

Legislative Analysis



LAWSUIT AGAINST ATTY OR LAW FIRM

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Senate Bill 1296 (Substitute H-2)
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 12-13-12

A SUMMARY OF SENATE BILL 1296 AS REPORTED BY HOUSE COMMITTEE

The bill would create a period of repose for bringing a claim of malpractice against an attorney-at-law or a law firm.

BACKGROUND INFORMATION:

The statutes of limitation establish time frames for bringing an action to recover damages for injuries to persons or property. In a claim of malpractice against a person who is a state-licensed professional, except as otherwise provided in Section 5838a (medical malpractice), an individual has two years from the date the claim accrues or six months after discovery of the facts giving rise to the claim, whichever is later, in which to file.

(In the kind of case addressed by this bill, a claim accrues at the time the professional stops serving the plaintiff in a professional capacity as to the matters that were the basis of the claim).

However, in the case of malpractice claims against licensed health professionals or architects, engineers, and surveyors, statutes also provide a period of repose—a fixed time period during which a claim may be brought without regard to when the claim accrued (in general, six years from the date of accrual).

Some feel that a period of repose should also be provided for attorneys and law firms. Without a period of repose, attorneys remain at risk for malpractice actions even well into retirement. As such, they must continue to incur expense into retirement to maintain "tail" insurance, a form of liability insurance to protect themselves from malpractice claims arising from work they performed before retirement. Similar to statutes of limitation, periods of repose limit the time frame in which a lawsuit can be filed and so recognize that as time goes on, memories fade, evidence and records are lost or destroyed, and witnesses may be deceased. Legislation has been offered at the initiation of the Probate and Estate Planning Section of the State Bar of Michigan.

CONTENT:

The bill would amend the Revised Judicature Act to create a six-year statute of repose for claims against lawyers and law firms. Specifically, the bill would prohibit an action for

legal malpractice against an attorney-at-law or a law firm from being commenced after the expiration of the applicable period of limitations under Chapter 58 or six years after the date of the act or omission that is the basis for the claim, whichever was earlier. Thus, no lawsuit could be brought for legal malpractice later than six years after the act or omission that was the basis for the claim.

"Attorney-at-law" would mean an individual licensed to practice law in Michigan or elsewhere. "Law firm" would mean a person that is primarily engaged in the practice of law, regardless of whether organized as a sole proprietorship, partnership, limited liability partnership, professional limited liability company, professional corporation, or other business entity. Law firm would include a legal services organization.

MCL 600.5805 et al.

FISCAL IMPACT:

The bill would have no fiscal impact on state or local government.

POSITIONS:

The Probate and Estate Planning Section of the State Bar of Michigan indicated support for the bill. (12-12-12)

The Family Law Section of the State Bar of Michigan indicated support for the bill. (12-12-12)

The Michigan Association for Justice indicated opposition to the bill. (12-12-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.