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April 2, 2012

Ronald Carpenter
Clerk, Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: McDevitt v. Harborview
Cause No. 853673

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
12 APR -3 AM 8:21
BY RONALD R. CARPENTER
CLERK

Dear Mr. Carpenter:

Petitioners wish to call to the Court's attention the fact that the 2012 Legislature has passed and the Governor has signed Senate Bill 6187 into law. SB 6187 repeals the 2009 amendments to RCW 4.92.100 and RCW 4.96.020, which are the subject of the appeal in this case. When it becomes effective, SB 6187 will require medical negligence plaintiffs to comply with RCW 4.92.100 or RCW 4.96.020, rather than to provide notice of intent to sue under RCW 7.70.100. A copy of the measure is enclosed. Thank you for bringing this information to the Court's attention.

Very truly yours,

BENNETT-BIGELOW & LEEDOM, P.S.

Michael Madden

MM/ged

Cc: Thomas McDonough, Esq., Counsel for Respondent (w/enclosure)
{1408.00090/M0576579.DOCX; 1}

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6187

62nd Legislature
2012 Regular Session

Passed by the Senate February 11, 2012
YEAS 46 NAYS 0

President of the Senate

Passed by the House February 28, 2012
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6187** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 6187

Passed Legislature - 2012 Regular Session

State of Washington

62nd Legislature

2012 Regular Session

By Senate Judiciary (originally sponsored by Senators Pflug, Harper, and Frockt; by request of Attorney General)

READ FIRST TIME 02/02/12.

1 AN ACT Relating to health care claims against state and
2 governmental health care providers arising out of tortious conduct; and
3 amending RCW 4.92.100 and 4.96.020.

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

5 **Sec. 1.** RCW 4.92.100 and 2009 c 433 s 2 are each amended to read
6 as follows:

7 (1) All claims against the state, or against the state's officers,
8 employees, or volunteers, acting in such capacity, for damages arising
9 out of tortious conduct, (~~except for claims involving injuries from~~
10 ~~health care, shall~~) must be presented to the risk management division.
11 (~~Claims involving injuries from health care are governed solely by the~~
12 ~~procedures set forth in chapter 7.70 RCW and are exempt from this~~
13 ~~chapter.~~) A claim is deemed presented when the claim form is
14 delivered in person or by regular mail, registered mail, or certified
15 mail, with return receipt requested, to the risk management division.
16 For claims for damages presented after July 26, 2009, all claims for
17 damages must be presented on the standard tort claim form that is
18 maintained by the risk management division. The standard tort claim
19 form must be posted on the office of financial management's web site.

1 (a) The standard tort claim form must, at a minimum, require the
2 following information:

3 (i) The claimant's name, date of birth, and contact information;

4 (ii) A description of the conduct and the circumstances that
5 brought about the injury or damage;

6 (iii) A description of the injury or damage;

7 (iv) A statement of the time and place that the injury or damage
8 occurred;

9 (v) A listing of the names of all persons involved and contact
10 information, if known;

11 (vi) A statement of the amount of damages claimed; and

12 (vii) A statement of the actual residence of the claimant at the
13 time of presenting the claim and at the time the claim arose.

14 (b) The standard tort claim form must be signed either:

15 (i) By the claimant, verifying the claim;

16 (ii) Pursuant to a written power of attorney, by the attorney in
17 fact for the claimant;

18 (iii) By an attorney admitted to practice in Washington state on
19 the claimant's behalf; or

20 (iv) By a court-approved guardian or guardian ad litem on behalf of
21 the claimant.

22 (c) The amount of damages stated on the claim form is not
23 admissible at trial.

24 (2) The state shall make available the standard tort claim form
25 described in this section with instructions on how the form is to be
26 presented and the name, address, and business hours of the risk
27 management division. The standard tort claim form must not list the
28 claimant's social security number and must not require information not
29 specified under this section.

30 (3) With respect to the content of claims under this section and
31 all procedural requirements in this section, this section must be
32 liberally construed so that substantial compliance will be deemed
33 satisfactory.

34 **Sec. 2.** RCW 4.96.020 and 2009 c 433 s 1 are each amended to read
35 as follows:

36 (1) The provisions of this section apply to claims for damages
37 against all local governmental entities and their officers, employees,

1 or volunteers, acting in such capacity (~~(, except that claims involving~~
2 ~~injuries from health care are governed solely by the procedures set~~
3 ~~forth in chapter 7.70 RCW and are exempt from this chapter)~~).

4 (2) The governing body of each local governmental entity shall
5 appoint an agent to receive any claim for damages made under this
6 chapter. The identity of the agent and the address where he or she may
7 be reached during the normal business hours of the local governmental
8 entity are public records and shall be recorded with the auditor of the
9 county in which the entity is located. All claims for damages against
10 a local governmental entity, or against any local governmental entity's
11 officers, employees, or volunteers, acting in such capacity, shall be
12 presented to the agent within the applicable period of limitations
13 within which an action must be commenced. A claim is deemed presented
14 when the claim form is delivered in person or is received by the agent
15 by regular mail, registered mail, or certified mail, with return
16 receipt requested, to the agent or other person designated to accept
17 delivery at the agent's office. The failure of a local governmental
18 entity to comply with the requirements of this section precludes that
19 local governmental entity from raising a defense under this chapter.

20 (3) For claims for damages presented after July 26, 2009, all
21 claims for damages must be presented on the standard tort claim form
22 that is maintained by the risk management division of the office of
23 financial management, except as allowed under (c) of this subsection.
24 The standard tort claim form must be posted on the office of financial
25 management's web site.

26 (a) The standard tort claim form must, at a minimum, require the
27 following information:

- 28 (i) The claimant's name, date of birth, and contact information;
29 (ii) A description of the conduct and the circumstances that
30 brought about the injury or damage;
31 (iii) A description of the injury or damage;
32 (iv) A statement of the time and place that the injury or damage
33 occurred;
34 (v) A listing of the names of all persons involved and contact
35 information, if known;
36 (vi) A statement of the amount of damages claimed; and
37 (vii) A statement of the actual residence of the claimant at the
38 time of presenting the claim and at the time the claim arose.

1 (b) The standard tort claim form must be signed either:
2 (i) By the claimant, verifying the claim;
3 (ii) Pursuant to a written power of attorney, by the attorney in
4 fact for the claimant;
5 (iii) By an attorney admitted to practice in Washington state on
6 the claimant's behalf; or
7 (iv) By a court-approved guardian or guardian ad litem on behalf of
8 the claimant.

9 (c) Local governmental entities shall make available the standard
10 tort claim form described in this section with instructions on how the
11 form is to be presented and the name, address, and business hours of
12 the agent of the local governmental entity. If a local governmental
13 entity chooses to also make available its own tort claim form in lieu
14 of the standard tort claim form, the form:

15 (i) May require additional information beyond what is specified
16 under this section, but the local governmental entity may not deny a
17 claim because of the claimant's failure to provide that additional
18 information;

19 (ii) Must not require the claimant's social security number; and

20 (iii) Must include instructions on how the form is to be presented
21 and the name, address, and business hours of the agent of the local
22 governmental entity appointed to receive the claim.

23 (d) If any claim form provided by the local governmental entity
24 fails to require the information specified in this section, or
25 incorrectly lists the agent with whom the claim is to be filed, the
26 local governmental entity is deemed to have waived any defense related
27 to the failure to provide that specific information or to present the
28 claim to the proper designated agent.

29 (e) Presenting either the standard tort claim form or the local
30 government tort claim form satisfies the requirements of this chapter.

31 (f) The amount of damages stated on the claim form is not
32 admissible at trial.

33 (4) No action subject to the claim filing requirements of this
34 section shall be commenced against any local governmental entity, or
35 against any local governmental entity's officers, employees, or
36 volunteers, acting in such capacity, for damages arising out of
37 tortious conduct until sixty calendar days have elapsed after the claim
38 has first been presented to the agent of the governing body thereof.

1 The applicable period of limitations within which an action must be
2 commenced shall be tolled during the sixty calendar day period. For
3 the purposes of the applicable period of limitations, an action
4 commenced within five court days after the sixty calendar day period
5 has elapsed is deemed to have been presented on the first day after the
6 sixty calendar day period elapsed.

7 (5) With respect to the content of claims under this section and
8 all procedural requirements in this section, this section must be
9 liberally construed so that substantial compliance will be deemed
10 satisfactory.

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