



IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 344  
 2 INTRODUCED BY Way C. Smith, Jr. & Jeff Barker  
 3 Winstan

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TIME  
 5 LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING  
 6 SECTIONS 27-2-205 AND 27-2-401, MCA; AND PROVIDING AN  
 7 IMMEDIATE EFFECTIVE DATE."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 27-2-205, MCA, is amended to read:

11 "27-2-205. Actions for medical malpractice. (1) ~~Action~~  
 12 An action in tort or contract for injury, a condition  
 13 resulting from an injury, or death against a practitioner of  
 14 the healing arts, physician or surgeon, dentist, registered  
 15 nurse, hospital administrator, nursing home administrator,  
 16 dispensing optician, optometrist, licensed physical  
 17 therapist, podiatrist, psychologist, osteopath,  
 18 chiropractor, clinical laboratory bioanalyst, clinical  
 19 laboratory technologist, pharmacist, veterinarian, a  
 20 licensed hospital or long-term care facility, or licensed  
 21 medical professional corporation, as--the-employer-of-any  
 22 such-person, based upon such-person's alleged professional  
 23 negligence or for rendering professional services without  
 24 consent or for an act, error, or omission in--such--person's  
 25 practice,--shall causing injury, a condition resulting from

1 an injury, or death, must be commenced within the time  
 2 limits provided in subsection (2).

3 (2) An action referred to in subsection (1) must be  
 4 commenced within the following time limits, whichever occurs  
 5 last:

6 (a) 3 years after the date-of-injury-or-3-years--after  
 7 the--plaintiff--discovers--or--through-the-use-of-reasonable  
 8 diligence--should--have--discovered--the--injury,--whichever  
 9 occurs--last,--but--in--no-case-may-such-action-be-commenced  
 10 after-5-years-from--the--date--of--injury; act, error, or  
 11 omission alleged to have caused the injury, a condition  
 12 resulting from the injury, or death; or

13 (b) 1 year after the injured person or decedent, or  
 14 his parent, guardian, or legal representative, discovered or  
 15 reasonably should have discovered that the alleged act,  
 16 error, or omission caused the injury, condition resulting  
 17 from an injury, or death, but in no event may an action be  
 18 commenced after 5 years from the date of the injury.

19 (3) However,--this The time limitation---shall---be  
 20 limitations in subsection (2) are tolled:

21 (a) for any period during which such-person-has the  
 22 alleged wrongdoer failed to disclose any an act, error, or  
 23 omission upon which such the action is based and which is  
 24 known to him or through the use of reasonable diligence  
 25 subsequent to said the act, error, or omission would have



1 been known to him;

2 (b) as to a minor, until he becomes 5 years of age or  
3 dies, whichever occurs first; and

4 (c) during any period of time that a minor does not  
5 reside with a parent or guardian.

6 (4) A continuing relationship between the claimant and  
7 the alleged wrongdoer does not toll the limitation period  
8 during the relationship.

9 (5) For purposes of this section, the knowledge of a  
10 custodial parent, guardian, or legal representative of an  
11 injured or deceased person is imputed to the injured or  
12 deceased person during the time the injured or deceased  
13 person is or was under 18 years of age."

14 Section 2. Section 27-2-401, MCA, is amended to read:

15 "27-2-401. When person entitled to bring action is  
16 under a disability. (1) If a person entitled to bring an  
17 action mentioned in part 2, except 27-2-211(3), is, at the  
18 time the cause of action accrues, either a minor (except a  
19 minor who is the subject of a claim under 27-2-205),  
20 seriously mentally ill, or imprisoned on a criminal charge  
21 or under a sentence for a term less than for life, the time  
22 of such disability is not a part of the time limited for  
23 commencing the action. However, the time so limited cannot  
24 be extended more than 5 years by any such disability except  
25 minority or, in any case, more than 1 year after the

1 disability ceases.

2 (2) If an action is barred by 27-2-304, any of the  
3 heirs, devisees, or creditors who at the time of the  
4 transaction upon which the action might have been founded  
5 was under one of the disabilities mentioned in subsection  
6 (1) may, within 5 years after the cessation of such  
7 disability, maintain an action to recover damages. In such  
8 action he may recover such sum or the value of such property  
9 as he would have received upon the final distribution of the  
10 estate if an action had been seasonably commenced by the  
11 executor or administrator.

12 (3) No person may avail himself of a disability unless  
13 it existed when his right of action or entry accrued.

14 (4) When two or more disabilities coexist at the time  
15 the right of action or entry accrues, the limitation does  
16 not attach until they are both removed."

17 NEW SECTION. Section 3. Injuries, conditions  
18 resulting from injuries, and deaths arising prior to  
19 effective date of this act. An action referred to in  
20 27-2-205(1) for an injury, a condition resulting from  
21 injury, or death that occurred prior to the effective date  
22 of this act must be commenced within 2 years after the  
23 effective date of this act or within the time limits in  
24 27-2-205(2) and (3), whichever expires last.

25 NEW SECTION. Section 4. Effective date. This act is

LC 0527/01

1 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 344

INTRODUCED BY ASAY, C. SMITH, JONES, POFF, POULSEN, WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TIME  
LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING  
SECTIONS SECTION 27-2-205 AND 27-2-401, MCA; AND PROVIDING  
AN IMMEDIATE-EFFECTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 27-2-205, MCA, is amended to read:

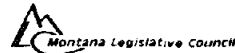
"27-2-205. Actions for medical malpractice. (1) Action  
in tort or contract for injury or death against a physician  
or surgeon, dentist, registered nurse, nursing home or  
hospital administrator, dispensing optician, optometrist,  
licensed physical therapist, podiatrist, psychologist,  
osteopath, chiropractor, clinical laboratory bioanalyst,  
clinical laboratory technologist, pharmacist, veterinarian,  
a licensed hospital or long-term care facility, or licensed  
medical professional corporation, as--the--employer--of--any  
such--person, based upon such-person's alleged professional  
negligence or for rendering professional services without  
consent or for an act, error, or omission in-such-person's  
practice, shall, except as provided in subsection (2), be

commenced within 3 years after the date of injury or 3 years  
after the plaintiff discovers or through the use of  
reasonable diligence should have discovered the injury,  
whichever occurs last, but in no case may such action be  
commenced after 5 years from the date of injury. However,  
this time limitation shall be tolled for any period during  
which ~~such-person-has-failed~~ there has been a failure to  
disclose any act, error, or omission upon which such action  
is based and which is known to him or through the use of  
reasonable diligence subsequent to said act, error, or  
omission would have been known to him.

(2) In an action on behalf of a minor who was under  
the age of 4 on the date of his injury or death, the period  
of limitations in subsection (1) begins to run when the  
minor reaches his eighth birthday or on death, whichever  
occurs earlier, and the time for commencement of the action  
is tolled during any period during which the minor does not  
reside with a parent or guardian."

NEW SECTION. Section 2. Applicability. This act  
applies to causes of action that arise after October 1,  
1987.

-End-



HOUSE BILL NO. 344

INTRODUCED BY ASAY, C. SMITH, JONES, POFF, POULSEN, WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TIME LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING SECTIONS SECTION 27-2-205 AND-27-2-401, MCA; AND PROVIDING AN IMMEDIATE-RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 27-2-205, MCA, is amended to read:

\*27-2-205. Actions for medical malpractice. (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, as--the--employer--of--any such--person, based upon such-person's alleged professional negligence or for rendering professional services without consent or for an act, error, or omission in-such-person's practice, shall, except as provided in subsection (2), be

commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which such-person-has-failed there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to him or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) In an action on behalf of a minor who was under the age of 4 on the date of his injury or death, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or on death, whichever occurs earlier, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

NEW SECTION. Section 2. Applicability. This act applies to causes of action that arise after October 1, 1987.

-End-



## HOUSE BILL NO. 344

INTRODUCED BY ASAY, C. SMITH, JONES, POFF, POULSEN, WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TIME LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING SECTIONS SECTION 27-2-205 AND 27-2-401, MCA; AND PROVIDING AN IMMEDIATE-EFFECTIVE FOR RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 27-2-205, MCA, is amended to read:

"27-2-205. Actions for medical malpractice. (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, as the employer of any such person, based upon such person's alleged professional negligence or for rendering professional services without consent or for an act, error, or omission in such person's practice, shall, except as provided in subsection (2), be

commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to him or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) In an action on behalf of a minor who was under the age of 4 on the date of his injury or death, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or on death, whichever occurs earlier, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

(2) THE TIME LIMITATIONS IN SUBSECTION (1) ARE APPLICABLE TO A MINOR WHO WAS UNDER THE AGE OF 4 ON THE DATE OF HIS INJURY OR DEATH NOTWITHSTANDING THE PROVISIONS OF 27-2-401, EXCEPT THAT SUCH TIME LIMITATIONS ARE TOLLED FOR A MINOR.

(A) UNTIL THE MINOR BECOMES 8 YEARS OF AGE, OR DIES, WHICHEVER OCCURS FIRST, AND



1 ~~(B) -- DURING ANY PERIOD THAT THE MINOR DOES NOT RESIDE~~  
2 ~~WITH A PARENT OR GUARDIAN.~~

3 (2) NOTWITHSTANDING THE PROVISIONS OF 27-2-401, IN AN  
4 ACTION FOR DEATH OR INJURY OF A MINOR WHO WAS UNDER THE AGE  
5 OF 4 ON THE DATE OF HIS INJURY, THE PERIOD OF LIMITATIONS IN  
6 SUBSECTION (1) BEGINS TO RUN WHEN THE MINOR REACHES HIS  
7 EIGHTH BIRTHDAY OR DIES, WHICHEVER OCCURS FIRST, AND THE  
8 TIME FOR COMMENCEMENT OF THE ACTION IS TOLLED DURING ANY  
9 PERIOD DURING WHICH THE MINOR DOES NOT RESIDE WITH A PARENT  
10 OR GUARDIAN."

11 NEW SECTION. Section 2. Applicability. This---act  
12 applies to causes of action that arise after October 1,  
13 1987. (1) AN ACTION REFERRED TO IN 27-2-205(2) FOR INJURY OR  
14 DEATH OCCURRING PRIOR TO OCTOBER 1, 1987, MUST BE COMMENCED  
15 WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF THIS ACT OR  
16 WITHIN THE TIME LIMITS IN 27-2-205(2), WHICHEVER EXPIRES  
17 LAST.

18 (2) THIS ACT APPLIES RETROACTIVELY, WITHIN THE MEANING  
19 OF 1-2-109, TO CAUSES OF ACTION THAT AROSE PRIOR TO OCTOBER  
20 1, 1987.

-End-

3-24-87

SENATE

DATE

2:03

TIME

344

House Bill

MR. CHAIRMAN: I MOVE TO AMEND

No.

third

blue

reading copy ( ) as follows:

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AMENDING SENATE JUDICIARY STANDING COMMITTEE REPORT, DATED MARCH 19, 1987.

1. Amendment No. 2.

Strike: Insert in its entirety.

Insert: "(2) Notwithstanding the provisions of 27-1-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

ADOPT

REJECT

*[Signature]*  
Senator Mazurek

# STANDING COMMITTEE REPORT

## SENATE

March 19 ..... 19 87 .....

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....HOUSE BILL..... No...344.....

Third ~~Third~~ reading copy ( blue )  
color

Revise time limits for medical malpractice actions.  
Asay (Mazurek)

Respectfully report as follows: That.....HOUSE BILL..... No... 344.....

be amended as followed:

1. Title, line 7.

Strike: "AN"

Following: "EFFECTIVE"

Insert: "FOR RETROACTIVE"

Following: "APPLICABILITY"

Strike: "DATE"

2. Page 2, lines 12 through 18.

Strike: subsection (2) in its entirety

Insert: " (2) The time limitations in subsection (1) are applicable to a minor who was under the age of 4 on the date of his injury or death notwithstanding the provisions of 27-2-401, except that such time limitations are tolled for a minor:

(a) until the minor becomes 8 years of age, or dies, whichever occurs first; and

(b) during any period that the minor does not reside with a parent or guardian.

3. Page 2, line 19 through 21.

Following: "Applicability."

Strike: the remainder of line 19 through line 21

Insert: "(1) An action referred to in 27-2-205(2) for injury or death occurring prior to October 1, 1987, must be commenced within 2 years after the effective date of this act or within the time limits in 27-2-205(2), whichever expires last.

(2) This act applies retroactively, within the meaning of 1-2-109, to causes of action that arose prior to October 1, 1987."

XXXXXXXX

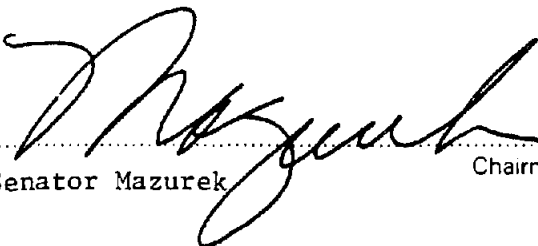
DO PASS

XXXXXXXXXX

AND AS AMENDED

BE CONCURRED IN

KMC

  
.....  
Senator Mazurek

Chairman.

3-19-87  
5:34  
44