

1 **HB 1929 - H AMD 0232 SCOPE AND OBJECT 3-18-03**

2 By Representative Carrell

3 Strike everything after the enacting clause and insert the
4 following:

5 "Sec. 1. RCW 4.16.350 and 1998 c 147 s 1 are each amended to
6 read as follows:

7 (1) Any civil action for damages for injury or death occurring
8 as a result of health care which is provided after June 25, 1976,
9 against:

10 ~~((+1))~~ (a) A person licensed by this state to provide health
11 care or related services, including, but not limited to, a
12 physician, osteopathic physician, dentist, nurse, optometrist,
13 podiatric physician and surgeon, chiropractor, physical therapist,
14 psychologist, pharmacist, optician, physician's assistant,
15 osteopathic physician's assistant, nurse practitioner, or
16 physician's trained mobile intensive care paramedic, including, in
17 the event such person is deceased, his estate or personal
18 representative;

19 ~~((+2))~~ (b) An employee or agent of a person described in (a)
20 of this subsection ~~((+1) of this section)~~, acting in the course
21 and scope of his or her employment, including, in the event such
22 employee or agent is deceased, his or her estate or personal
23 representative; or

24 ~~((+3))~~ (c) An entity, whether or not incorporated, facility,
25 or institution employing one or more persons described in (a) of
26 this subsection ~~((+1) of this section)~~, including, but not limited
27 to, a hospital, clinic, health maintenance organization, or nursing
28 home; or an officer, director, employee, or agent thereof acting in
29 the course and scope of his or her employment, including, in the
30 event such officer, director, employee, or agent is deceased, his
31 or her estate or personal representative;

32 based upon alleged professional negligence shall be commenced
33 within three years of the act or omission alleged to have caused
34 the injury or condition, or one year of the time the patient or his

1 or her representative or custodial parent or guardian discovered or
2 reasonably should have discovered that the injury or condition was
3 caused by said act or omission, whichever period ((expires later,
4 except that in no event shall an action be commenced more than
5 eight years after said act or omission: PROVIDED, That the time
6 for commencement of an action is tolled upon proof of fraud,
7 intentional concealment, or the presence of a foreign body not
8 intended to have a therapeutic or diagnostic purpose or effect,
9 until the date the patient or the patient's representative has
10 actual knowledge of the act of fraud or concealment, or of the
11 presence of the foreign body; the patient or the patient's
12 representative has one year from the date of the actual knowledge
13 in which to commence a civil action for damages.

14 For purposes of this section, notwithstanding RCW 4.16.190, the
15 knowledge of a custodial parent or guardian shall be imputed to a
16 person under the age of eighteen years, and such imputed knowledge
17 shall operate to bar the claim of such minor to the same extent
18 that the claim of an adult would be barred under this section. Any
19 action not commenced in accordance with this section shall be
20 barred.

21 For purposes of this section, with respect to care provided
22 after June 25, 1976, and before August 1, 1986, the knowledge of a
23 custodial parent or guardian shall be imputed as of April 29, 1987,
24 to persons under the age of eighteen years)) occurs first.

25 (2) In no event may an action be commenced more than three
26 years after the act or omission alleged to have caused the injury
27 or condition except:

28 (a) Upon proof of fraud, intentional concealment, or the
29 presence of a foreign body not intended to have a therapeutic or
30 diagnostic purpose or effect, in which case the patient or the
31 patient's representative has one year from the date the patient or
32 the patient's representative or custodial parent or guardian has
33 actual knowledge of the act of fraud or concealment or of the
34 presence of the foreign body in which to commence a civil action
35 for damages.

36 (b) In the case of a minor, for any period during minority, but
37 only for such period during minority in which the minor's custodial
38 parent or guardian and the defendant or the defendant's insurer

1 have committed fraud or collusion in the failure to bring an action
2 on behalf of the minor.

3 (c) In the case of a minor under the full age of six years, in
4 which case the action on behalf of the minor must be commenced
5 within three years or prior to the minor's eighth birthday,
6 whichever provides a longer period.

7 (3) Any action not commenced in accordance with this section is
8 barred.

9 (4) For purposes of this section, the tolling provisions of RCW
10 4.16.190 do not apply.

11 (5) This section does not apply to a civil action based on
12 intentional conduct brought against those individuals or entities
13 specified in this section by a person for recovery of damages for
14 injury occurring as a result of childhood sexual abuse as defined
15 in RCW 4.16.340(5)."

16 Correct the title.

EFFECT: Replaces the 8 year period of repose with a 3 year period of repose by requiring that actions be brought within the *earlier* of 3 years from the act or omission or 1 year of discovery, (rather than within the *later* of those periods but always within 8 years of the act or omission). In the case of a minor under the age of 6, allows an action within the *later* of 3 years from the act or omission or age 8.

Eliminates the tolling of the statute of limitations during minority unless there has been fraud or collusion between a minor's parent or guardian and the defendant.