

HOUSE BILL REPORT

SSB 6187

As Reported by House Committee On: Judiciary

Title: An act relating to health care claims against state and governmental health care providers arising out of tortious conduct.

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).

Brief History:

Committee Activity:

Judiciary: 2/15/12, 2/20/12 [DP].

Brief Summary of Substitute Bill

- Provides that claims against a state or local governmental entity based on injuries from health care are subject to the requirements of the state and local government claims filing statutes.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Edie Adams (786-7180).

Background:

A tort claim against either the state or a local government may not be filed in court until the claimant complies with certain notice requirements established in statute, called the "claim filing statute." A tort claim against the state must be presented to and filed with the Office of Risk Management. A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims.

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.

A claim must be presented on a standard claim form that contains specified information, including a description of the injury or damages, the conduct or circumstances that brought about the injury or damage, the names of all persons involved, and the amount of damages claimed. A claimant may not commence a civil tort action against the state or a local governmental entity until 60 days after the claim is presented. The statute of limitations for the claim is tolled during this 60-day period.

Legislation in 2009 exempted claims based on injuries resulting from health care from the requirements of the state and local government claim filing statutes. The legislation specified that these health care-related claims are governed solely by the procedures set forth in the law governing civil actions for injuries resulting from health care (health care actions). The law governing health care actions provides that any action based upon a health care provider's professional negligence may not be commenced unless the defendant has been given at least 90 days prior notice of the intention to commence the action. This 90-day notice requirement for health care actions was established in 2006.

In 2010 the Washington Supreme Court (Court) invalidated the 90-day notice requirement for health care actions in the case *Waples v. Yi*. The Court found that the statute violated separation of powers principles because it irreconcilably conflicts with court rules governing the commencement of actions and it is a procedural rule that falls within the powers of the judicial branch to establish rules governing how lawsuits are initiated and maintained.

Waples v. Yi involved a suit against a private health care provider. A case currently on direct review at the Court, *McDevitt v. Harborview*, raises the issue of whether the 90-day notice requirement for health care actions remains valid with respect to health care actions against governmental entities under Article II, §26 of the Washington Constitution, which gives the Legislature the authority to direct by law the manner in which suits may be brought against the state.

Summary of Bill:

Provisions of the state and local government claim filing statutes that exempt claims involving injuries from health care are eliminated. A civil action against a state or local government entity involving injuries from health care may not be commenced until after the claim is presented to the governmental entity in accordance with the requirements of the claim filing statutes.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill simply reinstates the claim filing requirements that were in effect prior to 2006. Due to legal developments, there is confusion regarding the requirements for suing public entities based on health care claims. The bill provides a practical solution that benefits all parties. Having this pre-suit notice will help the state save money by allowing early resolution of claims before a lawsuit is filed.

(Opposed) None.

Persons Testifying: John Nickolson, Office of the Attorney General; Larry Shannon, Washington State Association of Justice; and Shari Spung, University of Washington.

Persons Signed In To Testify But Not Testifying: None.