated, facility, or institution that is licensed, registered, or

1 certified by this state to provide health care or related services or
2 to arrange for the provision of health care or related services,
3 including, but not limited to, an ambulatory diagnostic, treatment, or
4 surgical facility, an adult family home, an ambulance, aid, or
5 emergency medical service, a blood bank or blood center, a boarding
6 home, a community health center, a community mental health center, a
7 comprehensive community health center, a disability insurer, a drug and
8 alcohol treatment center, an extended care facility, a group home, a
9 health carrier, a health care service contractor, a health maintenance
10 organization, a home health agency, a hospice, a hospice care center,
11 a hospital, an independent clinical laboratory, an in-home services
12 agency, an intermediate care facility, a kidney disease treatment
13 facility, a long-term care facility, a migrant health center, a nursing
14 home, a pharmacy, a psychiatric hospital, a psychiatric,
15 neuropsychiatric, or mental health facility, a rehabilitation facility,
16 a renal dialysis center, a rural health care facility, a skilled
17 nursing facility, a soldiers or veterans home, a sperm bank, a tissue
18 bank, a tribal clinic, or a visiting nurse service, including any
19 related entity, facility, or institution owned or operated by the
20 health care institution, and any officer, director, employee, agent, or
21 apparent agent of the health care institution or such related entity,
22 facility, or institution, acting in the course and scope of his or her
23 employment or agency, including in the event such officer, director,
24 employee, or agent is deceased, his or her estate or personal
25 representative.

26 (d) "Health care professional" means:

27 (i) Any health care provider described in RCW 7.70.020 (1) and (2);

28 (ii) Any clinic, corporation, limited liability company,
29 partnership, or limited liability partnership comprised of one or more
30 of the health care providers described in RCW 7.70.020(1), and any
31 officer, director, employee, agent, or apparent agent thereof acting
32 within the scope of his or her employment or agency, including in the
33 event such officer, director, employee, agent, or apparent agent is
34 deceased, his or her estate or personal representative; or

35 (iii) Any entity, facility, or institution that is owned or
36 operated by a health care provider described in RCW 7.70.020(1), or by
37 a clinic, corporation, limited liability company, partnership, or
38 limited liability partnership comprised of one or more of the health

1 care providers described in RCW 7.70.020(1), and any officer, director,
2 employee, agent, or apparent agent thereof acting in the course and
3 scope of his or her employment or agency, including in the event such
4 officer, director, employee, agent, or apparent agent is deceased, his
5 or her estate or personal representative.

6 (e) "Health care provider" means any person or entity described in
7 RCW 7.70.020.

8 (f) "Noneconomic damages" has the meaning set forth in RCW
9 4.56.250(1)(b).

10 **Sec. 103.** RCW 7.70.020 and 1995 c 323 s 3 are each amended to read
11 as follows:

12 As used in this chapter "health care provider" means either:

13 (1) A person licensed, registered, or certified by this state to
14 provide health care or related services, including, but not limited to,
15 a licensed acupuncturist, a physician, an osteopathic physician, a
16 dentist, a nurse, an optometrist, a podiatric physician and surgeon, a
17 chiropractor, a physical therapist, a psychologist, a pharmacist, an
18 optician, a physician's assistant, a midwife, an osteopathic
19 physician's assistant, an advanced registered nurse practitioner, a
20 drugless healer, a naturopath, a dental hygienist, a denturist, an
21 ocularist, an occupational therapist, a pharmacy assistant, a
22 radiologic technologist, a nursing assistant, a respiratory care
23 practitioner, a health care assistant, a dietician, a nutritionist, a
24 surgical technologist, a mental health counselor, a marriage and family
25 therapist, a social worker, or a physician's trained mobile intensive
26 care paramedic, including, in the event such person is deceased, his or
27 her estate or personal representative;

28 (2) An employee or agent of a person described in ~~((part))~~
29 subsection (1) (~~above~~) of this section, acting in the course and
30 scope of his or her employment or agency, including, in the event such
31 employee or agent is deceased, his or her estate or personal
32 representative; or

33 (3) An entity, whether or not incorporated, facility, or
34 institution employing one or more persons described in ~~((part))~~
35 subsection (1) (~~above~~) of this section, including, but not limited
36 to, a hospital, clinic, health maintenance organization, or nursing
37 home; or an officer, director, employee, or agent thereof acting in the
38 course and scope of his or her employment or agency, including in the

1 event such officer, director, employee, or agent is deceased, his or
2 her estate or personal representative.

3 **Sec. 104.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
4 amended to read as follows:

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

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

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

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

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

18 ~~((5))~~ (e) The time limitations imposed by the client or by the
19 circumstances;

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

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

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

25 (2)(a) An attorney may not contract for or collect a contingency
26 fee for representing a person in connection with an action for damages
27 for injury or death occurring as a result of health care or related
28 services, or the arranging for the provision of health care or related
29 services, in excess of the following limits:

30 (i) Forty percent of the first fifty thousand dollars recovered;

31 (ii) Thirty-three and one-third percent of the next fifty thousand
32 dollars recovered;

33 (iii) Twenty-five percent of the next five hundred thousand dollars
34 recovered;

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

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

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

8 (d) For purposes of this subsection, "recovered" means the net sum
9 recovered after deducting any disbursements or costs incurred in
10 connection with the arbitration, litigation, or settlement of the
11 claim. Costs of medical care incurred by the plaintiff and the
12 attorney's office overhead costs or charges are not deductible
13 disbursements or costs for such purposes.

14 (3) Subsection (2) of this section applies to all contingency fee
15 arrangements or agreements, including any modification of the amount of
16 any contingency fee, entered into after the effective date of this
17 section.

18 **Sec. 105.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
19 read as follows:

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

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

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

1 ~~((2))~~ (4) The supreme court shall by rule adopt procedures to
2 implement mandatory mediation of actions under this chapter. The rules
3 shall require mandatory mediation without exception and address, at a
4 minimum:

5 (a) Procedures for the appointment of, and qualifications of,
6 mediators. A mediator shall have experience or expertise related to
7 actions arising from injury occurring as a result of health care, and
8 be a member of the state bar association who has been admitted to the
9 bar for a minimum of five years or who is a retired judge. The parties
10 may stipulate to a nonlawyer mediator. The court may prescribe
11 additional qualifications of mediators;

12 (b) Appropriate limits on the amount or manner of compensation of
13 mediators;

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

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

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

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

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

25 ~~((3))~~ (5) Mediators shall not impose discovery schedules upon the
26 parties.

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

30 **Sec. 106.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
31 as follows:

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

36 ~~(1) A person licensed by this state to provide health care or~~
37 ~~related services, including, but not limited to, a physician,~~
38 ~~osteopathic physician, dentist, nurse, optometrist, podiatric physician~~

1 and surgeon, chiropractor, physical therapist, psychologist,
2 pharmacist, optician, physician's assistant, osteopathic physician's
3 assistant, nurse practitioner, or physician's trained mobile intensive
4 care paramedic, including, in the event such person is deceased, his
5 estate or personal representative;

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

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

17 representative;)) a health care provider as defined in RCW 7.70.020, or
18 a health care institution as defined in section 102(7)(c) of this act,
19 based upon alleged professional negligence shall be commenced within
20 three years of the act or omission alleged to have caused the injury,
21 death, or condition, or within one year of the time the patient or his
22 or her representative or custodial parent or guardian discovered or
23 reasonably should have discovered that the injury, death, or condition
24 was caused by said act or omission, whichever period ((expires later,
25 except that in no event shall an action be commenced more than eight
26 years after said act or omission: PROVIDED, That the time for
27 commencement of an action is tolled upon proof of fraud, intentional
28 concealment, or the presence of a foreign body not intended to have a
29 therapeutic or diagnostic purpose or effect, until the date the patient
30 or the patient's representative has actual knowledge of the act of
31 fraud or concealment, or of the presence of the foreign body; the
32 patient or the patient's representative has one year from the date of
33 the actual knowledge in which to commence a civil action for damages.

34 For purposes of this section, notwithstanding RCW 4.16.190, the
35 knowledge of a custodial parent or guardian shall be imputed to a
36 person under the age of eighteen years, and such imputed knowledge
37 shall operate to bar the claim of such minor to the same extent that
38 the claim of an adult would be barred under this section. Any action
39 not commenced in accordance with this section shall be barred.

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

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

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

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

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

28 (3) For purposes of this section, the tolling provisions of RCW
29 4.16.190 do not apply.

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

35 (5) This section applies to all causes of action for injury or
36 death occurring as a result of health care or related services, or the
37 arranging for the provision of health care or related services, filed
38 on or after the effective date of this section. However, any action
39 which, if filed on or after the effective date of this section, would

1 have been timely under former law, but now would be barred under the
2 chapter . . . , Laws of 2005 amendments contained in this section, may
3 be brought within one year following the effective date of this
4 section.

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

7 **Sec. 107.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
8 amended to read as follows:

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

26 (2) Unless otherwise provided by superseding federal law, there is
27 no right of subrogation or reimbursement from the patient's or
28 claimant's tort recovery with respect to compensation covered in
29 subsection (1) of this section.

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

32 (1) A contract for health care or related services that contains a
33 provision for arbitration of a dispute as to professional negligence of
34 a health care provider as defined in RCW 7.70.020, whether brought
35 under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, or
36 4.24.010, any other applicable law, or any combination thereof, must

1 have the provision as the first article of the contract and the
2 provision must be expressed in the following language:

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

13 (2) Immediately before the signature line provided for the
14 individual contracting for the health care or related services, there
15 must appear the following in at least ten-point bold red type:

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

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

26 (4) Where the contract is one for health care or related services
27 to a minor, it may not be disaffirmed if signed by the minor's parent
28 or legal guardian.

29 (5) A contract for the provision of health care or related services
30 that contains a provision for arbitration of a dispute as to
31 professional negligence of a health care provider shall not be deemed
32 a contract of adhesion, or unconscionable, or otherwise improper, where
33 it complies with subsections (1) through (3) of this section.

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

1 NEW SECTION. Sec. 109. A new section is added to chapter 7.70 RCW
2 to read as follows:

3 RCW 7.70.100, 7.70.110, 7.70.120, and 7.70.130 do not apply if
4 there is a contract for binding arbitration under section 108 of this
5 act.

6 NEW SECTION. Sec. 110. 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 health care or
11 related services, care or custody, loss of future earnings, loss of
12 bodily function, or 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 or related services, or for the arranging for the provision
17 of health care or related services, the court shall, at the request of
18 either party, enter a judgment ordering that money damages or its
19 equivalent for future damages of the judgment creditor be paid in whole
20 or in part by periodic payments rather than by a lump-sum payment if
21 the award equals or exceeds fifty thousand dollars in future damages.
22 In entering a judgment ordering the payment of future damages by
23 periodic payments, the court shall make a specific finding as to the
24 dollar amount of periodic payments which will compensate the judgment
25 creditor for such future damages. As a condition to authorizing
26 periodic payments of future damages, the court shall require the
27 judgment debtor who is not adequately insured to post security adequate
28 to ensure full payment of such damages awarded by the judgment. Upon
29 termination of periodic payments of future damages, the court shall
30 order the return of this security, or so much as remains, to the
31 judgment debtor.

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

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

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

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

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

26 (7) It is intended in enacting this section to authorize, in
27 actions for damages for injury occurring as a result of health care or
28 related services, or the arranging for the provision of health care or
29 related services, the entry of judgments that provide for the payment
30 of future damages through periodic payments rather than lump-sum
31 payments. By authorizing periodic payment judgments, it is further
32 intended that the courts will utilize such judgments to provide
33 compensation sufficient to meet the needs of an injured plaintiff and
34 those persons who are dependent on the plaintiff for whatever period is
35 necessary while eliminating the potential windfall from a lump-sum
36 recovery that was intended to provide for the care of an injured
37 plaintiff over an extended period who then dies shortly after the
38 judgment is paid, leaving the balance of the judgment award to persons
39 and purposes for which it was not intended. It is also intended that

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

6 NEW SECTION. **Sec. 111.** It is intended in enacting sections 112
7 and 113 of this act that health care providers should remain personally
8 liable for their own negligent or wrongful acts or omissions in
9 connection with the provision of health care services, but that their
10 vicarious liability for the negligent or wrongful acts or omissions of
11 others should be curtailed. To that end, it is intended that *Adamski*
12 *v. Tacoma General Hospital*, 20 Wn. App. 98, 579 P.2d 970 (1978), and
13 its holding that hospitals may be held liable for a physician's acts or
14 omissions under so-called "apparent agency" or "ostensible agency"
15 theories should be reversed, so that hospitals will not be liable for
16 the act or omission of a health care provider granted hospital
17 privileges unless the health care provider is an actual agent or
18 employee of the hospital. It is further intended that, notwithstanding
19 any generally applicable principle of vicarious liability to the
20 contrary, individual health care professionals will not be liable for
21 the negligent or wrongful acts of others, except those who were acting
22 under their direct supervision and control.

23 NEW SECTION. **Sec. 112.** A new section is added to chapter 7.70 RCW
24 to read as follows:

25 A public or private hospital shall be liable for an act or omission
26 of a health care provider granted privileges to provide health care at
27 the hospital only if the health care provider is an actual agent or
28 employee of the hospital and the act or omission of the health care
29 provider occurred while the health care provider was acting within the
30 course and scope of the health care provider's agency or employment
31 with the hospital.

32 NEW SECTION. **Sec. 113.** A new section is added to chapter 7.70 RCW
33 to read as follows:

34 A person who is a health care provider under RCW 7.70.020 (1) or
35 (2) shall not be personally liable for any act or omission of any other
36 health care provider who was not the person's actual agent or employee

1 or who was not acting under the person's direct supervision and control
2 at the time of the act or omission.

3 **Sec. 114.** RCW 74.34.200 and 1999 c 176 s 15 are each amended to
4 read as follows:

5 (1) In addition to other remedies available under the law, a
6 vulnerable adult who has been subjected to abandonment, abuse,
7 financial exploitation, or neglect either while residing in a facility
8 or in the case of a person residing at home who receives care from a
9 home health, hospice, or home care agency, or an individual provider,
10 shall have a cause of action for damages on account of his or her
11 injuries, pain and suffering, and loss of property sustained thereby.
12 This action shall be available where the defendant is or was a
13 corporation, trust, unincorporated association, partnership,
14 administrator, employee, agent, officer, partner, or director of a
15 facility, or of a home health, hospice, or home care agency licensed or
16 required to be licensed under chapter 70.127 RCW, as now or
17 subsequently designated, or an individual provider.

18 (2) It is the intent of the legislature, however, that where there
19 is a dispute about the care or treatment of a vulnerable adult, the
20 parties should use the least formal means available to try to resolve
21 the dispute. Where feasible, parties are encouraged but not mandated
22 to employ direct discussion with the health care provider, use of the
23 long-term care ombudsman or other intermediaries, and, when necessary,
24 recourse through licensing or other regulatory authorities.

25 (3) In an action brought under this section, a prevailing plaintiff
26 shall be awarded his or her actual damages, together with the costs of
27 the suit(~~(, including a reasonable attorney's fee)~~). The term "costs"
28 includes(~~(, but is not limited to,)~~) the reasonable fees for a
29 guardian(~~(,)~~) and guardian ad litem, (~~(and experts,)~~) if any, that
30 (~~(may be)~~) were necessary to the litigation of a claim brought under
31 this section.

32 NEW SECTION. **Sec. 115.** In the event that the Washington state
33 supreme court or other court of competent jurisdiction rules or affirms
34 that section 102 of this act is unconstitutional, then the prescribed
35 limitations on noneconomic damages set forth in section 102 of this act
36 take effect upon the ratification of a state constitutional amendment
37 that empowers the legislature to enact limits on the amount of

1 noneconomic damages recoverable in any or all civil causes of action or
2 upon the enactment by the United States congress of a law permitting
3 such limitations on noneconomic damages, whichever occurs first.

4 **PART 2**

5 **JOINT AND SEVERAL LIABILITY REFORM**

6 **Sec. 201.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
7 as follows:

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

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

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

1 (2) If a defendant is jointly and severally liable under (~~one of~~)
2 the exception(~~s~~) listed in subsection(~~s~~) (1)(~~(a) or (1)(b)~~) of
3 this 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. 202.** 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 **PART 3**

30 **MISCELLANEOUS**

31 NEW SECTION. **Sec. 301.** Part headings used in this act are not any
32 part of the law.

33 NEW SECTION. **Sec. 302.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 303.** Sections 101 through 103, 107, 110 through
4 114, 201, and 202 of this act apply to all causes of action, whether
5 filed or not, that the parties have not settled or in which judgment
6 has not been entered before the effective date of this section.

7 NEW SECTION. **Sec. 304.** Sections 105, 108, and 109 of this act
8 apply to all causes of action filed on or after the effective date of
9 this section.

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