

HOUSE BILL REPORT

HB 1929

As Passed House:

March 18, 2003

Title: An act relating to the eight-year statute of repose in RCW 4.16.350.

Brief Description: Reenacting the eight-year statute of repose.

Sponsors: By Representatives Lantz, Carrell, Cody, McMahan, Schual-Berke, Clibborn, Kessler, Newhouse, Campbell, Moeller, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Veloria, Conway, Simpson, Sommers and Haigh.

Brief History:

Committee Activity:

Judiciary: 2/21/03, 2/27/03 [DP].

Floor Activity:

Passed House: 3/18/03, 56-41.

Brief Summary of Bill

- Reenacting the eight-year statute of repose for lawsuits brought for damages for injuries caused by health care.
- Providing legislative findings and intent regarding the rationale for the eight-year statute of repose in response to a court decision declaring there to be no acceptable rationale.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Bill Perry (786-7123).

Background:

In 1976 as part of major tort reform legislation, the Legislature enacted a new statute governing the time limitations for bringing a lawsuit for damages for injuries resulting from health care. Generally, medical malpractice actions are to be brought:

- within three years of the alleged act or omission; or
- within one year of when the claimant discovers or reasonably should have discovered that his or her injury was caused by the alleged act or omission; but
- never more than eight years after the alleged act or omission.

(In certain cases involving fraud, intentional concealment or the presence of a foreign articles left in a patient's body, the rule is one year from *actual* knowledge, and various events, including a minor claimant's age, may "toll" the period for commencing the lawsuit. However, in the case of a minor, the knowledge of a parent or guardian regarding an injury and its cause are to be imputed to the minor.)

The eight-year outside limit for bringing a lawsuit is sometimes referred to as the statute of "repose."

In 1998 the state Supreme Court invalidated the eight-year statute of repose in medical malpractice lawsuits. *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998). The injured claimant in the case argued that because the statute of repose applies only to a small subset of medical malpractice cases, it violates constitutional principles of equal protection.

Under the analysis used in equal protection issues, more or less judicial scrutiny of legislation is applied depending on the rights involved and the classifications of individuals affected. Where the discrimination created by a statute does not involve a "fundamental" or "important" right (such as freedom of speech or liberty) or it does not involve a "suspect" or "semisuspect" classification (such as race or age), the legislation will receive only "minimal scrutiny." This lowest standard of scrutiny is called the "rational basis" test. Under this test, legislation may discriminate between classes so long as there is some rational relationship between the discrimination and a permissible legislative goal. Stated another way:

"[the law] will be upheld unless the classification rests on grounds wholly irrelevant to the achievement of a legitimate state objective."

The Court also observed that:

"Indeed, the rational basis standard may be satisfied where the legislative choice . . . [is] based on rational speculation unsupported by evidence or empirical data."

The Court in *DeYoung* found that the eight-year statute of repose does not involve a suspect or semisuspect classification, and therefore the Court applied only the rational basis test. Despite applying this minimal scrutiny, the Court found the statute unconstitutional. The Court noted that it is "rare" for a statute to be struck down under this test. The Court found that:

- The stated purpose of the bill that included the statute of repose was to address

- issues of insurance cost and availability;
- The statute of repose would affect only a very small number of cases;
- There was no evidence that the statute of repose would have any affect on insurance cost or availability.

Therefore, the Court concluded, the statute had no rational relationship to a legislative goal.

The Court acknowledged that another unstated but permissible goal of the legislation could be preventing defendants from having to answer to stale claims and providing an outer limit to the discovery rule. However, the Court concluded that the "minuscule" number of claimants with claims more than eight years old makes the relationship to that goal "too attenuated."

Summary of Bill:

The eight-year statute of repose in medical malpractice cases is reenacted.

The Legislature finds that if the statute of repose has any effect on insurance costs it will be to reduce those costs, but that even if it has no effect on insurance it will provide protection against stale claims, however few they may be. The Legislature finds that compelling even one defendant to answer a stale claim is a substantial wrong.

The reenacted statute of repose is intended to apply to cases commenced on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: There is a real crisis in medical malpractice coverage that is threatening to cause doctors to retire early, quit practicing, or leave the state. There has been a decline in reimbursement payments for health care services at the same time there has been a huge increase in insurance premiums. This bill is a step in the right direction.

The eight-year statute of repose is a responsible attempt to place an outside limit on a health care professional's expose to liability. Without some limit like this, medical professionals face years of having to maintain liability insurance. This long exposure to potential liability is particularly a problem for obstetricians and pediatricians.

(With concerns) Real relief is needed with respect to the problem of alleged injury to very young minors who may have as much as eight years beyond majority to bring a suit even with the statute of repose.

Testimony Against: None.

Testified: (In support) Representative Lantz, prime sponsor; and Loren Finley.

(With concerns) Lisa Thatcher, Washington State Hospital Association; Mike Glenn, Olympic Medical Center; James McMahon, Washington Casualty Company; and Cliff Webster, Washington State Medical Association.

(Neutral) Larry Shannon, Washington State Trial Lawyers Association.