

# FINAL BILL REPORT

## SSB 6187

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C 250 L 12  
Synopsis as Enacted

**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).

**Senate Committee on Judiciary**  
**House Committee on Judiciary**

**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 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, the Washington State Supreme Court held that the notice requirement in the statute was 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:** 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Votes on Final Passage:**

Senate	46	0
House	98	0

**Effective:** June 7, 2012