

HOUSE BILL REPORT

SSB 5910

As Reported by House Committee On:
Judiciary

Title: An act relating to prefiling notice of intent to commence a medical malpractice action.

Brief Description: Modifying the notice requirement of intent to file a medical malpractice claim.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Brandland, Kline, Weinstein and Parlette).

Brief History:

Committee Activity:

Judiciary: 3/27/07, 3/30/07 [DP].

Brief Summary of Substitute Bill

- Establishes procedures for providing the 90-day pre-suit notice that is required before instituting a medical malpractice action.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Edie Adams (786-7180).

Background:

In 2006, the Legislature passed 2SHB 2292 which included a wide variety of issues relating to medical malpractice, including medical malpractice civil actions. One of the changes in 2SHB 2292 relating to medical malpractice civil actions was the creation of a requirement for pre-suit notice before an action may be commenced. The pre-suit notice requirement provides that a medical malpractice action may not be commenced unless the plaintiff has provided the defendant with 90 days prior notice of the intention to file a suit. If the pre-suit notice is served within 90 days of the expiration of the statute of limitations, the statute of limitations is

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extended for a period of 90 days from the service of the notice. The pre-suit notice provision does not specify how service of the notice may be made, who the notice may be served on, nor how to compute the running of the 90-day period.

Under court rule, when a notice or other document must be served on another party, the service may be made by delivering a copy to the party or by mailing it to the party's last known address. Service by mail is deemed complete upon the third day following the day upon which the document is placed in the mail, excluding Saturdays, Sundays, or legal holidays. A different rule applies to service of the summons and complaint. If the summons and complaint are authorized to be served by mail, service is deemed complete on the date of mailing. There are three authorized methods of proof of service by mail under court rules: by written acknowledgment of service; by affidavit of the person who mailed the papers; or by certificate of an attorney.

A plaintiff filing suit against the state or a local governmental entity must comply with certain notice requirements established in statute, called the "claim filing statute." A tort claim against the state must be presented to and filed with the Risk Management Division of the Office of Financial Management. A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims. A claimant may not commence a civil tort action against the state, or against a local governmental entity, until 60 days after the claim is presented to and filed with the governmental entity. The statute of limitations for the claim is tolled during this 60-day period.

Summary of Bill:

The 90-day pre-suit notice required before filing a medical malpractice action may be provided by regular mail, registered mail, or certified mail with return receipt requested, by depositing the notice, with postage prepaid, in the post office addressed to the defendant. Proof of notice by mail is made in the same manner as under court rule for proof of service by mail.

Notice to a health care provider entity, or an agent or employee of the entity, may be addressed to the chief executive officer, administrator, risk management office, or registered agent for the health care provider entity. Notice for a claim against a local government entity must be filed with the agent designated by the local government for receiving tort claim filings.

If the notice is served within 90 days of the expiration of the statute of limitations, the time for the commencement of the action will be extended 90 days from the date the notice was mailed. After the 90 day extension passes, the claimant has an additional five court days to commence the action.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill makes a technical fix to the provision in last year's medical malpractice bill that requires 90-day prior notice of intent to file suit. The flaw in this provision makes it cumbersome to provide the notice. The questions that have arisen and that are addressed in this bill include how a party provides the required notice and who the party serves with the notice. These changes have been worked on and agreed to by all the parties involved in last year's bill.

(Opposed) None.

Persons Testifying: Michael Temple, Washington State Trial Lawyers Association; and Anne Bryant, Physician's Insurance.

Persons Signed In To Testify But Not Testifying: None.