

SENATE BILL REPORT

EHB 3200

As Reported By Senate Committee On:
Judiciary, February 27, 2004

Title: An act relating to the time period for bringing an action for personal injury or death resulting from health care.

Brief Description: Limiting the time period for bringing an action for personal injury or death resulting from health care.

Sponsors: Representatives Lantz, Morrell, Clibborn and Rockefeller.

Brief History:

Committee Activity: Judiciary: 2/27/04 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline and Thibaudeau.

Staff: Jinnah Rose-McFadden (786-7421)

Background: Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action: (1) the health care provider failed to follow the required standard of care; (2) the health care provider promised that the injury suffered would not occur; or (3) the injury resulted from health care to which the patient did not consent.

Generally, a medical malpractice action must be brought within three years of the act or omission or within one year of when a claimant discovered or reasonably should have discovered that the injury was caused by the act or omission, whichever period is longer.

The statute of limitations is tolled for minors; the three-year period does not begin to run until a minor reaches the age of 18. Knowledge of a parent or guardian is imputed to a minor, but the imputed knowledge does not take effect until the minor reaches age 18. An injured minor will therefore always have until at least the age of 21 to bring a medical malpractice action. In addition, the statute is tolled for fraud, intentional concealment, or the presence of a foreign body. In these cases, a plaintiff has one year from actual knowledge of the fraud, concealment, or presence of a foreign body to bring suit.

The statute also provides that a medical malpractice action may never be commenced more than eight years after the act or omission. This eight-year time limit is called a "statute of repose." In the 1998 Washington Supreme Court decision *DeYoung v. Providence Medical Center*, this eight-year statute of repose was held unconstitutional on equal protection

grounds. The court found that the statute had no rational relationship to a legitimate legislative goal.

Summary of Bill: The statute of limitations for a minor injured as the result of the provision of health care is amended. An action based on injuries suffered by a minor must be commenced by the later of: (1) eight years from the act or omission or by the age of 21, whichever is earlier; or (2) one year from the time the plaintiff discovered or should have discovered that the injury was caused by the act or omission.

The tolling of the statute of limitations during any period of minority is eliminated with respect to medical malpractice actions. The statute of limitations begins to run on an injured minor at the time of the act or omission that caused the injury, or from the time of the discovery of the injury.

A six-year statute of repose is established for medical malpractice actions. A medical malpractice action may never be commenced more than six years after the act or omission, unless one of the remaining reasons for tolling the statute applies (e.g., fraud or the presence of a foreign body).

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: While a new statute of repose can and should be passed by the Legislature, there is no indication that a statute of repose will reduce insurance rates.

Testimony Against: The bill does not address the infirmities in the current statute of repose that was held unconstitutional by the Supreme Court. A better way to address the statute of repose, is to pass the striking amendment to this bill.

Testified: PRO: Larry Shannon, Washington State Trial Lawyers Association; CON: Cliff Webster, Washington State Medical Association.