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**SUBSTITUTE SENATE BILL 5910**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Brandland, Kline, Weinstein and Parlette)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to prefiling notice of intent to commence a medical  
2 malpractice action; and amending RCW 7.70.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.70.100 and 2006 c 8 s 314 are each amended to read  
5 as follows:

6 (1) No action based upon a health care provider's professional  
7 negligence may be commenced unless the defendant has been given at  
8 least ninety days' notice of the intention to commence the action. The  
9 notice required by this section shall be given by regular mail,  
10 registered mail, or certified mail with return receipt requested, by  
11 depositing the notice, with postage prepaid, in the post office  
12 addressed to the defendant. If the defendant is a health care provider  
13 entity defined in RCW 7.70.020(3) or, at the time of the alleged  
14 professional negligence, was acting as an actual agent or employee of  
15 such a health care provider entity, the notice may be addressed to the  
16 chief executive officer, administrator, office of risk management, if  
17 any, or registered agent for service of process, if any, of such health  
18 care provider entity. Notice for a claim against a local government  
19 entity shall be filed with the agent as identified in RCW 4.96.020(2).

1 Proof of notice by mail may be made in the same manner as that  
2 prescribed by court rule or statute for proof of service by mail. If  
3 the notice is served within ninety days of the expiration of the  
4 applicable statute of limitations, the time for the commencement of the  
5 action must be extended ninety days from the (~~service of~~) date the  
6 notice was mailed, and after the ninety-day extension expires, the  
7 claimant shall have an additional five court days to commence the  
8 action.

9 (2) The provisions of subsection (1) of this section are not  
10 applicable with respect to any defendant whose name is unknown to the  
11 plaintiff at the time of filing the complaint and who is identified  
12 therein by a fictitious name.

13 (3) After the filing of the ninety-day presuit notice, and before  
14 a superior court trial, all causes of action, whether based in tort,  
15 contract, or otherwise, for damages arising from injury occurring as a  
16 result of health care provided after July 1, 1993, shall be subject to  
17 mandatory mediation prior to trial except as provided in subsection (6)  
18 of this section.

19 (4) The supreme court shall by rule adopt procedures to implement  
20 mandatory mediation of actions under this chapter. The implementation  
21 contemplates the adoption of rules by the supreme court which will  
22 require mandatory mediation without exception unless subsection (6) of  
23 this section applies. The rules on mandatory mediation shall address,  
24 at a minimum:

25 (a) Procedures for the appointment of, and qualifications of,  
26 mediators. A mediator shall have experience or expertise related to  
27 actions arising from injury occurring as a result of health care, and  
28 be a member of the state bar association who has been admitted to the  
29 bar for a minimum of five years or who is a retired judge. The parties  
30 may stipulate to a nonlawyer mediator. The court may prescribe  
31 additional qualifications of mediators;

32 (b) Appropriate limits on the amount or manner of compensation of  
33 mediators;

34 (c) The number of days following the filing of a claim under this  
35 chapter within which a mediator must be selected;

36 (d) The method by which a mediator is selected. The rule shall  
37 provide for designation of a mediator by the superior court if the  
38 parties are unable to agree upon a mediator;

1 (e) The number of days following the selection of a mediator within  
2 which a mediation conference must be held;

3 (f) A means by which mediation of an action under this chapter may  
4 be waived by a mediator who has determined that the claim is not  
5 appropriate for mediation; and

6 (g) Any other matters deemed necessary by the court.

7 (5) Mediators shall not impose discovery schedules upon the  
8 parties.

9 (6) The mandatory mediation requirement of subsection (4) of this  
10 section does not apply to an action subject to mandatory arbitration  
11 under chapter 7.06 RCW or to an action in which the parties have  
12 agreed, subsequent to the arisal of the claim, to submit the claim to  
13 arbitration under chapter 7.04A or 7.70A RCW.

14 (7) The implementation also contemplates the adoption of a rule by  
15 the supreme court for procedures for the parties to certify to the  
16 court the manner of mediation used by the parties to comply with this  
17 section.

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