

# HOUSE BILL REPORT

## HB 2839

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**As Reported By House Committee On:**  
Health Care

**Title:** An act relating to health care liability reform.

**Brief Description:** Providing for health care liability reform.

**Sponsors:** Representatives Dyer, Sherstad, Thompson, McMahan, Goldsmith, Huff, Carlson, Robertson and Johnson.

**Brief History:**

**Committee Activity:**

Health Care: 1/30/96, 2/2/96 [DPS].

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### HOUSE COMMITTEE ON HEALTH CARE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Hymes, Vice Chairman; Casada; Crouse; Sherstad and Skinner.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Cody, Ranking Minority Member; Murray, Assistant Ranking Minority Member; Campbell; Conway; Morris and H. Sommers.

**Staff:** Charlie Gavigan (786-7340).

**Background:** Washington has several provisions in law dealing with medical malpractice. For instance, no award can be made for damages for an injury occurring from health care unless (1) the injury resulted from the failure of a health care provider to follow the accepted standard of care; (2) the provider promised that the injury would not occur; or (3) the injury resulted from care to which the patient did not consent.

Generally, a statute of limitations requires court actions be brought within a specific time frame or be barred. Typically, the statute of limitations for a minor does not begin to run until the minor reaches the age of 18, and is tolled for persons who are incompetent and for some prisoners. For health care claims, an action must be filed within three years of the injury or one year from the time the injury reasonably should have been discovered, whichever is later, but in no case after eight years.

In health care cases where the injured person is under the age of 18 at the time of the injury, the Supreme Court has held that a parent or guardian's knowledge is not imputed to the minor until the minor reaches 18, although the statute seems to require a parent or guardian's knowledge be imputed to the minor any time after the injury.

Health care actions are subject to mandatory mediation. If a written, good faith request for mediation is made, the statute of limitations is suspended.

Washington's laws regarding evidence that is allowed to be considered at trial provide that a patient is deemed to waive the physician-patient privilege 90 days after a civil action is filed with the court. Washington court-made law precludes the defendant from having ex parte contact with a plaintiff's health care providers; this means the defendant or his or her attorney cannot interview the plaintiff's health care providers without the plaintiff or his or her attorney being present.

**Summary of Substitute Bill:** In order to make a claim for damages resulting from negligence by a health care provider, the claimant must file a certificate of merit within 90 days of initiating the claim. The certificate of merit must include the opinion of the attorney that the claim is reasonable after consulting with at least one health care expert in the defendant's field who is willing to testify.

The tolling, or suspension, of the statute of limitations for minors, for incompetent persons, or for some prisoners is eliminated for health care claims.

If a written, good faith request for mediation is made, the statute of limitations is tolled for six months, rather than for an unspecified period.

Court-made law limiting defendant contact with a plaintiff's health care providers is overturned by this act; once the physician-patient privilege is waived, the defendant can contact and interview the plaintiff's health care providers without the plaintiff or his or her attorney being present. The physician-patient privilege is deemed waived 120 days from the filing of a claim with the court.

**Substitute Bill Compared to Original Bill:** Provisions in the original bill are removed by the substitute bill that (1) would eliminate the existing requirement that standards of practice be developed for health care providers as part of the whistleblower law; and (2) would require additional rules to limit some trusts by minors relating to personal injury awards or settlements. The physician-patient privilege is waived by statute 120 days after a cause of action is filed. (Current law waives the privilege 90 days after filing a cause of action; the original bill waives the privilege 90 days after making a claim in writing).

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill is needed to reform liability in the health care arena. The certificate of merit will eliminate baseless cases. The bill provides rational limits to how much time can pass before a lawsuit is filed and levels the playing-field regarding access to important witnesses. Abusive trusts by minors used to access public assistance even though they have received substantial awards or settlements should be limited.

**Testimony Against:** The certification of merit provision is not necessary and will add to the cost of resolving health care disputes. The physician-patient privilege should not be waived earlier, and the access to a plaintiff's health care providers should be provided only if the plaintiff is present. Abuses with trusts for minors have been reduced through changes in federal law. A minor's right to file a lawsuit should not be eliminated before the age of majority for health care.

**Testified:** Gary Morse, Physicians Insurance Exchange and Washington State Medical Association (supports); Barbara Shickich, Washington State Hospital Association (supports); Bill Phillips, Washington Defense Trial Lawyers Association (supports); Larry Shannon, Washington State Trial Lawyers Association (opposes); and William Dussault (opposes).