

SENATE BILL REPORT

HB 2308

As Reported by Senate Committee On:
Judiciary, February 23, 2012

Title: An act relating to awarding of costs, including attorneys' fees, in actions challenging actions taken by professional peer review bodies.

Brief Description: Regulating awarding of costs, including attorneys' fees, in actions challenging actions taken by professional peer review bodies.

Sponsors: Representatives Rodne and Pedersen.

Brief History: Passed House: 1/30/12, 96-0.

Committee Activity: Judiciary: 2/15/12, 2/22/12, 2/23/12 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Padden, Regala and Roach.

Staff: Aldo Melchiori (786-7439)

Background: The state Health Care Peer Review Act (HCPRA) incorporates provisions of the federal Health Care Quality Improvement Act of 1986 (HCQIA). HCQIA was enacted with the stated purpose of encouraging effective professional peer review to improve the quality of medical care and reduce the cost of medical malpractice lawsuits. HCQIA aimed to accomplish these goals by providing incentives and protection for health care providers and physicians engaging in professional peer review processes.

HCQIA provides immunity from damages for professional peer review bodies and persons serving on or assisting professional peer review bodies for actions taken by the body if those actions meet certain standards. In order to qualify for immunity, the professional peer review body action must be taken in the reasonable belief that the action was in furtherance of quality health care; after a reasonable effort to obtain the facts of the matter; after adequate notice and hearing procedures; and in the reasonable belief that the action was warranted by the known facts.

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.

HCQIA contains a fee-shifting provision for prevailing defendants who meet the standards for HCQIA immunity. The court must award to a substantially prevailing party defending against a claim the costs of the suit attributable to the claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. A defendant does not substantially prevail when the plaintiff obtains an award for damages or permanent injunctive relief.

The state HCPRA incorporates the provisions of the federal HCQIA that provide immunity from damages for professional peer review actions that are based on the competence or professional conduct of a health care provider.

In addition, HCPRA provides the exclusive remedy for actions taken by professional peer review bodies that are found to be based on matters not related to the competence or professional conduct of the health care provider. These actions are limited to appropriate injunctive relief and damages for lost earnings directly attributable to the professional peer review body's action.

With respect to suits based on these actions, HCPRA provides that reasonable attorneys' fees and costs, as approved by the court, must be awarded to the prevailing party, as determined by the court. This provision has been interpreted to require the court to award costs and reasonable attorneys' fees to the prevailing party.

Summary of Bill (Recommended Amendments): Standards for the award of prevailing party costs and attorneys' fees are revised for suits under HCPRA that are based on professional peer review body actions not related to competence or professional conduct. The court must award to the substantially prevailing party in a professional peer review proceeding, the costs of the suit attributable to any claim or defense asserted in the action by the nonprevailing party if the nonprevailing party's claim, defense, or conduct was frivolous, unreasonable, without foundation, or in bad faith. The court must award to the substantially prevailing defendant the cost of the suit, including reasonable attorneys' fees, if the nonprevailing plaintiff failed to exhaust all administrative remedies available before the Professional Peer Review Board.

A party is not considered a substantially prevailing party if the opposing party obtains an award for damages or permanent injunctive relief.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): It clarifies that the attorney fee provisions in the bill only apply to the professional peer review process.

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.

Staff Summary of Public Testimony on Original Bill: PRO: The Washington State Medical Association has worked with the hospitals to draft this solution. The bill makes it more difficult for prevailing hospitals to recover attorney's fees. It is fair that appealing physicians should exhaust their administrative remedies before going to court.

CON: We should not discourage actions against professional peer review committees because they help keep hospitals honest. Large attorney fee awards against physicians discourage them from challenging unfair hospital actions. No other states have similar statutory schemes.

Persons Testifying: PRO: Katie Kolan, WA State Medical Assn.

CON: Dr. Kay Funk, citizen.