

1 SENATE BILL NO. 7

2 INTRODUCED BY KLAMPE

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TOLLING OF APPLICABLE STATUTES OF
6 LIMITATIONS RELATED TO MEDICAL MALPRACTICE CLAIMS; AND AMENDING SECTIONS 27-2-205 AND
7 27-6-702, MCA."

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

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

12 **"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against
13 a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing
14 optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical
15 laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or
16 long-term care facility, or licensed medical professional corporation, based upon alleged professional
17 negligence or for rendering professional services without consent or for an act, error, or omission, ~~shall~~
18 must, except as provided in subsection (2), be commenced within 3 years after the date of injury or within
19 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the
20 injury, whichever occurs last, but in no case may ~~such an~~ an action be commenced after 5 years from the date
21 of injury. However, this time limitation ~~shall be~~ is tolled for any period during which there has been a failure
22 to disclose any act, error, or omission upon which ~~such an~~ an action is based and ~~which that~~ is known to the
23 ~~plaintiff~~ defendant or through the use of reasonable diligence subsequent to ~~said the~~ the act, error, or omission
24 would have been known to ~~him~~ the defendant.

25 (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was
26 under the age of 4 on the date of ~~his~~ the minor's injury, the period of limitations in subsection (1) begins
27 to run when the minor reaches ~~his~~ the minor's eighth birthday or dies, whichever occurs first, and the time
28 for commencement of the action is tolled during any period during which the minor does not reside with
29 a parent or guardian."
30

1 **Section 2.** Section 27-6-702, MCA, is amended to read:

2 **"27-6-702. Tolling of statute of limitations.** The running of the applicable limitation period ~~is~~ related
3 to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care
4 providers named in the application as parties to the panel proceeding and as to all other persons or entities
5 named in the application as necessary or proper parties for any court action ~~which~~ that might subsequently
6 arise out of the same factual circumstances set forth in the application. The running of the applicable
7 limitation period ~~in a malpractice claim~~ does not begin again until 30 days after either an order of dismissal,
8 with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the
9 consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in
10 the permanent files of the panel and a copy is served upon the complainant or ~~he~~ the complainant's
11 attorney if ~~he is~~ represented by counsel, by certified mail."

12

-END-

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 7

2 INTRODUCED BY KLAMPE

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TOLLING OF APPLICABLE STATUTES OF
6 LIMITATIONS RELATED TO MEDICAL MALPRACTICE CLAIMS; AND AMENDING SECTIONS 27-2-205 AND
7 27-6-702, MCA."

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

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

12 **"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against
13 a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing
14 optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical
15 laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or
16 long-term care facility, or licensed medical professional corporation, based upon alleged professional
17 negligence or for rendering professional services without consent or for an act, error, or omission, ~~shall~~
18 must, except as provided in subsection (2), be commenced within 3 years after the date of injury or within
19 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the
20 injury, whichever occurs last, but in no case may ~~such an~~ an action be commenced after 5 years from the date
21 of injury. However, this time limitation ~~shall be~~ is tolled for any period during which there has been a failure
22 to disclose any act, error, or omission upon which ~~such an~~ an action is based and ~~which that~~ which is known to the
23 ~~plaintiff~~ defendant or through the use of reasonable diligence subsequent to ~~said the~~ the act, error, or omission
24 would have been known to ~~him~~ the defendant.

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

1 **Section 2.** Section 27-6-702, MCA, is amended to read:

2 "**27-6-702. Tolling of statute of limitations.** The running of the applicable limitation period ~~in~~ related
3 to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care
4 providers named in the application as parties to the panel proceeding and as to all other persons or entities
5 named in the application as necessary or proper parties for any court action ~~which~~ that might subsequently
6 arise out of the same factual circumstances set forth in the application. The running of the applicable
7 limitation period ~~in a malpractice claim~~ does not begin again until 30 days after either an order of dismissal,
8 with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the
9 consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in
10 the permanent files of the panel and a copy is served upon the complainant or ~~his~~ the complainant's
11 attorney if ~~he is~~ represented by counsel, by certified mail."

12

-END-

1 SENATE BILL NO. 7

2 INTRODUCED BY KLAMPE

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TOLLING OF APPLICABLE STATUTES OF
6 LIMITATIONS RELATED TO MEDICAL MALPRACTICE CLAIMS; AND AMENDING SECTIONS 27-2-205 AND
7 27-6-702, MCA."

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

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

12 "27-2-205. **Actions for medical malpractice.** (1) Action in tort or contract for injury or death against
13 a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing
14 optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical
15 laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or
16 long-term care facility, or licensed medical professional corporation, based upon alleged professional
17 negligence or for rendering professional services without consent or for an act, error, or omission, ~~shall~~
18 must, except as provided in subsection (2), be commenced within 3 years after the date of injury or within
19 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the
20 injury, whichever occurs last, but in no case may ~~such an~~ an action be commenced after 5 years from the date
21 of injury. However, this time limitation ~~shall be~~ is tolled for any period during which there has been a failure
22 to disclose any act, error, or omission upon which ~~such an~~ an action is based and ~~which that~~ is known to the
23 ~~plaintiff~~ defendant or through the use of reasonable diligence subsequent to ~~said the~~ the act, error, or omission
24 would have been known to ~~him~~ the defendant.

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

1 **Section 2.** Section 27-6-702, MCA, is amended to read:

2 **"27-6-702. Tolling of statute of limitations.** The running of the applicable limitation period ~~is related~~
3 to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care
4 providers named in the application as parties to the panel proceeding and as to all other persons or entities
5 named in the application as necessary or proper parties for any court action ~~which that~~ that might subsequently
6 arise out of the same factual circumstances set forth in the application. The running of the applicable
7 limitation period ~~in a malpractice claim~~ does not begin again until 30 days after either an order of dismissal,
8 with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the
9 consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in
10 the permanent files of the panel and a copy is served upon the complainant or ~~his~~ the complainant's
11 attorney if ~~he is~~ represented by counsel, by certified mail."

12

-END-

1 SENATE BILL NO. 7

2 INTRODUCED BY KLAMPE

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES
45 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TOLLING OF APPLICABLE STATUTES OF
6 LIMITATIONS RELATED TO MEDICAL MALPRACTICE CLAIMS; AND AMENDING SECTIONS 27-2-205 AND
7 27-6-702, MCA."8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1011 **Section 1.** Section 27-2-205, MCA, is amended to read:12 **"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against
13 a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing
14 optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical
15 laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or
16 long-term care facility, or licensed medical professional corporation, based upon alleged professional
17 negligence or for rendering professional services without consent or for an act, error, or omission, ~~shall~~
18 must, except as provided in subsection (2), be commenced within 3 years after the date of injury or within
19 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the
20 injury, whichever occurs last, but in no case may ~~such an~~ an action be commenced after 5 years from the date
21 of injury. However, this time limitation ~~shall be~~ is tolled for any period during which there has been a failure
22 to disclose any act, error, or omission upon which ~~such an~~ an action is based and ~~which that~~ is known to the
23 ~~plaintiff~~ defendant or through the use of reasonable diligence subsequent to ~~said the~~ the act, error, or omission
24 would have been known to ~~him~~ the defendant.25 (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was
26 under the age of 4 on the date of ~~his~~ the minor's injury, the period of limitations in subsection (1) begins
27 to run when the minor reaches ~~his~~ the minor's eighth birthday or dies, whichever occurs first, and the time
28 for commencement of the action is tolled during any period during which the minor does not reside with
29 a parent or guardian."
30

1 **Section 2.** Section 27-6-702, MCA, is amended to read:

2 "27-6-702. **Tolling of statute of limitations.** The running of the applicable limitation period ~~in~~ related
3 to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care
4 providers named in the application as parties to the panel proceeding and as to all other persons or entities
5 named in the application as necessary or proper parties for any court action ~~which~~ that might subsequently
6 arise out of the same factual circumstances set forth in the application. The running of the applicable
7 limitation period ~~in a malpractice claim~~ does not begin again until 30 days after either an order of dismissal,
8 with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the
9 consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in
10 the permanent files of the panel and a copy is served upon the complainant or ~~his~~ the complainant's
11 attorney if ~~he is~~ represented by counsel, by certified mail."

12

-END-