

Legislative Analysis



RJA: STATUTE OF LIMITATIONS REVISIONS

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House Bill 5033 as introduced

Sponsor: Rep. Dan Scripps

Committee: Judiciary

First Analysis (6-9-09)

BRIEF SUMMARY: The bill would amend the Revised Judicature Act to apply the tolling of the statute of limitations pertaining to actions involving minor children or the "insane" to actions arising under any statute and not just to those arising under provisions of the RJA.

The term "insane" as used in the RJA refers to "a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane."

FISCAL IMPACT: House Bill 5033 will have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

The problem that the bill seeks to address is a complicated one and involves both the no-fault insurance law and a statute that allows minors and the "insane" (which includes traumatic brain injuries from auto accidents) to have additional time to file lawsuits to recover damages. In 2002, a lawsuit was filed by the parents of a boy who had been injured when an automobile struck his bicycle in 1996. The lawsuit was filed to collect no fault benefits for attendant care provided to the child from 1996 to 1999. The trial court decided in favor of the parents, but the state appellate court reversed that decision and instead granted summary disposition for the defendant. The case was appealed to the state Supreme Court, which upheld the appellate court's conclusion that the defendant was entitled to summary judgment.

Briefly stated, the thrust of the arguments in the court case – *Cameron v Auto Club Insurance Association*, 476 Mich 55 (2006) – centers on the interpretation of a provision in the no-fault law that, among other criteria, restricts a claim for damages to expenses incurred within one year of when the lawsuit was filed. The case also involves the interpretation of a provision in the Revised Judicature Act (RJA) pertaining to the tolling of the statute of limitations for an action involving a minor or insane person.

Both the appeals court and the Supreme Court agreed that the suit by the parents was filed long after the one year period had expired (the attendant care services had ended in 1999 when the boy entered a residential care facility). However, the boy's parents maintained that the tolling provision in the RJA extended the time period in which a claim could be filed to one year after the boy would reach 18 years of age. At the time of

the filing, he was only 16. Therefore, they believed the one-year time period under the no fault law did not apply.

The appeals court held that the tolling provision in the RJA did not apply to actions filed under the no-fault law because the RJA provision restricted the applicability to actions brought "under this act" – meaning actions brought under the RJA and not any other statute. The Supreme Court agreed that the tolling was inapplicable to the Cameron case, writing that the RJA tolling provision was "irrelevant to the damages-limiting one-year-back provision" of the no-fault law. The Court also vacated the appellate court's analysis of the phrase "under this act."

In addition, the *Cameron* ruling overruled an earlier court of appeals case – *Geiger v Detroit Automobile Inter-Insurance Exch* (114 Mich App 283 (1982) – that had concluded the minority/insanity provision in the RJA had tolled the one-year-back rule in the no-fault law.

The *Cameron* decision has, among other things, set off a debate over the legislative and case law history of the interplay between the one-year-back provision in the no-fault law and the tolling provision for minors and the insane in the RJA. For example, the current wording of the RJA tolling provision was revised in 1993 by legislation addressing medical malpractice. Since the provision had applied to "any action" from 1961 to the adoption of the 1993 amendments, there is some uncertainty whether the change was deliberate or if the effect on actions under the no-fault laws was unintended.

Legislation to address what actions the tolling provision pertains to has been offered.

THE CONTENT OF THE BILL:

House Bill 5033 would amend the Revised Judicature Act (MCL 600.5838a and 600.5851). In addition to numerous revisions of a technical or editorial nature, the bill would amend a provision that tolls the statute of limitations for actions involving minors and the insane. (By specifying that the term is "not dependent on whether or not the person has been judicially declared to be insane," the act includes traumatic brain injuries within the term.)

Currently, if a person entitled to bring an action ***under this act*** (meaning the RJA) is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person have one year after the disability is removed, through death or otherwise, to make the entry or bring the action although the period of limitations has run. The bill would delete the highlighted phrase.

As noted earlier, the term "insane" as used in the RJA refers to "a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane."

BACKGROUND INFORMATION:

A separate bill, House Bill 4845, would amend the no fault law to address issues raised in *Cameron*. That bill was reported as a substitute H-1 from the House Judiciary Committee with the recommendation that it be rereferred to the House Insurance Committee.

ARGUMENTS:

For:

From 1961 until 1993, the tolling provision in the RJA for minors and persons suffering insanity applied to any action brought under any statute. The *Geiger* court in 1982 strengthened this interpretation by specifying that the RJA provision did toll the one-year-back rule in the no fault law. Even after the 1993 legislation addressing medical malpractice claims (Public Act 78) revised the wording of MCL 600.5851(1) from specifying "any action" to "an action under this act," courts still relied on the *Geiger* decision. However, the *Cameron* court in 2006 overruled that decision.

Regardless of whether or not the legislature intended to narrow the applicability of the RJA to actions brought only under that act, it remains in the legislature's purview to amend the law to state clearly what it wants it to mean. House Bill 5033 would delete the phrase "under this act," thereby effectively returning the applicability of the RJA tolling provision for minors and persons suffering insanity to actions brought under *any* state statute.

For:

Supporters of legislation to "cure" the *Cameron* decision maintain that under the *Cameron* ruling, a legal trap has been created that results in an unfair loss of no-fault benefits needed to sustain or reimburse care. Without the "fix," auto insurers are able to shift the cost from the auto insurance industry to the health care industry, even though the liability for auto insurers is capped and lifetime claims over that amount are reimbursed through the Michigan Catastrophic Claims Association. Shifting the costs overburdens the health care system, with many of the injured being covered under Medicaid.

The bill would not completely "cure" *Cameron*, but it would address the issue of whether or not minors and those suffering brain injuries in car accidents, or their families, would have additional time in which to file actions to receive no fault benefits otherwise denied by an auto insurer.

Against:

The bill may not be needed. A 2008 court of appeals case, with leave to the Supreme Court denied, concluded that all civil actions are brought "under" the RJA. More to the point, the court wrote that "whether the cause of action arises by statute, common law, or contract, the minority rolling provision is applicable." *Kilda v Braman*, 278 Mich App 60 (Feb, 2008). The case involved an uninsured motorist seeking no-fault benefits despite the provision in the insured's policy that a legal action could not be brought

against the insurer more than one year after the date of the accident. If indeed *Kilda* was applied generally, there would be no need to amend the RJA tolling provision.

Against:

No opposition was directed specifically at House Bill 5033 but, in general, opponents of House Bill 4835, which would amend the no-fault laws to address issues raised in *Cameron*, have voiced concerns about the cost to auto insurers (and the motoring public) if amendments to the one-year lookback rule mean that there is no foreseeable end to the period when no-fault lawsuits can be filed.

POSITIONS:

No positions specific to House Bill 5033 were submitted.

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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.