
ENGROSSED HOUSE BILL 3200

State of Washington 58th Legislature 2004 Regular Session

By Representatives Lantz, Morrell, Clibborn and Rockefeller

Read first time 02/14/2004. Referred to .

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

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

5 NEW SECTION. **Sec. 1.** The legislature intends, by establishing a
6 six-year statute of repose in RCW 4.16.350, to respond to the court's
7 decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998),
8 by expressly stating the legislature's rationale for a statute of
9 repose.

10 The legislature recognizes that a six-year statute of repose alone
11 may not solve the crisis in the medical insurance industry. However,
12 to the extent that a six-year statute of repose has an effect on
13 medical malpractice insurance, that effect will tend to reduce rather
14 than increase the cost of malpractice insurance.

15 Whether or not the statute of repose has the actual effect of
16 reducing insurance costs, the legislature finds it will provide
17 protection against claims, however few, that are stale, based on
18 untrustworthy evidence, or that place undue burdens on defendants.

1 In accordance with the court's opinion in *DeYoung*, the legislature
2 further finds that compelling even one defendant to answer a stale
3 claim is a substantial wrong, and setting an outer limit to the
4 operation of the discovery rule is an appropriate aim.

5 The legislature further finds that a six-year statute of repose is
6 a reasonable time period in light of the need to balance the interests
7 of injured plaintiffs and the health care industry.

8 The legislature intends to establish a six-year statute of repose
9 in section 2 of this act and specifically set forth for the court the
10 legislature's legitimate rationale for adopting the six-year statute of
11 repose. The legislature further intends that the six-year statute of
12 repose established in section 2 of this act be applied to actions
13 commenced on or after the effective date of this act.

14 **Sec. 2.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
15 as follows:

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

20 (+)) a person or entity identified in subsection (2) of this
21 section, shall:

22 (a) With respect to a patient who was eighteen years old or older
23 at the time of the act or omission alleged to have caused the injury or
24 condition, be commenced by the later of:

25 (i) Three years from the act or omission; or

26 (ii) One year from the time the patient or his or her
27 representative discovered or reasonably should have discovered that the
28 injury or condition was caused by the act or omission; and

29 (b) With respect to a patient who was under the age of eighteen
30 years at the time of the act or omission alleged to have caused the
31 injury or condition, be commenced by the later of:

32 (i) When the patient reaches age twenty-one or six years from the
33 act or omission, whichever occurs first; or

34 (ii) One year from the time the patient or his or her
35 representative discovered or reasonably should have discovered that the
36 injury or condition was caused by the act or omission; and

1 (c) Notwithstanding (a) or (b) of this subsection, in any event be
2 commenced no later than six years after the act or omission.

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

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

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

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

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

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

1 from the date of the actual knowledge in which to commence a civil
2 action for damages.

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

9 For purposes of this section, with respect to care provided after
10 June 25, 1976, and before August 1, 1986, the knowledge of a custodial
11 parent or guardian shall be imputed as of April 29, 1987, to persons
12 under the age of eighteen years.

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

17 **Sec. 3.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read
18 as follows:

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

28 (2) Subsection (1) of this section with respect to a person under
29 the age of eighteen years does not apply to the time limited for the
30 commencement of an action under RCW 4.16.350.

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