

HOUSE BILL REPORT

SB 5136

As Reported by House Committee On: Judiciary

Title: An act relating to electronic presentment of claims against the state arising out of tortious conduct.

Brief Description: Concerning electronic presentment of claims against the state arising out of tortious conduct.

Sponsors: Senators Padden and Kline; by request of Department of Enterprise Services.

Brief History:

Committee Activity:

Judiciary: 3/13/13, 3/19/13 [DPA].

Brief Summary of Bill (As Amended by Committee)

- Allows for claims against the state to be presented as an attachment to electronic mail or by fax.
- Provides a claimant the opportunity to cure in the event of a question with respect to an electronic signature, and provides that the cure relates back to the date of original filing.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Pedersen, Chair; Hansen, Vice Chair; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Nealey, Orwall, Roberts and Shea.

Minority Report: Do not pass. Signed by 2 members: Representatives Hope and Klippert.

Staff: Cece Clynch (786-7195).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Article II, section 26 of the state Constitution authorizes the Legislature to direct by law the manner in which lawsuits may be brought against the state. A person may not commence a tort action for damages against the state, or any state officer, employee, or volunteer, acting in such capacity, without first complying with the "claim filing statute," which requires presentment of a tort claim. One of the purposes of the "claim filing statute" is to allow time for investigation, evaluation, and settlement of claims prior to instigation of a civil lawsuit.

Claims presented after July 26, 2009, must utilize the standard tort claim form. The standard tort claim form must, at a minimum, require the following information: the claimant's name, date of birth, and contact information; a description of the conduct and the circumstances that brought about the injury or damage; a description of the injury or damage; the time and place of the occurrence; a listing of persons involved, if known; a statement of damages claimed; and a statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

A lawsuit may not be commenced until 60 calendar days have elapsed after the claim, on the standard tort claim form specified in statute, and signed by the requisite persons, is presented. Per the statute, claims are deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the Risk Management Division housed within the Office of Financial Management. (Since 2011 and the creation of the Department of Enterprise Services (DES), the renamed Office of Risk Management has been housed in the DES.)

The state is required to make available on its website the standard tort claim form, together with instructions on completing the form. In addition, this website must include the name, address, and business hours of the Risk Management Division.

Liberal construction is required with respect to the content of claims and procedural requirements.

Summary of Amended Bill:

A claim form may be presented as an attachment to electronic mail or by fax.

When a claim form is presented electronically, it must bear an electronic signature in lieu of a written original signature. An "electronic signature" means a facsimile of an original signature that is affixed to the claim form and executed or adopted by the person with the intent to sign the document. In the event a question arises regarding an electronic signature, the claimant is allowed the opportunity to cure and the cured notice relates back to the date of the original filing.

If the claim is submitted as an attachment to electronic mail, the conveyance of the claim must include the date, time the claim was presented, and the internet provider's address from which it was sent. When the claim is submitted via fax, the conveyance must include the date, time the claim was submitted, and the fax number from which it was sent.

Information relative to the claim form and instructions, already required to be made available by the state, must also include the United States mail, physical, and electronic addresses and numbers where a claim may be presented.

References are changed to reflect 2011 legislation that created the DES, within which is housed the Office of Risk Management (formerly the Risk Management Division).

Amended Bill Compared to Original Bill:

Language is added providing that, in the event of a question regarding an electronic signature, the claimant is allowed the opportunity to cure and the cured notice relates back to the date of the original filing.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This is an efficiency bill brought by the DES as agency request legislation. The appropriate safeguards are in place. It is a common sense bill and will help the state and claimants by saving costs and speeding things up for all concerned. Currently, an original signature is required which, in turn, demands that claims be filed in person or by mail. This is a cumbersome process that delays resolution of claims. Whether to file electronically is permissive. It could save last minute rushes when the statute of limitations is a concern. The Office of Risk Management receives about 4,000 claims per year. This will save time, although it is not expected that agency costs will change. There is a technical fix in the works regarding liberal construction in instances where there is a slight deviation so as to avoid dismissal. In the past, there was a situation in the City of Spokane where the signature was on the wrong line of the form and it was dismissed for that reason. There will be a separate email address for these claims. For very voluminous claim filings, that may attach many medical records, the office may need to use an upload feature to avoid situations where the receiving mailbox is not big enough. Thought and attention is being given to these particulars before it "goes live."

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; Larry Shannon, Washington State Association of Justice; and Lucy Isaki, Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.