

# HOUSE BILL REPORT

## HB 2308

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### As Amended by the Senate

**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:**

##### **Committee Activity:**

Judiciary: 1/16/12, 1/19/12 [DP].

##### **Floor Activity:**

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

Senate Amended.

Passed Senate: 3/2/12, 49-0.

#### **Brief Summary of Bill**

- Revises the standard for the award of prevailing party costs and attorneys' fees in actions under the state Health Care Peer Review Act.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 8 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Hansen, Kirby, Nealey, Orwall and Roberts.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Shea, Assistant Ranking Minority Member; Klippert and Rivers.

**Staff:** Edie Adams (786-7180).

#### **Background:**

The state Health Care Peer Review Act (HCPRA) incorporates provisions of the federal Health Care Quality Improvement Act of 1986 (HCQIA). The HCQIA was enacted with the

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stated purpose of encouraging effective professional peer review to improve the quality of medical care and reduce the cost of medical malpractice lawsuits. The HCQIA aimed to accomplish these goals by providing incentives and protection for health care providers and physicians engaging in professional peer review processes.

The 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.

The 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 providing immunity from damages for professional peer review actions that are based on the competence or professional conduct of a health care provider.

In addition, the 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, the 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:**

Standards for the award of prevailing party costs and attorneys' fees are revised for suits under the HCPRA that are based on professional peer review body actions not related to competence or professional conduct.

The court shall award to the substantially prevailing party 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 shall 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 may not be considered a substantially prevailing party if the opposing party obtains an award for damages or permanent injunctive relief.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment provides that a party is not a substantially prevailing party for purposes of the award of attorneys' fees if the opposing party obtains an award of damages or injunctive relief under the Health Care Peer Review Act. The original House bill did not specify that the award to the opposing party must be in an action under the Health Care Peer Review Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The law encourages professional peer review as a means of improving the quality of health care and decreasing medical malpractice suits. Professional peer review is a process that takes place within the hospital setting according to hospital rules and procedural rights. On occasion the actions of peer review boards are challenged in the courts. Recent cases have interpreted the law to mandate the award of costs and attorneys' fees to the prevailing party in these actions. This will have a chilling effect on legitimate challenges to actions of peer review boards. The bill allows the award of attorneys' fees in two cases—if the nonprevailing party's claim is frivolous or if the nonprevailing party failed to exhaust available administrative remedies. The Washington State Medical Association worked with the Washington State Hospital Association in arriving at a joint agreement on the changes in the bill.

(Opposed) None.

**Persons Testifying:** Katie Kolan, Washington State Medical Association.

**Persons Signed In To Testify But Not Testifying:** None.