

SENATE BILL REPORT

SB 5413

As Reported By Senate Committee On:
Judiciary, March 1, 2005

Title: An act relating to actions against health care providers under chapter 7.70 RCW.

Brief Description: Revising mandatory mediation requirements for actions involving health care providers.

Sponsors: Senators Rasmussen, McCaslin, Weinstein, Esser, Swecker, Shin, Haugen, Sheldon, Hargrove, Rockefeller and Regala.

Brief History:

Committee Activity: Judiciary: 2/17/05, 3/1/05 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5413 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: All causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, are subject to mandatory mediation prior to trial.

Proponents of this legislation believe the mediation process, unlike the traditional system of tort litigation, allows plaintiffs and defendants to address one another early when it is believed that a mistake may have led to an injury during the receipt of health care.

Summary of Substitute Bill: No action for negligence against a health care provider may be commenced unless the defendant has been given at least 90 days notice of intent to commence the action. If notice is served within 90 days of the expiration of the applicable statute of limitations, the time for commencement of the action must be extended 90 days from service of the notice. This provision is not applicable if the plaintiff does not know the name of defendant at time of filing. All causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, are subject to mandatory mediation prior to trial. However, actions subject to mandatory arbitration and those in which the parties have agreed to submit the claim to arbitration are not subject to mandatory mediation. The Supreme Court is directed to adopt by rule procedures for parties to certify to the court the manner of mediation used by the parties to comply with this legislation.

Substitute Bill Compared to Original Bill: The substitute bill informs the supreme court of the content the legislature contemplates being included in the procedures adopted by rule by the supreme court to implement mandatory mediation. The original dictated the content of the rules.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: Current law says the supreme court must adopt rules to implement mandatory mediation but the one they adopted said either side may opt out of mediation. So, mandatory mediation became an oxymoron. Settlements occur by forcing people to mediate. It is an alternative dispute mechanism that helps to resolve disputes and moves parties forward.

Testimony Against: None.

Who Testified: PRO: Larry Shannon, Wa State Trial Lawyers Assn; Cliff Webster, Wa State Medical Assn.