

HOUSE BILL ANALYSIS

HB 1796

Title: An act relating to establishing a certificate of merit procedure in lawsuits.

Brief Description: Establishing a certificate of merit procedure for certain lawsuits.

Sponsors: Representatives Huff, Lisk, Carrell, Cairnes, Benson and Sullivan.

Brief Summary of Bill

- Requires an attorney, in certain types of civil actions, to file a certificate of merit declaring, among other things, that the attorney has reviewed the facts of the case, has consulted with an expert, and has concluded that the claim is reasonable and meritorious.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

Generally, bringing a frivolous lawsuit subjects a person to possible sanctions. Sanctions against an attorney are awarded under court rule (CR 11). Sanctions against a party are awarded under statute (RCW 4.84.185).

Under the statute, if a court finds that the action, counterclaim, cross-claim, third-party claim, or defense in any civil action was frivolous and advanced without reasonable cause, the court may require the nonprevailing party to pay the prevailing party's reasonable expenses, including attorney fees, incurred in opposing the action.

These sanctions may be imposed after a voluntary or involuntary order of dismissal, order on summary judgement, final judgment after trial, or other final order terminating the action.

Under the court rule and case law interpreting the rule, an attorney has three independent and affirmative duties when signing any pleading, motion, or legal memorandum in an action:

- the duty to conduct a reasonable inquiry into the facts supporting an action;

- the duty to conduct a reasonable inquiry into the law, such that an action embodies existing legal principles or a good faith argument for the extension, modification, or reversal of existing law; and
- the duty not to use an action for delay, harassment, or increasing the costs of litigation.

A court may impose sanctions against an attorney for violating the court rule. Sanctions may include the other party's costs and attorney fees.

There are numerous businesses and professions for which the state requires a person to be licensed, registered, or certified. These business and professions are generally contained in Title 18 of the Revised Code of Washington and include, for example, accountants, architects, counselors, dentists, physicians, pharmacists, nurses, psychologists, real estate brokers, private investigators, security guards, and massage practitioners.

Summary of Bill:

A certificate of merit is required in certain civil actions. The claimant's attorney must file a certificate indicating:

- the attorney has reviewed the facts of the case;
- the attorney has consulted with at least one qualified expert with knowledge of the issues in the type of action and who either practices in the same specialty area as the defendant, or has expertise in the areas requiring expert testimony for a product liability claim or action against a health care facility;
- the identity of the expert and the expert's license, certification, or registration;
- the expert is willing and available to testify; and
- the attorney has concluded that there is reasonable and meritorious cause for filing an action.

The certificate is required in a civil action for damages based on the negligence of a licensed, registered, or certified business person or professional, or a health care facility, and in actions for product liability.

Failure to file a certificate is grounds for dismissal of the case or sanctions against the attorney, or both, at the discretion of the court.

When there are multiple defendants in the lawsuit, the attorney must indicate in the certificate that he or she believes there is reasonable and meritorious cause for filing the suit against each defendant. The requirement for a certificate does not apply to claimants representing themselves without an attorney.

The attorney must file the certificate within 90 days of filing the action or service. The court may extend the 90-day period upon a showing of good cause. The certificate requirement applies to all actions for damages filed after December 31, 1999.

Fiscal Note: Not requested.

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

Office of Program Research