

SENATE BILL REPORT

SSB 5386

AS PASSED SENATE, FEBRUARY 18, 1992

Brief Description: Establishing certificate of merit in professional negligence suits.

SPONSORS: Senate Committee on Law & Justice (originally sponsored by Senators McCaslin and Bailey)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5386 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, and Newhouse.

Minority Report: Do not substitute.

Signed by Senators M. Kreidler, Madsen, Rasmussen, and A. Smith.

Staff: Jon Carlson (786-7459)

Hearing Dates: January 31, 1991; February 7, 1992

BACKGROUND:

Current law allows a civil action for malicious prosecution against a party who files a claim with the knowledge that it is unfounded, malicious, and without probable cause. However, there is still concern that the number of frivolous and unfounded lawsuits is increasing, particularly professional negligence claims brought against individuals working in the licensed professions. It is recommended that the claimant's attorney show that a claim brought against a licensed professional is reasonable and meritorious.

SUMMARY:

A certificate of merit procedure is established for determining the legitimacy of claims brought against licensed, registered, or certified professionals.

Whenever a claimant's attorney brings an action for damages arising out of professional negligence, the attorney must file a certificate of merit within 30 days of filing the action or service of process, whichever occurs later.

The certificate of merit must show that the claimant's attorney reviewed the case and determined that the cause of action is reasonable and meritorious. As part of his or her deliberations, the attorney must consult with at least one qualified expert who holds a license in the same profession as that of the defendant, and whom the attorney believes is

knowledgeable in the issues being litigated. The qualified expert must also practice in the same specialty or subspecialty as the defendant.

Where there are multiple defendants, the certificate must find that there is a reasonable and meritorious cause of action for each defendant.

The certificate of merit procedure is not applicable to a plaintiff who is not represented by an attorney. A violation of these provisions is grounds for dismissal of the case or sanctions against the attorney.

The certificate of merit procedure applies to all actions for damages arising out of professional negligence filed on or after August 1, 1992.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

This measure helps to ensure that claims brought against licensed professionals are meritorious. It would also speed up the litigation process and decrease the overall cost of maintaining these claims.

TESTIMONY AGAINST:

Civil Rule 11, motions for summary judgment, and statutes that allow claims for malicious prosecution and recovery of expenses for opposing frivolous actions render this measure unnecessary.

TESTIFIED: Michael Runyan, Washington Defense Trial Lawyers (pro); Bruce Mauser, Architects and Engineers Legislative Council (pro); Noella Rawlings, Physicians Insurance (pro); Clif Finch, Association of Washington Business (pro); Eugene Moen, Washington State Trial Lawyers Association (con); David Swartling, Washington State Bar Association Litigation Section (con)