

SENATE BILL REPORT

SB 5910

As Reported By Senate Committee On:
Judiciary, February 28, 2007

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: Senators Brandland, Kline, Weinstein and Parlette.

Brief History:

Committee Activity: Judiciary: 2/20/07, 2/28/07 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5910 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Murray and Weinstein.

Staff: Lidia Mori (786-7755)

Background: Current law provides that no cause of action against a health care provider for negligence may be commenced unless the defendant has been given at least 90 days notice of intent to commence the action. If the notice is served within 90 days of the expiration of the applicable statute of limitations, then the time for the commencement of the action must be extended 90 days from the date of service of the notice.

Summary of Bill: Notice of intent to commence an action against a health care provider for negligence must be provided by regular mail, registered mail, or certified mail with return receipt requested. It may also be provided by depositing the notice, postage prepaid, in the post office addressed to the defendant. The notice may be addressed to the chief executive officer, administrator, office of risk management, or registered agent for service of process of the health care entity if the defendant is a health care provider entity or an agent or employee of the health care entity at the time of the alleged negligence. Proof of notice by mail may be accomplished the same way as proof of service by mail. Specifically, proof of service of papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney.

If the notice of intent to commence an action against a health care provider is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement

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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.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary): The notice for a claim against a local governmental entity must be filed with the agent appointed by the governing body of the local governmental entity, as detailed in RCW 4.96.020(2).

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: A large group of interested parties realized there was a glitch in the medical malpractice bill that was passed last year. This is an agreed bill. Last year, the 90 day pre-suit notice was created, but two issues were not addressed. How is the count started and how is it ended? Also, who receives the notice? Do you count Saturday and Sunday? This bill clarifies who should get the notice, and it reduces the chance that the notice will get overlooked.

Persons Testifying: PRO: Senator Brandland, prime sponsor; Larry Shannon, Washington State Trial Lawyers Association.