

SENATE BILL REPORT

HB 1533

As of March 15, 2013

Title: An act relating to clarifying notice of claims in health care actions.

Brief Description: Clarifying notice of claims in health care actions.

Sponsors: Representatives Rodne and Jinkins.

Brief History: Passed House: 3/04/13, 98-0.

Committee Activity: Law & Justice: 3/15/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Sharon Swanson (786-7447)

Background: 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 90 days' notice of the intention to commence the action. This 90-day notice requirement for health care actions was established in 2006 as part of comprehensive legislation addressing medical malpractice issues, including civil liability for injuries resulting from health care.

Legislation in 2009 exempted claims based on injuries resulting from health care from the requirements of the state and local government claim filing statutes, which generally provide that a tort claim against a state or local governmental entity must be presented to the state or local government entity 60 days prior to the commencement of a court action. The 2009 legislation specified that health care-related claims against governmental entities are governed solely by the procedures set forth in the law governing civil actions for injuries resulting from health care.

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 involved a suit against a private health care provider. A subsequent case, *McDevitt v. Harborview*, addressed the issue of whether the 90-day notice requirement for health care

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actions remains valid with respect to health care actions against governmental entities. Before the Court ruled on the *McDevitt* case, the Legislature passed a bill providing that health care actions are subject to the general state and local government claims filing statutes, which require 60-day prior notice.

Subsequently, in December 2012, the Court held in the *McDevitt* case that the 90-day pre-suit notice requirement for health care actions is valid as applied to health care actions against governmental entities. This holding is based on Article II, sec. 26 of the Washington State Constitution, which gives the Legislature the authority to direct by law the manner in which suits may be brought against the state.

As a result of the *McDevitt* decision and the legislative change in 2012, there are now two statutes with different procedural requirements governing pre-suit notice for health care actions against governmental entities.

Summary of Bill: Eliminates the requirement that a claimant provide 90-day prior notice of the claimant's intent to file an action based on the professional negligence of a health care provider.

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: PRO: The Washington State Association of Justice (WSAJ) strongly supports this measure and is very appreciative of the prime sponsor and sponsor for bringing it forward. We believe this is a simple common sense measure that will bring clarity back to our notice of claims provisions for actions involving government health care providers. We thought we fixed this issue during the 2012 session but a recent decision by the Court requires this bill to remove any possibility of confusion by having two conflicting statutes on the books. This bill simply returns to the pre-2006 law and gives one clear set of rules for everyone to follow.

Persons Testifying: PRO: Larry Shannon, WSAJ.