

# SENATE BILL REPORT

## HB 2741

---

---

As of February 17, 2012

**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:** Representatives Rodne, Eddy, Dammeier and Haler; by request of Attorney General.

**Brief History:** Passed House: 2/09/12, 97-0.

**Committee Activity:** Judiciary: 2/17/12.

---

### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** All claims against the state or against the state's officers, employees, or volunteers for damages arising out of tortious conduct, except for claims involving injuries from health care, must be presented to the risk management division of the Department of Enterprise Services. All claims, other than those arising from injuries from health care, are presented when a claim form is delivered to the risk management division on the standard tort claim form. The delivery of that claim form triggers a 60-days notice of intent to file suit. Depending on the court's rules, the cause of action may be subject to mandatory mediation or arbitration. Some courts require mediation prior to a court date being set, others do not. If there is no court rule, and the parties do not settle or elect to go through mediation or arbitration, the case may proceed to trial.

The current statute reads that a person may commence an action based upon a health care provider's professional negligence by giving the defendant 90-days notice of intent to commence the action. All causes of action are subject to mandatory mediation prior to trial except for those actions subject to mandatory arbitration. A person has a right to trial by jury following an unsuccessful attempt at mediation or arbitration. However, in recent case law the Washington State Supreme Court concluded that the notice requirement in the statute is unconstitutional because it violates the separation of powers doctrine as it conflicts with the judiciary's power to set court procedures. The case specifically dealt with a private entity. Whether this decision can be extended to those cases involving governmental entities is a question currently before the state Supreme Court.

---

*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.*

**Summary of Bill:** All claims against the state, or against the state's officers, employees, or volunteers for damages arising out of tortious conduct, including claims involving injuries from health care, must be presented to the office of risk management.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The intent of this bill is to clear up confusion because of developments in the past couple of years regarding filing requirements in which the defendant is a public health care entity. The bill makes the process the same for health care claims as for other tort claims. There are currently no notice requirements in health care.

**Persons Testifying:** PRO: John Nicholson, AGO; Michael Temple, WA State Assn. for Justice.