

CHAPTER 212

[Substitute Senate Bill No. 6048]

CIVIL ACTIONS AND PROCEDURES—REVISIONS

AN ACT Relating to mandatory arbitration; frivolous lawsuits; release of patients in the mental health system; immunity for elected and appointed officials, volunteer emergency personnel, corporate directors, design professionals, nonprofit corporations, and hospitals; studies on excess insurance, settlement conferences, examination of jurors, appellate evaluation conferences, discovery conferences, and offers of settlement; consortium; limitation of actions involving felonies and intoxication; statute of limitations on health care; physician-patient privilege waiver; attorneys' fees; and workers' compensation liens; amending RCW 7.06.020, 7.06.040, 4.84.185, 71.05.120, 4.24.310, 18.71.210, 23A.12.020, 23A.08.025, 24.03.025, 23.86-.050, 24.32.070, 23.86.030, 24.32.020, 24.06.025, 24.06.035, 23A.04.010, 4.22.020, 4.24.420, 5.40.060, 4.24.264, 7.70.090, 4.16.350, 5.60.060, 4.24.005, 51.24.030, and 4.22.060; adding a new section to chapter 4.24 RCW; adding a new section to chapter 51.24 RCW; creating new sections; repealing RCW 2.08.067, 4.24.268, and 4.96.040; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

PART I

MANDATORY ARBITRATION

Sec. 101. Section 2, chapter 103, Laws of 1979 as last amended by section 3, chapter 265, Laws of 1985 and RCW 7.06.020 are each amended to read as follows:

(1) All civil actions, except for appeals from municipal or justice courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of ~~((ten))~~ fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to ~~((twenty-five))~~ thirty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved.

Sec. 102. Section 4, chapter 103, Laws of 1979 and RCW 7.06.040 are each amended to read as follows:

The ~~((qualifications and))~~ appointment of arbitrators shall be prescribed by rules adopted by the supreme court. An arbitrator must be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court.

NEW SECTION. Sec. 103. Section 5, chapter 357, Laws of 1985, section 1, chapter 95, Laws of 1986 and RCW 2.08.067 are each repealed.

PART II FRIVOLOUS LAWSUITS

Sec. 201. Section 1, chapter 127, Laws of 1983 and RCW 4.84.185 are each amended to read as follows:

In any civil action, the court having jurisdiction may, upon ~~((final judgment and))~~ written findings by the ~~((trial))~~ judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon ~~((post-trial))~~ motion ~~((, and))~~ by the prevailing party after an order of dismissal, order on summary judgment, or final judgment after trial or other final order terminating the action as to the prevailing party. In no event may such motion be filed more than thirty days after entry of the order. The ((trial)) judge shall consider the action, counterclaim, cross-claim, third party claim, or defense as a whole.

The provisions of this section apply unless otherwise specifically provided by statute.

PART III RELEASE OF PATIENTS IN THE MENTAL HEALTH SYSTEM

Sec. 301. Section 17, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 7, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.120 are each amended to read as follows:

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing ~~((his))~~ duties pursuant to this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence

against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

PART IV

IMMUNITY FOR ELECTED AND APPOINTED OFFICIALS

NEW SECTION. Sec. 401. A new section is added to chapter 4.24 RCW to read as follows:

(1) An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body.

(2) For purposes of this section:

(a) "Public agency" means any state agency, board, commission, department, institution of higher education, school district, political subdivision, or unit of local government of this state including but not limited to municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts.

(b) "Governing body" means the policy-making body of a public agency.

NEW SECTION. Sec. 402. The following acts of parts of acts are each repealed:

- (1) Section 904, chapter 305, Laws of 1986 and RCW 4.24.268; and
- (2) Section 2, chapter 190, Laws of 1981 and RCW 4.96.040.

PART V

VOLUNTEER FIREMEN, POLICEMEN, AND EMERGENCY MEDICAL TECHNICIANS

Sec. 501. Section 2, chapter 58, Laws of 1975 as amended by section 20, chapter 443, Laws of 1985 and RCW 4.24.310 are each amended to read as follows:

For the purposes of RCW 4.24.300 the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Compensation" has its ordinary meaning but does not include nominal payments, reimbursement for expenses, or pension benefits, nor does it include payment made to volunteer part-time and volunteer on-call personnel of fire departments, fire districts, ambulance districts, police departments, or any emergency response organizations.

(2) "Emergency care" means care, first aid, treatment, or assistance rendered to the injured person in need of immediate medical attention and includes providing or arranging for further medical treatment or care for

the injured person. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by RCW 4.24.300 does not apply to the negligent operation of any motor vehicle.

(3) "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination of circumstances which calls for immediate action (~~((other than in a hospital, doctor's office, or other place where qualified medical personnel practice or are employed))~~).

Sec. 502. Section 3, chapter 305, Laws of 1971 ex. sess. as last amended by section 4, chapter 68, Laws of 1986 and RCW 18.71.210 are each amended to read as follows:

No act or omission of any physician's trained mobile intensive care paramedic, intravenous therapy technician, or airway management technician, as defined in RCW 18.71.200 as now or hereafter amended, ~~((or of))~~ any emergency medical technician as defined in RCW 18.73.030, or any first responder under RCW 18.73.205, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The trained mobile intensive care paramedic, intravenous therapy technician, ~~((or))~~ airway management technician, emergency medical technician, or first responder;

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained mobile intensive care paramedic, intravenous therapy technician, ~~((or))~~ airway management technician, emergency medical technician, or first responder, as the case may be.

This section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained mobile intensive care paramedic, intravenous therapy technician, ~~((or))~~ airway management technician, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be

used by the physician's trained mobile intensive care paramedics, intravenous therapy technicians, ~~((or))~~ airway management technicians, emergency medical technicians, or first responders.

This section shall not apply to any act or omission which constitutes either gross negligence or wilful or wanton ~~((conduct))~~ misconduct.

***PART VI**

FEASIBILITY STUDY ON EXCESS INSURANCE

NEW SECTION. Sec. 601. The risk manager shall conduct or contract for a feasibility study on the cost and benefits of the state of Washington offering, on an optional basis, excess insurance to its political subdivisions based upon sound actuarial principles and pricing.

For purposes of the study, it shall be assumed that: (1) Excess coverage can be offered only to those political subdivisions which meet sound risk management and loss control practices and which have instituted primary coverage, either through pooling arrangements, self-insurance, or an authorized insurer, that meets the underwriting requirements established by the risk manager; (2) the funding of an excess insurance program shall be on an actuarially sound basis and all premiums, assessments, and charges are to reflect this policy; (3) no amount in excess of five million dollars may be paid from an excess insurance program for the payment and settlement of any claims arising out of any single occurrence.

For purposes of the study, "excess insurance" means a contract by which the state insures, or procures a third person to insure, a political subdivision against property loss or liability in excess of its primary insurance.

A report on the results of the study shall be submitted not later than December 31, 1987, to the judiciary committees of the senate and house of representatives.

****Sec. 601 was vetoed, see message at end of chapter.***

PART VII

CORPORATE AND COOPERATIVE DIRECTORS LIABILITY

Sec. 701. Section 55, chapter 53, Laws of 1965 as last amended by section 10, chapter 290, Laws of 1985 and RCW 23A.12.020 are each amended to read as follows:

The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated term of years.
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this title.
- (4) The aggregate number of shares which the corporation shall have authority to issue and if such shares are to be divided into classes, the number of shares of each class.

(5) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(7) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(8) The address of its initial registered office and the name of its initial registered agent at such address.

(9) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify.

(10) The name and address of each incorporator.

In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) The direction of the management of the business and the regulation of the affairs of the corporation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;

(c) The par value of any authorized shares or class of shares; ~~(and)~~

(d) Eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating RCW 23A.08.450, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective; and

(e) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this title.

Sec. 702. Section 2, chapter 58, Laws of 1969 ex. sess. as last amended by section 1, chapter 99, Laws of 1980 and RCW 23A.08.025 are each amended to read as follows:

(1) As used in this section:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" includes attorneys' fees.

(d) "Official capacity" means: (i) When used with respect to a director, the office of director in the corporation, and (ii) when used with respect to a person other than a director as contemplated in subsection (10) of this section, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be, made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative.

(2) A corporation shall have power to indemnify any person made a party to any proceeding (other than a proceeding referred to in subsection (3) of this section) by reason of the fact that he is or was a director against judgments, penalties, fines, settlements and reasonable expenses actually incurred by him in connection with such proceeding if:

(a) He conducted himself in good faith, and: (i) In the case of conduct in his own official capacity with the corporation, he reasonably believed his conduct to be in the corporation's best interests, or (ii) in all other cases, he reasonably believed his conduct to be at least not opposed to the corporation's best interests; and

(b) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A corporation shall have power to indemnify any person made a party to any proceeding by or in the right of the corporation by reason of the fact that he is or was a director against reasonable expenses actually

incurred by him in connection with such proceeding if he conducted himself in good faith, and:

(a) In the case of conduct in his official capacity with the corporation, he reasonably believed his conduct to be in its best interests; or

(b) In all other cases, he reasonably believed his conduct to be at least not opposed to its best interests;

PROVIDED, That no indemnification shall be made pursuant to this subsection in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.

(4) A director shall not be indemnified under subsection (2) or (3) of this section in respect of any proceeding (~~charging improper personal benefit to him~~), whether or not involving action in his official capacity, in which he shall have been adjudged to be liable on the basis that (~~personal benefit was improperly received by him~~) the director personally received a benefit in money, property, or services to which the director was not legally entitled.

(5) Unless otherwise limited by the articles of incorporation:

(a) A director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) or (3) of this section shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(b) A court of appropriate jurisdiction, upon application of a director and such notice as the court shall require shall have authority to order indemnification in the following circumstances:

(i) If the court determines a director is entitled to reimbursement under (a) of this subsection, the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(ii) If the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or (3) of this section or has been adjudged liable under subsection (4) of this section, the court may order such indemnification as the court shall deem proper, except that indemnification with respect to any proceeding referred to in subsection (3) of this section and with respect to any proceeding in which liability shall have been adjudged pursuant to subsection (4) of this section shall be limited to expenses.

A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(6) No indemnification under subsection (2) or (3) of this section shall be made by the corporation unless authorized in the specific case after a determination that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in the applicable subsection. Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors not at the time parties to such proceeding; or

(b) If such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to such proceeding; or

(c) In a written opinion by legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services within the past three years for the corporation or any party to be indemnified, selected by the board of directors or a committee thereof by vote as set forth in (a) or (b) of this subsection, or if the requisite quorum of the full board cannot be obtained therefor and such committee cannot be established, by a majority vote of the full board (in which selection directors who are parties may participate); or

(d) By the shareholders.

Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by such legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in (c) of this subsection for the selection of such counsel. Shares held by directors who are parties to the proceeding shall not be voted on the subject matter under this subsection.

(7) Reasonable expenses incurred by a director who is party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding:

(a) Upon receipt by the corporation of a written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that the director has not met the standard of conduct necessary for indemnification by the corporation as authorized by this section; and

(b) Either:

(i) After a determination, made in the manner specified by subsection (6) of this section, that the information then known to those making the determination (without undertaking further investigation for purposes thereof) does not establish that indemnification would not be permissible under subsection (2) or (3) of this section; ~~(and)~~ or

~~((b))~~ (ii) Upon receipt by the corporation of

~~(i))~~ a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section~~((and~~

~~(ii) A written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that he has not met such standard of conduct)).~~

The undertaking required by ~~((b)(ii))~~ (a) of this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Payments under this subsection may be authorized in the manner specified in subsection (6) of this section.

(8) ~~(No provision for the corporation to indemnify a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise (except as contemplated by subsection (11) of this section), shall be valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section shall limit the corporation's ability to reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.))~~ Any corporation shall have power to make or agree to any further indemnity, including advance of expenses, to any director that is authorized by the articles of incorporation, any bylaw adopted or ratified by the shareholders, or any resolution adopted or ratified, before or after the event, by the shareholders, provided that no such indemnity shall indemnify any director from or on account of acts or omissions of such director finally adjudged to be intentional misconduct or a knowing violation of law, or from or on account of conduct of such director finally adjudged to be in violation of RCW 23A-08.450, or from or on account of any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled. Unless the articles of incorporation, or any such bylaw or resolution provide otherwise, any determination as to any further indemnity shall be made in accordance with subsection (6) of this section. Each such indemnity may continue as to a person who has ceased to be a director and may inure to the benefit of the heirs, executors, and administrators of such a person.

(9) For purposes of this section, the corporation shall be deemed to have requested a director to serve an employee benefit plan where the performance by him of his duties to the corporation also imposes duties on, or otherwise involves services by, him to the plan or participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be deemed "fines"; and action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

(10) Unless otherwise limited by the articles of incorporation:

(a) An officer of the corporation shall be indemnified as and to the extent provided in subsection (5) of this section for a director and shall be entitled to seek indemnification pursuant to subsection (5) of this section to the same extent as a director;

(b) A corporation shall have the power to provide indemnification including advances of expenses, to an officer, employee, or agent of the corporation to the same extent that it may indemnify directors pursuant to this section except that subsection (12) of this section shall not apply to any person other than a director; and

(c) A corporation, in addition, shall have the power to indemnify an officer who is not a director, as well as employees and agents of the corporation who are not directors, to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(11) A corporation shall have power to purchase and maintain insurance on behalf of any person who is, or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as an officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(12) Any indemnification of a director in accordance with this section, including any payment or reimbursement of expenses, shall be reported to the shareholders with the notice of the next shareholders' meeting or prior thereto in a written report containing a brief description of the proceedings involving the director being indemnified and the nature and extent of such indemnification.

Sec. 703. Section 6, chapter 235, Laws of 1967 as amended by section 75, chapter 35, Laws of 1982 and RCW 24.03.025 are each amended to read as follows:

The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including ~~((any provision for))~~ provisions regarding:

(a) Distribution of assets on dissolution or final liquidation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the members, if any;

(c) Eliminating or limiting the personal liability of a director to the corporation or its members, if any, for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(d) Any provision which under this title is required or permitted to be set forth in the bylaws.

(5) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(6) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(7) The name and address of each incorporator.

(8) The name of any person or corporations to whom net assets are to be distributed in the event the corporation is dissolved.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

~~((8) The name of any persons or corporations to whom net assets are to be distributed in the event the corporation is dissolved:))~~

Sec. 704. Section 2, chapter 19, Laws of 1913 as last amended by section 171, chapter 35, Laws of 1982 and RCW 23.86.050 are each amended to read as follows:

Every association formed under this chapter shall prepare articles of association in writing, which shall set forth:

(1) The name of the association.

(2) The purpose for which it was formed.

(3) Its principal place of business.

(4) The term for which it is to exist which may be perpetual or for a stated number of years.

(5) The amount of capital stock, the number of shares and the par value of each share.

(6) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

Sec. 705. Section 7, chapter 115, Laws of 1921 as last amended by section 2, chapter 132, Laws of 1959 and RCW 24.32.070 are each amended to read as follows:

Each association formed under this chapter must prepare and file articles of incorporation, setting forth:

- (1) The name of the association.
- (2) The purpose for which it is formed.
- (3) The place where its principal business will be transacted.
- (4) The term for which it is to exist, which may be perpetual.
- (5) The number of directors thereof, which must not be less than five and may be any number in excess thereof, and the term of office of such directors, which term shall not exceed three years as may be provided by the bylaws of the association.

(6) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

(7) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by

which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of two-thirds of the members voting upon such change after notice of the proposed change shall have been given to all members entitled to vote thereon, in the manner provided by the bylaws: PROVIDED, That if the total vote upon the proposed change shall be less than twenty-five percent of the total membership of the association, such change shall fail of adoption.

~~((7))~~ (8) If organized with capital stock, the amount of such stock and the number of shares into which it is divided. The capital stock may be divided into preferred and common stock which stock may be of a fixed par value or nonpar value. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each.

~~((8))~~ (9) The articles must be subscribed by the incorporators and acknowledged by three or more of such incorporators before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state and other places, as prima facie evidence of the facts contained therein and of the due incorporation of such association.

Sec. 706. Section 17, chapter 19, Laws of 1913 and RCW 23.86.030 are each amended to read as follows:

(1) No corporation or association organized or doing business for profit in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it has complied with the provisions of this chapter; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder.

(2) A member of the board of trustees or an officer of any association legally organized under this chapter shall have the same immunity from liability as is granted in RCW 4.24.264.

Sec. 707. Section 2, chapter 115, Laws of 1921 and RCW 24.32.020 are each amended to read as follows:

Five or more persons engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital

stock, under the provisions of this chapter. A member of the board of directors or an officer of such a corporation shall have the same immunity from liability as is granted in RCW 4.24.264.

Sec. 708. Section 5, chapter 120, Laws of 1969 ex. sess. as amended by section 120, chapter 35, Laws of 1982 and RCW 24.06.025 are each amended to read as follows:

The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) The qualifications and the rights and responsibilities of the members and the manner of their election, appointment or admission to membership and termination of membership; and, if there is more than one class of members or if the members of any one class are not equal, the relative rights and responsibilities of each class or each member.
- (5) If the corporation is to have capital stock:
 - (a) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;
 - (b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
 - (c) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
 - (d) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.
- (6) If the corporation is to distribute surplus funds to its members, stockholders or other persons, provisions for determining the amount and time of the distribution.
- (7) Provisions for distribution of assets on dissolution or final liquidation.
- (8) Whether a dissenting shareholder or member shall be limited to a return of less than the fair value of his shares or membership.

(9) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(10) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(11) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(12) The name and address of each incorporator.

(13) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Sec. 709. Section 7, chapter 120, Laws of 1969 ex. sess. and RCW 24.06.035 are each amended to read as follows:

A corporation subject to the provisions of this chapter shall not engage in any business, trade, a vocation or profession for profit: PROVIDED, That nothing contained herein shall be construed to forbid such a corporation from accumulating reserve, equity, surplus or other funds through subscriptions, fees, dues or assessments, or from charges made its members or other persons for services rendered or supplies or benefits furnished, or from distributing its surplus funds to its members, stockholders or other persons in accordance with the provisions of the articles of incorporation. A member of the board of directors or an officer of such a corporation shall have the same immunity from liability as is granted in RCW 4.24.264.

Sec. 710. Section 3, chapter 53, Laws of 1965 as last amended by section 1, chapter 117, Laws of 1986 and RCW 23A.04.010 are each amended to read as follows:

As used in this title, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this title, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this title.

(3) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(4) "Shares" means the units into which the proprietary interests in a corporation are divided.

(5) "Subscriber" means one who subscribes for one or more shares in a corporation, whether before or after incorporation.

(6) "Shareholder" means one who is a holder of record of one or more shares in a corporation. If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth:

(a) The classification of shareholder who may certify;

(b) The purpose or purposes for which the certification may be made;

(c) The form of certification and information to be contained therein;

(d) If the certification is with respect to a record date or closing of the stock transfer books within which the certification must be received by the corporation; and

(e) Such other provisions with respect to the procedure as are deemed necessary or desirable.

Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(7) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(8) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(9) "Conforms to law" as used in this title in connection with duties of the secretary of state in reviewing documents for filing under this title

means the secretary of state has determined the document complies as to form with the applicable requirements of this title.

(10) "Effective date" means, in connection with a filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the date of receipt which might otherwise be applied as the effective date.

(11) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person submitting the document with the secretary of state.

(12) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary or the treasurer of the corporation.

(13) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a dividend; a purchase, redemption, or other acquisition of shares; or otherwise.

(14) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

PART VIII CONSORTIUM

Sec. 801. Section 2, chapter 138, Laws of 1973 1st ex. sess. as amended by section 10, chapter 27, Laws of 1981 and RCW 4.22.020 are each amended to read as follows:

The contributory fault of one spouse shall not be imputed to the other spouse or the minor child of the spouse to diminish recovery in an action by the other spouse or the minor child of the spouse, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property, whether separate or community, of the spouse. In an action brought for wrongful death or loss of consortium, the contributory

fault of the decedent or injured person shall be imputed to the claimant in that action.

PART IX LIMITATION OF ACTIONS—FELONY

Sec. 901. Section 501, chapter 305, Laws of 1986 and RCW 4.24.420 are each amended to read as follows:

It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony~~((,-if))~~ at the time of the occurrence causing the injury or death and the felony was ((causally related to the injury or death in time, place, or activity)) a proximate cause of the injury or death. However, nothing in this section shall affect a right of action under 42 U.S.C. Sec. 1983.

PART X INTOXICATION DEFENSE

Sec. 1001. Section 902, chapter 305, Laws of 1986 and RCW 5.40.060 are each amended to read as follows:

It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition ~~((contributed more than fifty percent to his or her injuries or death. If the amount of alcohol in a person's blood is shown by chemical analysis of his or her blood, breath, or other bodily substance to have been 0.10 percent or more by weight of alcohol in the blood, it is conclusive proof that the person was under the influence of intoxicating liquor))~~ was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs.

PART XI IMMUNITY FOR DIRECTORS OF NONPROFIT CORPORATIONS

Sec. 1101. Section 903, chapter 305, Laws of 1986 and RCW 4.24.264 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a member of the board of directors or an officer of any nonprofit corporation is not ~~((civ- ility))~~ individually liable for any ~~((act or omission in the course and scope of))~~ discretionary decision or failure to make a discretionary decision within

his or her official capacity as director or officer unless the ~~((act or omission))~~ decision or failure to decide constitutes gross negligence.

(2) Nothing in this section shall limit or modify in any manner the duties or liabilities of a director or officer of a corporation to the corporation or the corporation's ~~((shareholders))~~ members.

PART XII IMMUNITY FOR DIRECTORS OF HOSPITALS

Sec. 1201. Section 905, chapter 305, Laws of 1986 and RCW 7.70.090 are each amended to read as follows:

Members of the board of directors or other governing body of a public or private hospital are not individually liable for personal injuries or death resulting from health care administered by a health care provider granted privileges to provide health care at the hospital unless the decision to grant the privilege to provide health care at the hospital constitutes gross negligence.

PART XIII STUDIES BY JUDICIAL COUNCIL

NEW SECTION. Sec. 1301. The judicial council shall study the effects on the administration of justice to litigants and the superior courts of the state of requiring parties to a lawsuit to participate in mandatory settlement conferences prior to a civil action going to trial. The study shall include, but not be limited to, the following issues relating to the use of mandatory settlement conferences in the superior courts of the state.

(1) The present use of settlement conferences in the state and any associated benefits, deficiencies, and costs.

(2) The use of settlement conferences in courts in other states, together with any benefits, deficiencies, and costs.

(3) Costs of instituting a mandatory settlement conference program in the superior courts.

(4) Cost-savings to the courts, attorneys, and litigants from instituting a mandatory settlement conference program.

(5) Potential of reducing court congestion by eliminating the number of civil actions that are required to be heard by a court or jury.

(6) Whether settlement conferences are an effective use of the time of judges, attorneys, court personnel, and litigants.

(7) Short-term and long-term societal benefits in expediting the procedure to resolve conflicts and disputes and increasing the litigant's understanding and participation in any civil action.

(8) Any other issues the council deems appropriate.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

NEW SECTION. Sec. 1302. The judicial council shall study the feasibility of modifying existing practices and procedures for examining prospective jurors to determine their qualifications and any actual or implied bias. The study shall include, but not be limited to, the following issues relating to juror examination:

(1) Determining whether existing juror examination under superior court Civil Rule 47 uses an inordinate amount of time and judicial resources without any corresponding benefits to the parties or the court.

(2) Determining whether the courts should be granted more control over the examination of jurors in order to expedite the examination process.

(3) Reviewing procedures used to examine prospective jurors in other state courts to determine the efficiency and effectiveness of such procedures.

(4) Reviewing procedures in the federal courts for juror examination to determine if they result in cost-savings to the courts and litigants, and if they are a more effective use of the time of judges, attorneys, court personnel, and litigants.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

NEW SECTION. Sec. 1303. The judicial council shall study the effects of requiring parties to an appeal of a civil action to participate in mandatory appellate settlement conferences. The study shall include, but not be limited to, the following issues relating to mandatory appellate settlement conferences:

(1) The present use of appellate settlement conferences in courts of this state and associated benefits, deficiencies, and costs.

(2) The use of appellate settlement conferences in courts in other states, together with any benefits, deficiencies, and costs.

(3) Costs of instituting a mandatory appellate settlement conference program in the superior courts.

(4) Cost-savings to the courts, attorneys, and litigants from instituting a mandatory appellate settlement conference program.

(5) Potential of reducing court congestion by eliminating the number of civil actions that are required to be heard by a court or jury.

(6) Whether settlement conferences are an effective use of the time of judges, attorneys, court personnel, and litigants.

(7) Short-term and long-term societal benefits in expediting the procedure to resolve conflicts and disputes and increasing the litigant's understanding and participation in any civil action.

(8) Any other issues the council deems appropriate.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

NEW SECTION. Sec. 1304. The judicial council shall study the feasibility of instituting mandatory discovery conferences in specified civil actions. The study shall include, but not be limited to, the following issues relating to mandatory discovery conferences:

(1) The existing use of discovery conferences under superior court Civil Rule 26(f) and any associated benefits, deficiencies, and costs.

(2) The use of mandatory discovery conferences in other states, and any benefits, deficiencies, and costs.

(3) Whether existing discovery practices are being used to unnecessarily delay civil actions or to harass opposing parties.

(4) Whether existing discovery practices are unreasonably expensive for the parties.

(5) Whether mandatory discovery conferences would be an effective use of the time of judges, attorneys, court personnel, and litigants.

(6) Whether mandatory discovery conferences would create cost-savings to the litigants and the courts and allow for a more efficient use of court rooms and court personnel.

(7) Any other relevant factors deemed appropriate by the council.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

NEW SECTION. Sec. 1305. The judicial council shall conduct a study on the benefits and detriments of enacting a comprehensive state statute on offers of settlement. This study shall include, but not be limited to, the following issues:

(1) The type of civil actions applicable to an offer of settlement statute.

(2) The appropriateness of monetary limits, "forgiveness margins," prejudgment interest, and granting discretion to the court to excuse payment of attorneys' fees.

(3) Time limits for issuing or rejecting an offer of settlement by the parties.

(4) The relationship of offers of settlement to reasonableness hearings and multiparty defendants.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

PART XIV HEALTH CARE LIMITATIONS

Sec. 1401. Section 1, chapter 80, Laws of 1971 as last amended by section 502, chapter 305, Laws of 1986 and RCW 4.16.350 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

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

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

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

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

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

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of the effective date of this 1987 section, to persons under the age of eighteen years.

PART XV

ACCELERATED WAIVER OF THE PHYSICIAN-PATIENT PRIVILEGE

Sec. 1501. Section 294, page 187, Laws of 1854 as last amended by section 101, chapter 305, Laws of 1986 and RCW 5.60.060 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

(3) A clergyman or priest shall not, without the consent of a person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(4) A physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) ~~((Within))~~ Ninety days ~~((of))~~ after filing an action for personal injuries or wrongful death, the claimant shall ~~((elect whether or not))~~ be deemed to waive the physician-patient privilege. ~~((If the claimant does not waive the physician-patient privilege, the claimant may not put his or her mental or physical condition or that of his or her decedent or beneficiaries in issue and may not waive the privilege later in the proceedings.))~~ Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

PART XVI
ATTORNEYS' FEES

Sec. 1601. Section 201, chapter 305, Laws of 1986 and RCW 4.24.005 are each amended to read as follows:

~~((The court shall, upon petition by a named party in any tort action, except those provided for in RCW 7.70.070, determine the reasonableness of that party's attorneys' fees. The court))~~ Any party charged with the payment of attorney's fees in any tort action may petition the court not later than forty-five days of receipt of a final billing or accounting for a determination of the reasonableness of that party's attorneys' fees. The court shall make such a determination and shall take into consideration the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) Whether the fee is fixed or contingent;
- (9) Whether the fixed or contingent fee agreement was in writing and whether the client was aware of his or her right to petition the court under this section;
- (10) The terms of the fee agreement.

NEW SECTION. Sec. 1602. Section 1601 of this act applies to agreements for attorneys' fees entered into after the effective date of this section.

PART XVII
WORKERS' COMPENSATION LIENS

Sec. 1701. Section 1, chapter 85, Laws of 1977 ex. sess. as last amended by section 1, chapter 58, Laws of 1986 and RCW 51.24.030 are each amended to read as follows:

- (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

~~((3))~~ (4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

PART XVIII

LIABILITY OF DESIGN PROFESSIONALS AND ARCHITECTS

NEW SECTION. Sec. 1801. A new section is added to chapter 51.24 RCW to read as follows:

(1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land surveyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions.

PART XIX

MISCELLANEOUS

Sec. 1901. Section 14, chapter 27, Laws of 1981 and RCW 4.22.060 are each amended to read as follows:

(1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the

court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

(2) A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

(3) A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement.

NEW SECTION. Sec. 1902. Sections 101 and 102 of this act shall take effect July 1, 1988.

*NEW SECTION. Sec. 1903. Sections 401 and 402, ~~601~~, 701 through 710, 901, 1001, 1101, 1201, 1401, 1501, 1601 and 1602, and 1701 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

*Sec. 1903 was partially vetoed, see message at end of chapter.

Passed the Senate April 21, 1987.

Passed the House April 14, 1987.

Approved by the Governor April 29, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 29, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 601, Substitute Senate Bill No. 6048, entitled:

"AN ACT Relating to mandatory arbitration."

Substitute Senate Bill No. 6048 makes a number of technical and substantive changes to the Tort Reform Act of 1986.

Section 601 requires the state Risk Manager to conduct or contract for a feasibility study on the cost and benefits of the State of Washington providing excess liability and property insurance to political subdivisions of the state. No appropriation is provided for this study and the Risk Manager currently faces the possibility of budgetary reductions. In order to conduct the study, it would require an experienced actuary and such personnel are not available on staff.

Also, local governments currently have the opportunity of establishing joint cooperative self-insurance funds under the provisions of RCW 48.62. I would encourage them to pursue the possibilities of establishing excess coverage through such a mechanism in a joint cooperative effort.

With the exception of section 601 and the reference to it in section 1903, Substitute Senate Bill No. 6048 is approved."

CHAPTER 213

[House Bill No. 654]

UNEMPLOYMENT INSURANCE—EXPERIENCE RATING REVISIONS

AN ACT Relating to unemployment insurance experience rating for employers; amending RCW 50.29.010; reenacting and amending RCW 50.29.020; creating a new section; repealing RCW 50.29.022; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Section 1, chapter 270, Laws of 1985, section 3, chapter 111, Laws of 1986 and RCW 50.29.022 are each repealed.

Sec. 2. Section 10, chapter 2, Laws of 1970 ex. sess. as last amended by section 1, chapter 111, Laws of 1986 and RCW 50.29.010 are each amended to read as follows:

As used in this chapter:

"Computation date" means July 1st of any year;

"Cut-off date" means September 30th next following the computation date;

"Qualification date" means April 1st of the third year preceding the computation date;

"Rate year" means the calendar year immediately following the computation date;

"Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his employment;

"Qualified employer" means any employer who (1) reported some employment in the twelve-month period beginning with the qualification date, (2) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (3) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either (~~twenty-five~~) one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month