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House of Representatives

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**DIGEST & HISTORY ON LEGISLATIVE BILLS, MEMORIALS, AND RESOLUTIONS;
RCW - BILL TABLE; TOPICAL INDEX; AND SESSION LAW CHAPTER TO BILL TABLE**

**** Compiled to and Inclusive of April 11, 2006 ****

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With the Cooperation of the Statute Law Committee
& the Legislative Service Center

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VOLUME 2

INFORMATION GUIDE TO USAGE

HOUSE

RCW TO BILL TABLE

SESSION LAW CHAPTER TO BILL TABLE

Initiatives Introduced in the Senate

SI 330 by People of the State of Washington

Provides that in any action or arbitration for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545 (1), any other applicable law, or any combination thereof, that is based upon the alleged wrongful acts or omissions of one or more health care professionals, whether or not those health care professionals are named as defendants, the total combined civil liability for noneconomic damages for all health care professionals, all persons, entities, and health care institutions for whose conduct the health care professionals could be held liable, and all persons, entities, and health care institutions that could be held liable for the conduct of any health care professionals, shall not exceed three hundred fifty thousand dollars for each claimant, regardless of the number of health care professionals, health care providers, or health care institutions against whom the claim for injury or death is or could have been asserted or the number of separate causes of action on which the claim is based.

Provides that an attorney may not contract for or collect a contingency fee for representing a person in connection with an action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, in excess of the following limits: (1) Forty percent of the first fifty thousand dollars recovered;

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

(3) Twenty-five percent of the next five hundred thousand dollars recovered;

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

Declares that the limitations in this provision apply regardless of whether the recovery is by judgment, settlement, arbitration, mediation, or other form of alternative dispute resolution.

Provides that, in no event may an action be commenced more than three years after the act or omission alleged to have caused the injury or condition except: (1) Upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, in which case the patient or the patient's representative has one year from the date the patient or the patient's representative or custodial parent or guardian has actual knowledge of the act of fraud or concealment or of the presence of the foreign body within which to commence a civil action for damages.

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

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

Provides that a contract for health care or related services that contains a provision for arbitration of a dispute as to professional negligence of a health care provider as defined in RCW 7.70.020, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, or 4.24.010, any other applicable law, or any combination thereof, must have the provision as the first article of the contract and the provision must be expressed in the following language:

"It is understood that any dispute as to medical malpractice that is as to whether any health care or related services rendered under this contract were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered, will be

determined by submission to arbitration as provided by Washington law, and not by a lawsuit or resort to court process except as Washington law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have such a dispute decided in a court of law before a jury, and instead are accepting the use of arbitration."

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

Declares that a person who is a health care provider under RCW 7.70.020 (1) or (2) shall not be personally liable for any act or omission of any other health care provider who was not the person's actual agent or employee or who was not acting under the person's direct supervision and control at the time of the act or omission.

-- 2005 REGULAR SESSION --

Jan 19 First reading, referred to Judiciary.

-- IN THE SENATE --

Jan 26 HEA - Majority; without recommendation.
And refer to Judiciary.

Jan 27 Referred to Judiciary.

SI 336 by People of the State of Washington

Finds that increases in rate filings in insurance have widespread impact in the availability and affordability of medical malpractice liability insurance. In some cases, excessive rate increases result in limiting the availability of affordable insurance in markets, which in turn threatens the viability of the services or products that are to be insured.

Finds that there are several contributing causes to the current medical liability problem, and addressing these causes requires reducing medical errors while increasing patient safety and information and reducing the cost of our medical liability system.

Declares that it is in the public interest to maintain an efficient and expeditious regulatory environment in which to conduct the business of insurance. This interest must be balanced by the equally important public interest in promoting a greater range of medical liability insurance options to increase accessibility and affordability of this insurance and increase transparency when excessive rate filings impact the very health care practices and businesses that are to be insured.

Declares an intent to increase consumer access to information regarding medical malpractice liability and insurance and to reduce costs by increasing patient safety and information.

Creates a supplemental malpractice insurance program to provide an excess layer of liability coverage for medical malpractice claims.

Provides that a board of governors will oversee the operations of the program. The management and operations of the program are subject to the supervision and approval of the board.

Provides that the program must charge an annual premium to health care facilities and providers who decide to buy excess medical malpractice liability coverage from the program. The program must use this money to pay claims, administrative costs, and other expenses of the program.

Requires the program to file an annual statement with the commissioner by March 1st of each year. The statement must contain information about the program's transactions, financial condition, and operations during the past calendar year. The commissioner may establish rules for the form and content of this statement.

Provides that, if a health care facility or provider buys insurance to establish proof of financial responsibility, the insuring entity that provides underlying coverage must certify in writing to the program that the facility or provider has medical malpractice coverage with limits of liability as specified in this act. The limits set forth in this act apply to any joint liability of a provider and his or her corporation or partnership.

Declares that the minimum retained limits of liability are: (1) For health care providers: (a) Two hundred fifty thousand dollars per claim; and (b) annual aggregate limits of seven hundred fifty thousand dollars;

(2) For facilities with fewer than twenty-five employees that do not provide surgical services: (a) Two hundred fifty thousand dollars per claim; and (b) annual aggregate limits of one million two hundred fifty thousand dollars;

(3) For hospitals with a capacity of less than one hundred beds: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of five million dollars;

(4) For hospitals with a capacity of one hundred or more beds: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of eight million dollars;

(5) For health maintenance organizations that do not provide hospital services: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of five million dollars;

(6) For health maintenance organizations that provide hospital services: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of eight million dollars; and

(7) For all other types of health care facilities: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of three million dollars.

Provides that, beginning in 2007, the commissioner must prepare an annual report by June 30th that summarizes and analyzes the closed claim reports for medical malpractice filed under section 126 of this act and the annual financial reports filed by insurers writing medical malpractice insurance in this state.

Declares that the legislature may appropriate for the biennium ending June 30, 2007, any sum of money it deems necessary to the department of health to: (1) Provide capital and surplus to the supplemental malpractice insurance program; and

(2) Pay administrative expenses incurred to establish the supplemental malpractice insurance program.

Declares that no person who has been found to have within a ten-year period committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the commission to practice medicine.

Provides that nothing in this act limits the authority of the disciplining authority to revoke a license or take other disciplinary action when the license holder has committed only one or two acts of unprofessional conduct.

Provides that, upon receipt of a written request from a patient or an immediate family member of a deceased or disabled family member to examine or copy records made or received in the course of business by a health care facility or provider relating to any adverse medical incident, the health care facility or provider, as promptly as required by the circumstances, but not later than fifteen working days after receiving the request, shall: (1) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient or an immediate family member of a deceased or disabled family member. In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained; or

(2) Inform the patient or an immediate family member of a deceased or disabled patient if the information does not exist or cannot be found.

Declares that, in any action under chapter 7.70 RCW, each side shall presumptively be entitled to only two expert witnesses on an issue, except upon a showing of necessity. Where there are multiple parties on a side and the parties cannot agree as to which experts will be called on an issue, the court, upon a showing of necessity, shall allow additional experts on an issue to be called as the court deems appropriate.

Provides that, in any action under this act, an attorney that has drafted, or assisted in drafting and filing an action, counterclaim, cross-claim, third-party claim, or a defense to a claim, upon signature and filing, certifies that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is not frivolous, and is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause frivolous litigation.

Declares that, if an action is signed and filed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the action, counterclaim, cross-claim, third-party claim, or a defense to a claim, including a reasonable attorney fee. The procedures governing the enforcement of RCW 4.84.185 shall apply to this provision.

Requires that, within one hundred twenty days after filing a lawsuit under this chapter, the attorney of record, or the plaintiff if pro se, must file a certificate of merit. The certificate must state that the attorney or pro se plaintiff has consulted with a qualified expert who believes on a more probable than not basis that the claim set forth satisfies at least one of the basis for recovery under this chapter. Upon a showing of good cause, a court may extend the time frame for filing the certificate for a period not to exceed sixty days.

-- 2005 REGULAR SESSION --

Jan 19 First reading, referred to Judiciary.

-- IN THE SENATE --

Jan 26 HEA - Majority; without recommendation.

And refer to Judiciary.

Jan 27 Referred to Judiciary.

Senate Bills

SB 5000 by Senators Honeyford, Schoesler, Benson, McCaslin, Deccio, Mulliken, and Johnson

Removing a fixed schedule of license plate replacement.

Revises RCW 46.16.233 to delete the requirement for periodic replacement of license plates.

Revises RCW 46.16.233 to delete the option for vehicle owners to retain their current license plate number.

-- 2005 REGULAR SESSION --

Dec 7 Prefiled for introduction.

Jan 10 First reading, referred to Transportation.

SB 5001 by Senators Honeyford, Benton, Schmidt, and Johnson

Authorizing promise scholarships to be used at Oregon institutions of higher education participating in the border county higher education opportunity project.

Authorizes the use of the scholarships if the student resides with a parent or guardian in Washington state intending to commute from the parent's or guardian's residence, the commute distance to a Washington institution of higher education exceeds the distance to a participating Oregon border county institution of higher education, and the commute distance to a Washington institution of higher education is so far as to render commuting impractical.

-- 2005 REGULAR SESSION --

Dec 7 Prefiled for introduction.

Jan 10 First reading, referred to Early Learning, K-12 & Higher Education.

SB 5002 by Senators Regala, Swecker, Hargrove, Brandland, Doumit, and Shin

Marketing, offering, or selling camping resort contracts.

(SUBSTITUTED FOR - SEE 1ST SUB)

Revises RCW 19.105.310 and RCW 19.105.325 relating to the marketing, offering, or selling of camping resort contracts.

SB 5002-S by Senate Committee on Labor, Commerce, Research & Development (originally sponsored by

Topical Index

Key to Symbols Identifying Bill Numbers

SENATE

- SB - Senate Bill
(Range of SB 5000 to SB 7999)
- SJM - Senate Joint Memorial
(Range of SJM 8000 to SJM 8199)
- SJR - Senate Joint Resolution
(Range of SJR 8200 to SJR 8399)
- SCR - Senate Concurrent Resolution
(Range of SCR 8400 to SCR 8599)
- SR - Senate Resolution
(Range of SR 8600 to SR 8999)
- SGA - Senate Gubernatorial Appointment
(Range of SGA 9000 to SGA 9499)

HOUSE

- HB - House Bill
(Range of HB 1000 to HB 3999)
- HJM - House Joint Memorial
(Range of HJM 4000 to HJM 4199)
- HJR - House Joint Resolution
(Range of HJR 4200 to HJR 4399)
- HCR - House Concurrent Resolution
(Range of HCR 4400 to HCR 4599)
- HR - House Resolution
(Range of HR 4600 to HR 4999)

Key to Other Symbols

- SI or HI - Initiative
- S - Substitute
- 2S - 2nd Substitute
- 3S - 3rd Substitute

* - Measure number preceded by an asterisk means as follows:

- (a) Bill (HB or SB) has been enacted (passed legislature and signed by the Governor);
- (b) Joint Memorial (HJM or SJM) or Joint Resolution (HJR or SJR) has passed the legislature;
- (c) Concurrent Resolution (HCR or SCR) has been adopted by the legislature;
- (d) House Resolution (HR) has been adopted by the House;
- (e) Senate Resolution (SR) has been adopted by the Senate; and
- (f) Gubernatorial Appointment (SGA) has been confirmed by the Senate.

Symbols following a measure number preceded by an asterisk:

- CH 4 (2005) - This bill became Chapter 4 of the 2005 session laws.
- CH 4 E1 (2005) - This bill became Chapter 4 of the 2005 1st extraordinary session laws.
- (2005) - The preceding measure (other than a bill) was adopted, passed or confirmed in the 2005 regular session.
- E1 (2005) - The preceding measure (other than a bill) was adopted, passed or confirmed in the 2005 1st extraordinary session.