

Legislative Analysis



STATUTE OF LIMITATIONS: SERVICE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 990 with House committee amendment

Sponsor: Sen. Michael D. Bishop

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (3-24-04)

BRIEF SUMMARY: The bill would clarify that the statutes of limitations would be tolled at the time a complaint is filed with a court if a copy of the summons and complaint were served on the defendant within the time frame established by Michigan Supreme Court rules.

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

THE APPARENT PROBLEM:

A statute of limitations for a civil action establishes a time frame during which one party can bring a lawsuit against another to recover damages. Once that time period expires, the injured party cannot sue the other party. Under current law, an action is commenced when the complaint is filed with a court. A copy of the complaint and the summons is required to be delivered to the defendant in a timely manner. Under state supreme court rules, a summons expires 91 days after issue. If the defendant cannot be served before the summons expires, but the plaintiff showed due diligence in attempting to serve the original summons, a judge may order a second summons to be issued. This second summons may be issued for up to one year. When a summons expires, the action is considered dismissed as to a defendant who has not been served with the complaint, although the plaintiff may file a new action against the defendant as long as the statute of limitations for the action has not yet run out.

In addition, MCL 600.5856 allows the statute of limitations to be tolled (suspended) under four circumstances: 1) at the time the complaint is filed and a copy of the summons and complaint are served on the defendant; 2) at the time jurisdiction over the defendant is otherwise acquired; 3) at the time the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service – except the statute of limitations cannot be tolled more than 90 days after the officer receives the summons and complaint; and 4) for a specified time period under certain circumstances pertaining to medical malpractice actions.

However, for over 30 years, this provision of law regarding the tolling of the statutes of limitations was interpreted as applying very narrowly to prior lawsuits between parties in which the merits of the action had not been adjudicated. [*Buscaino v Rhodes*, 385 Mich 474 (1971)] In other words, for over three decades the statutes of limitations were

considered tolled when the complaint was filed regardless of how long it took to serve the defendant with the summons and complaint – as long as service was done during the life span of the summons.

A recent court case changed this. In *Gladych v New Family Homes, Inc.*, 468 Mich 594 (July 2003), the complaint was filed on January 22, 1999 - one day before the three-year limitations period expired. The plaintiff was unsuccessful in serving the defendant with the summons and complaint before the summons expired, but was granted a second summons and successfully served the defendant on May 4, 1999. The Michigan Supreme Court overruled *Buscaino* and held that the plaintiff failed to comply with the statute of limitations requirements because even though the complaint was filed with the court within the three-year statute of limitations (SOL) period, the summons and complaint were not served according to any of the four ways to stop the clock, so to speak, under MCL 600.5856. Therefore, according to the *Gladych* court, the SOL clock had run out before the summons and complaint was served on the defendant; thus, the lawsuit was dismissed.

Since *Gladych* threw the proverbial monkey wrench into the accustomed manner of tracking the SOL by legal professionals, some feel that the statute regarding tolling the statutes of limitations should be clarified. Legislation has been introduced to address this concern.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to revise a provision that tolls (or suspends) the statute of limitations at the time a complaint is filed and a copy of the summons and complaint are served on the defendant. Under the bill, the statute of limitations would be tolled only if the summons and complaint were served on the defendant within the time set forth in the supreme court rules.

The bill also would delete a provision that tolls the statute of limitations at the time the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service, for up to 90 days after the officer receives the summons and complaint.

MCL 600.5856

ARGUMENTS:

For:

The bill would revise the law pertaining to tolling the statutes of limitations for civil actions, and restore the common practice used for over 30 years. The clarification would also resolve several existing conflicts between statutes and state supreme court rules. For instance, one statute states that an action commences when the complaint is filed, leading many to believe that filing the complaint is what tolls the statutes of limitations; yet, another provision states that the statutes of limitations are tolled by a combination of

filing the complaint in court and service of process on the defendant of the summons and complaint. In one provision, the summons is good for 90 days, but is good for 91 days according to court rules. Under the bill, it would be clear that filing the complaint would stop the SOL clock, as long as the summons and complaint were served on the defendant within the time period established in the supreme court rules (currently 91 days). The bill would still allow the SOL to be tolled at the time jurisdiction over the defendant was acquired by other means and would clarify the circumstance tolling the SOL in medical malpractice cases.

Further, it is reported that most service of process is no longer provided by “officers” (sheriffs and their deputies); therefore, the provision tolling the statutes of limitations by placing the summons and complaint in the hands of an officer would be eliminated.

Response:

The bill should be amended to clarify which actions it would pertain to. For instance, would it apply to all cases filed after the bill’s effective date, or only to those cases arising after the effective date?

POSITIONS:

The Michigan Trial Lawyers Association supports the bill. (3-23-04)

Legislative Analyst: S. Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.