

SENATE BILL REPORT

SSB 6187

As Passed Senate, February 11, 2012

Title: An act relating to health care claims against state and governmental health care providers arising out of tortious conduct.

Brief Description: Concerning health care claims against state and governmental health care providers arising out of tortious conduct.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Pflug, Harper and Frockt; by request of Attorney General).

Brief History:

Committee Activity: Judiciary: 1/25/12, 2/01/12 [DPS].

Passed Senate: 2/11/12, 46-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6187 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Hargrove, Kohl-Welles and Padden.

Staff: Juliana Roe (786-7438)

Background: Currently, all claims against the state, or against the state's officers, employees, or volunteers for damages arising out of tortious conduct except for claims involving injuries from health care must be presented to the risk management division of the Department of Enterprise Services. All claims, other than those arising from injuries from health care, are presented when a claim form is delivered to the risk management division on the standard tort claim form. The delivery of that claim form triggers a 60 days' notice of intent to file suit. Depending on the court's rules, the cause of action may be subject to mandatory mediation or arbitration. Some courts require mediation prior to a court date being set, others do not. If there is no court rule, and the parties do not settle or elect to go through mediation or arbitration, the case may proceed to trial.

The current statute reads that a person may commence an action based upon a health care provider's professional negligence by giving the defendant 90 days' notice of intent to commence the action. All causes of action are subject to mandatory mediation prior to trial

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except for those actions subject to mandatory arbitration. A person has a right to trial by jury following an unsuccessful attempt at mediation or arbitration. However, in recent case law the Washington State Supreme Court concluded that the notice requirement in the statute is unconstitutional because it violates the separation of powers doctrine as it conflicts with the judiciary's power to set court procedures. The case specifically dealt with a private entity. Whether this decision can be extended to those cases involving governmental entities is a question currently before the state Supreme Court.

Summary of Substitute Bill: All claims against the state, or against the state's officers, employees, or volunteers for damages arising out of tortious conduct, including claims involving injuries from health care must be presented to the risk management division of the Department of Enterprise Services.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: A change in 2006 created a discrepancy, and this bill is intended to remedy the discrepancy. The end result is that if we don't make this change, it will cost everyone more to get potentially the same settlement. This legislation will take us back to the way the law was written in the 1960s, which means that there will be one tort claim practice for all torts.

Persons Testifying: PRO: Senator Pflug, prime sponsor; John Nicholson, Attorney General's Office; Michael Temple, WA Assn. for Justice.