
HOUSE BILL 1858

State of Washington

59th Legislature

2005 Regular Session

By Representatives Lantz, Flannigan, Morrell, Cody, Kirby, Springer, Williams, Miloscia, Schual-Berke, Upthegrove, Linville, O'Brien and Wood

Read first time 02/08/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to the time period for bringing an action for
2 personal injury or death resulting from health care; and amending RCW
3 4.16.350 and 4.16.190.

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

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

7 (1) Any civil action for damages that is based upon alleged
8 professional negligence, that is for an injury or condition occurring
9 as a result of health care which is provided after June 25, 1976, and
10 that is brought against((+

11 +)) a person or entity identified in subsection (2) of this
12 section, shall be commenced:

13 (a) By the later of three years from the act or omission, or one
14 year from the time the patient or his or her representative discovered
15 or reasonably should have discovered that the injury or condition was
16 caused by the act or omission; and

17 (b) Notwithstanding (a) of this subsection, no later than eight
18 years after the act or omission, except if the action involves an
19 injury to a minor, and the minor's parent or guardian knew that the

1 injury or condition was caused by the act or omission and failed to
2 bring the cause of action on behalf of the minor, the action shall be
3 commenced no later than three years from the date the minor reaches the
4 age of eighteen.

5 (2) Persons or entities against whom an action is brought under
6 subsection (1) of this section include:

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

15 ~~((2))~~ (b) An employee or agent of a person described in (a) of
16 this subsection ~~((1) of this section)), acting in the course and scope~~
17 ~~of his or her employment, including, in the event such employee or~~
18 ~~agent is deceased, his or her estate or personal representative; or~~

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

27 ~~based upon alleged professional negligence shall be commenced within~~
28 ~~three years of the act or omission alleged to have caused the injury or~~
29 ~~condition, or one year of the time the patient or his representative~~
30 ~~discovered or reasonably should have discovered that the injury or~~
31 ~~condition was caused by said act or omission, whichever period expires~~
32 ~~later, except that in no event shall an action be commenced more than~~
33 ~~eight years after said act or omission: PROVIDED, That)).~~

34 (3) The time for commencement of an action is tolled upon proof of
35 fraud, intentional concealment, or the presence of a foreign body not
36 intended to have a therapeutic or diagnostic purpose or effect, until
37 the date the patient or the patient's representative has actual
38 knowledge of the act of fraud or concealment, or of the presence of the

1 foreign body; the patient or the patient's representative has one year
2 from the date of the actual knowledge in which to commence a civil
3 action for damages.

4 (4)(a)(i) For purposes of this section, (~~notwithstanding RCW~~
5 ~~4.16.190,~~) the knowledge of a custodial parent or guardian shall be
6 imputed to a person under the age of eighteen years, and such imputed
7 knowledge shall operate to bar the claim of such minor to the same
8 extent that the claim of an adult would be barred under this section.
9 Any action not commenced in accordance with this section shall be
10 barred.

11 (ii) This subsection (4)(a) shall not apply to bar the claim of a
12 minor under the circumstance provided in subsection (1)(b) of this
13 section.

14 (b) For purposes of this section, with respect to care provided
15 after June 25, 1976, and before August 1, 1986, the knowledge of a
16 custodial parent or guardian shall be imputed as of April 29, 1987, to
17 persons under the age of eighteen years.

18 (5) This section does not apply to a civil action based on
19 intentional conduct brought against those individuals or entities
20 specified in this section by a person for recovery of damages for
21 injury occurring as a result of childhood sexual abuse as defined in
22 RCW 4.16.340(5).

23 **Sec. 2.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read
24 as follows:

25 (1) Unless otherwise provided in this section, if a person entitled
26 to bring an action mentioned in this chapter, except for a penalty or
27 forfeiture, or against a sheriff or other officer, for an escape, be at
28 the time the cause of action accrued either under the age of eighteen
29 years, or incompetent or disabled to such a degree that he or she
30 cannot understand the nature of the proceedings, such incompetency or
31 disability as determined according to chapter 11.88 RCW, or imprisoned
32 on a criminal charge prior to sentencing, the time of such disability
33 shall not be a part of the time limited for the commencement of action.

34 (2) Subsection (1) of this section with respect to a person under
35 the age of eighteen years does not apply to the time limited for the

1 commencement of an action under RCW 4.16.350.

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