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SFA**BILL ANALYSIS**

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House Bill 5232 (Substitute H-3 as passed by the House)
Sponsor: Representative Jim Howell
House Committee: Family and Civil Law
Senate Committee: Judiciary

Date Completed: 5-9-00

CONTENT

The bill would amend the Revised Judicature Act (RJA) to require that, except as otherwise provided in the bill, a court dismiss an action for an individual's injury or death that occurred while he or she was committing, or fleeing from committing, a felony or acts that would constitute a felony. The court also would have to order the plaintiff to pay each defendant's costs and actual attorney fees.

Specifically, a court would have to dismiss with prejudice a plaintiff's action for an individual's bodily injury or death if the injury or death occurred during either or both of the following:

- The individual's commission, or flight from the commission, of a felony.
- The individual's acts or flight from acts that the finder of fact in a civil action found, by clear and convincing evidence, to constitute all the elements of a felony.

If the bodily injury or death resulted from force, however, the court could not apply the requirement to dismiss and award costs unless the court found that the defendant used a degree of force that a reasonable person would believe to have been appropriate either to prevent injury to the defendant or others or to prevent the commission of a felony. In making a finding regarding the degree of force used to prevent a felony, the court could not consider the fact that the defendant might not have known that the plaintiff's actions or attempted actions would be the commission of a felony.

If a proceeding regarding an individual's commission of a felony were pending and he or she were a plaintiff in a civil action for damages for his or her own bodily injury, the court would have to stay the civil action until the final disposition of the proceeding concerning the felony, including appeals, if both of the following occurred:

- The defendant moved to dismiss the plaintiff's claim based on the bill's requirement to dismiss and award costs.
- The court found probable cause to believe that the bill's dismissal requirement applied to the plaintiff's claim against the defendant.

The period of limitations to bring a civil action for damages for an individual's bodily injury or death would be tolled during each period that a court proceeding regarding the individual was pending in a criminal action or a juvenile adjudication, including appeals, but only if the civil action were based on the same events as the criminal action or juvenile adjudication.

The bill would not apply under circumstances governed by Section 1902 of the RJA, which prohibits a defendant in a criminal action for criminal sexual conduct from commencing or maintaining a civil action against a victim of that crime if the criminal action is pending and the civil action is based on statements or reports made by the victim that pertain to an incident from which the criminal action is derived. The court must dismiss such a civil action without prejudice.

The bill would apply only to a civil action filed on or after the bill's effective date.

"Felony" would mean a violation of a Michigan or U.S. law that was designated as a felony or that was punishable by death or imprisonment for more than one year. "Commission of a felony" would mean either a conviction for a felony or a juvenile adjudication holding an individual responsible for an offense that would be a felony if committed by an adult. "Plaintiff" would include, but not be limited to, an individual who, or an estate that, brought an action for the bodily injury or death.

Proposed MCL 600.2955b

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact. The number of future cases that could be dismissed under the bill cannot be estimated.

Fiscal Analyst: B. Bowerman