

# HOUSE BILL REPORT

## HB 2839

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to a study of alternatives for resolving disputes related to injuries resulting from health care.

**Brief Description:** Creating a task force to study alternatives for resolving disputes related to injuries resulting from health care.

**Sponsors:** Representatives Schual-Berke, Kagi, Cody, Lantz, Linville, Morrell, Wallace, Kenney, O'Brien, Miloscia, Sommers, Rockefeller, Clibborn, Edwards and Dickerson.

**Brief History:**

**Committee Activity:**

Judiciary: 1/27/04, 1/29/04 [DPA].

**Brief Summary of Amended Bill**

- Establishes a task force to study and make recommendations on alternative administrative or judicial processes for the resolution of medical malpractice actions.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Edie Adams (786-7180).

**Background:**

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the required standard of care;
- The health care provider promised that the injury suffered would not occur; or

- The injury resulted from health care to which the patient did not consent.

Failure to follow the standard of care means that the health care provider failed to exercise the degree of care expected of a reasonably prudent provider of the same field at that time, and acting in the same or similar circumstances.

Medical malpractice cases may be resolved through a civil action in superior court, or through mediation or arbitration. All medical malpractice claims are subject to mandatory mediation in accordance with court rules. However, the court rule allows mandatory mediation to be waived upon petition of any party that mediation is not appropriate.

Some medical malpractice claims may be subject to mandatory arbitration requirements. Mandatory arbitration is required in counties with a population over 150,000 and authorized in smaller counties. It applies to actions in which the sole relief requested is monetary damages not exceeding \$35,000. In addition, parties to a dispute may voluntarily agree in writing to enter into arbitration to resolve the dispute. A party that agrees to arbitration waives the right to a jury trial on the issue. Arbitration decisions are binding on the parties but may be reviewed on a limited basis by the courts.

Medical malpractice claims that are not settled or resolved through mediation or arbitration are resolved through a civil trial in superior court. Medical malpractice cases are generally complex and require the use of numerous expert witnesses and extensive discovery by both parties, which can make the process both costly and time-consuming. The time period for resolution of a medical negligence case can take several years or longer, especially if the judgment in the case is appealed.

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### **Summary of Amended Bill:**

A joint task force is created to study judicial and administrative alternatives to resolving medical malpractice suits. The task force's objectives are to:

- Examine the approaches other states and jurisdictions have taken to address medical malpractice cases, such as mediation and arbitration, administrative compensation systems, and the use of impartial medical experts or specialized courts or judges;
- Recommend one or more methods of resolution of medical malpractice disputes, such as an administrative resolution process, medical courts, or court rule modifications designed to increase the medical knowledge of judges; and
- Recommend an implementation plan that addresses the administrative structure of the proposed method, the cost of implementation, and necessary changes to statutes and court rules.

The task force is chaired by the Office of the Attorney General and includes the following members:

- Legislators, including one member from each caucus;
- Superior court judges, appointed by the president of the Superior Court Judges Association, including one from eastern Washington and one from western Washington;
- One appellate court judge appointed by the Chief Justice of the Supreme Court;
- One retired judge actively involved in mediation or arbitration of medical negligence suits;
- The Secretary of the Department of Health;
- Two physician representatives of the Washington Medical Association;
- One representative of the Washington State Hospital Association;
- One representative of the Washington State Bar Association; and
- One representative of health care consumers, appointed by the Attorney General.

The task force must submit a report to the Governor and the appropriate committees of the Legislature by November 1, 2005.

**Amended Bill Compared to Original Bill:**

The amended bill specifies that the staff of the Office of Program Research and Senate Committee Services will provide staff support services to the task force.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The bill is a thoughtful approach to one of the pieces of the medical malpractice insurance problem. The bill will not solve the medical malpractice crisis. However, there are other methods of dispute resolution that should be explored. The current system is expensive, time-consuming and does not meet everyone's needs. The goal of this task force is to address the issues of timeliness and cost-containment. It is also intended to address the issue of how well-informed the people are who hear these complex issues.

(With concerns) Conceptually, this kind of process could be a very productive one. However, it should not be a predetermined direction as to what the outcome is going to be, and there is language in the bill that would lead one to certain conclusions. Juries have the ability to handle complex issues and utilize the collective wisdom of the

community to reach a good decision. We should be slow to move away from the jury process, which has served us well.

**Testimony Against:** None

**Persons Testifying:** Representative Schual-Berke, prime sponsor.

(With concerns) Larry Shannon, Washington State Trial Lawyers Association.

**Persons Signed In To Testify But Not Testifying:** None.