

HOUSE BILL REPORT

EHB 3200

As Passed House:

February 16, 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: By Representatives Lantz, Morrell, Clibborn and Rockefeller.

Brief History:

Floor Activity:

Passed House: 2/16/04, 88-10.

Brief Summary of Engrossed Bill

- Shortens the time period for commencement of a medical malpractice action for an injured minor; and
- Establishes a six-year statute of repose for medical malpractice actions.

HOUSE COMMITTEE ON JUDICIARY

Majority/Minority Report: None.

Staff: Edie Adams (786-7180).

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.

A medical malpractice action must be brought within time limits specified in statute,

called the statute of limitations. Generally, a medical malpractice action must be brought within three years of the act or omission or within one year of when the 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. This means that the three-year period does not begin to run until the minor reaches the age of 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 those cases, the person has one year from actual knowledge of the fraud, concealment, or presence of a foreign body to bring suit. 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.

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 outside time limit for bringing an action 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 Engrossed 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:

- Eight years from the act or omission or by the age of 21, *whichever is earlier*; or
- 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. This means that 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: The bill takes effect 90 days after adjournment of session in which bill was passed.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.