

town or commercial or industrial area, or scenic system highway may be permitted more than fifty feet from the advertised activity;

(2) A type 3 sign, other than one along any portion of the primary system within an incorporated city or town or within any commercial or industrial area, permitted more than fifty feet from the advertised activity pursuant to subsection (1) of this section shall not be erected or maintained a greater distance from the advertised activity than one of the following options selected by the owner of the business being advertised:

(a) One hundred fifty feet measured along the edge of the protected highway from the main entrance to the activity advertised (when applicable);

(b) One hundred fifty feet from the main building of the advertised activity; or

(c) Fifty feet from a regularly used parking lot maintained by and contiguous to the advertised activity.

(3) In addition to signs permitted by subsections (1) and (2) of this section, the commission may adopt regulations permitting one type 3 sign visible to traffic proceeding in any one direction on an interstate, primary or scenic system highway on premises which, on the effective date of this 1976 amendatory act, are used wholly or in part as an operating business, farm, ranch or orchard which sign bears only the name of the business, farm, ranch or orchard and a directional arrow or short directional message. Regulations adopted under this subsection shall prohibit the erection or maintenance of such type 3 signs on narrow strips of land a substantial distance from but connected with a business, farm, ranch or orchard. Signs permitted under this subsection shall not exceed fifty square feet in area.

~~(4)~~<sup>(3)</sup> The commission with advice from the parks and recreation commission shall adopt specifications for a uniform system of official tourist facility directional signs to be used on the scenic system highways. Official directional signs shall be posted by the commission to inform motorists of types of tourist and recreational facilities available off the scenic system which are accessible by way of public or private roads intersecting scenic system highways.

Passed the House February 2, 1976.

Passed the Senate February 13, 1976.

Approved by the Governor February 21, 1976.

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## CHAPTER 56

[Substitute House Bill No. 1470]

### CIVIL RECOMPENSE AND CLAIMS— MEDICAL MALPRACTICE

AN ACT Relating to civil recompense and claims; amending section 1, chapter 80, Laws of 1971 and RCW 4.16.350; amending section 1, chapter 157, Laws of 1969 ex. sess. as amended by section 1, chapter 114, Laws of 1975 1st ex. sess. and RCW 4.24.240; adding a new section to chapter 4.28 RCW; adding a new section to chapter 4.56 RCW; adding new sections to Title 5 RCW; and creating a new chapter in Title 7 RCW.

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

Section 1. Section 1, chapter 80, Laws of 1971 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 the effective date of this 1976 amendatory act against ((a hospital which is licensed by the state of Washington or against the personnel of any hospital, or against a member of the healing arts including, but not limited to, a physician licensed under chapter 18.71 RCW or chapter 18.57 RCW, chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, or a nurse licensed under chapter 18.88 or 18.78 RCW,)):

(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 (((1) three years from the date of the alleged wrongful act, or (2) one year from the time that plaintiff discovers the injury or condition was caused by the wrongful act, whichever period of time expires last)) 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. Any action not commenced in accordance with this section shall be barred: PROVIDED, That the limitations in this section shall not apply to persons under a legal disability as defined in RCW 4.16.190.

NEW SECTION. Sec. 2. There is added to chapter 4.28 RCW a new section to read as follows:

In any civil action for personal injuries, the complaint shall not contain a statement of the damages sought but shall contain a prayer for damages as shall be determined. A defendant in such action may at any time request a statement from the plaintiff setting forth separately the amounts of any special damages and general damages sought. Not later than fifteen days after service of such request to the plaintiff, the plaintiff shall have served the defendant with such statement.

NEW SECTION. Sec. 3. There is added to Title 5 RCW a new section to read as follows:

In any civil action for personal injuries which is based upon alleged professional negligence and which is 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;

evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Sec. 4. Section 1, chapter 157, Laws of 1969 ex. sess. as amended by section 1, chapter 114, Laws of 1975 1st ex. sess. and RCW 4.24.240 are each amended to read as follows:

~~(1) (Physicians licensed under chapters 18.71 or 18.57 RCW, dentists licensed under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64 RCW who are members of review committees for medical, dental, or pharmaceutical societies, and licensed hospitals, or committees whose duties require evaluation of credentials and qualifications of physicians, dentists, or pharmacists)):~~

(a) 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, including, in the event such person is deceased, his estate or personal representative;

(b) An employee or agent of a person described in subparagraph (a) of this subsection, 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

(c) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subparagraph (a) of this subsection, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, trustee, 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;

shall be immune from civil action for damages arising out of the good faith performance of their duties on such committees, where such actions are being brought by or on behalf of the person who is being evaluated.

(2) No member, employee, staff person, or investigator of a professional review committee shall be liable in a civil action as a result of acts or omissions made in good faith on behalf of the committee; nor shall any person be so liable for filing

charges with or supplying information or testimony in good faith to any professional review committee; nor shall a member, employee, staff person, or investigator of a professional society, of a professional examining or licensing board, of a professional disciplinary board, of a governing board of any institution, or of any employer of professionals be so liable for good faith acts or omissions made in full or partial reliance on recommendations or decisions of a professional review committee or examining board.

NEW SECTION. Sec. 5. There is added to chapter 4.56 RCW a new section to read as follows:

In any civil action for personal injuries in which a jury verdict awarding damages is made, the court may, if it finds the plaintiff's injuries totally and permanently disable the plaintiff, enter a judgment requiring that a portion of the damages awarded shall be provided in the form of an annuity plan. Similarly, in any civil action or arbitration for personal injuries in which trial is by the court or the dispute is resolved by arbitration and in which the plaintiff prevails, the court or arbitrator may, if it finds the plaintiff's injuries totally and permanently disable the plaintiff enter a judgment or award requiring that a portion of the damages awarded be provided in the form of an annuity plan.

NEW SECTION. Sec. 6. The state of Washington, exercising its police and sovereign power, hereby modifies as set forth in this chapter and in RCW 4.16-.350, as now or hereafter amended, certain substantive and procedural aspects of all civil actions and causes of action, whether based on tort, contract, or otherwise, for damages for injury occurring as a result of health care which is provided after the effective date of this 1976 amendatory act.

NEW SECTION. Sec. 7. As used in this chapter "health care provider" means either:

(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 part (1) above, 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 part (1) above, 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.

NEW SECTION. Sec. 8. No award shall be made in any action or arbitration for damages for injury occurring as the result of health care which is provided after the effective date of this 1976 amendatory act, unless the plaintiff establishes one or more of the following propositions:

(1) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(2) That a health care provider promised the patient or his representative that the injury suffered would not occur;

(3) That injury resulted from health care to which the patient or his representative did not consent.

Unless otherwise provided in this chapter, the plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence.

**NEW SECTION.** Sec. 9. The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider in the profession or class to which he belongs, in the State of Washington, acting in the same or similar circumstances;

(2) Such failure was a proximate cause of the injury complained of.

**NEW SECTION.** Sec. 10. (1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his representatives against a health care provider:

(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;

(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;

(d) That the treatment in question proximately caused injury to the patient.

(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his representative would attach significance to it deciding whether or not to submit to the proposed treatment.

(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:

(a) The nature and character of the treatment proposed and administered;

(b) The anticipated results of the treatment proposed and administered;

(c) The recognized possible alternative forms of treatment; or

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment.

(4) If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his consent to required treatment will be implied.

**NEW SECTION.** Sec. 11. If a patient while legally competent, or his representative if he is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient

gave his informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(1) A description, in language the patient could reasonably be expected to understand, of:

- (a) The nature and character of the proposed treatment;
- (b) The anticipated results of the proposed treatment;
- (c) The recognized possible alternative forms of treatment; and
- (d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(2) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in subsection (1) of this section.

Failure to use a form shall not be admissible as evidence of failure to obtain informed consent.

NEW SECTION. Sec. 12. The court shall, in any action under this chapter, determine the reasonableness of each party's attorneys fees. The court 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.

NEW SECTION. Sec. 13. Any party may present evidence to the trier of fact that the patient has already been compensated for the injury complained of from any source except the assets of the patient, his representative, or his immediate family, or insurance purchased with such assets. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation. Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee. Compensation as used in this section shall mean payment of money or other property to or on behalf of the patient, rendering of services to the patient free of charge to the patient, or indemnification of expenses incurred by or on behalf of the patient. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider.

NEW SECTION. Sec. 14. Sections 6 through 13 of this 1976 amendatory act shall constitute a new chapter in Title 7 RCW.

NEW SECTION. Sec. 15. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the

act, or the application of the provision to other persons or circumstances is not affected.

Passed the House February 18, 1976.

Passed the Senate February 13, 1976.

Approved by the Governor February 21, 1976.

Filed in Office of Secretary of State February 21, 1976.

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## CHAPTER 57

[House Bill No. 1529]

### COUNTY OPERATED FERRIES— FISCAL SUPPORT

AN ACT Relating to county operated ferries; amending section 46.68.100, chapter 12, Laws of 1961 as last amended by section 1, chapter 124, Laws of 1973 1st ex. sess. and RCW 46.68.100; amending section 1, chapter 21, Laws of 1975 1st ex. sess. and RCW 47.56.725; and declaring an emergency.

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

Section 1. Section 46.68.100, chapter 12, Laws of 1961 as last amended by section 1, chapter 124, Laws of 1973 1st ex. sess. and RCW 46.68.100 are each amended to read as follows:

From the net tax amount in the motor vehicle fund there shall be paid sums as follows:

(1) There shall be paid to the cities and towns of the state sums equal to ten and forty-four hundredths percent of the net tax amount to be paid monthly as the same accrues;

(2) To the counties of the state there shall be paid sums equal to thirty-two and sixty-one hundredths percent of the net tax amount out of which there shall be paid to the state highway commission those sums as may be appropriated for assistance to county operated ferries, as provided in RCW 47.56.725, at such times as shall be determined by the commission, with the balance of such county share to be paid monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(3) To the state there shall be paid to be expended as provided by RCW 46.68.130, sums equal to fifty-five and five-tenths percent of the net tax amount to be paid monthly as the same accrues.

(4) There shall be paid to the Puget Sound ferry operations account sums equal to one and forty-five hundredths percent of the net tax amount to be paid monthly as the same accrues.

Nothing in this section or in RCW 46.68.090 or 46.68.130 shall be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuels.

Sec. 2. Section 1, chapter 21, Laws of 1975 1st ex. sess. and RCW 47.56.725 are each amended to read as follows:

(1) The Washington state highway commission is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the state highway commission shall pay to each of the counties from