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BILL



ANALYSIS

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Senate Bill 1296 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 582 of 2012

Date Completed: 3-12-13

CONTENT

The bill added Section 5838b to the Revised Judicature Act to require a legal malpractice action against an attorney or a law firm to be brought within the applicable period of limitations or within six years after the act or omission that is the basis for the claim, whichever is earlier.

The Act establishes periods (or statutes) of limitations for various types of actions, as well as periods (or statutes) of repose for certain actions. (A statute of limitations limits the period of time an action may be brought after an injury or damage occurs or is discovered. A period of repose sets a fixed time following an event, other than the occurrence of the injury or damage, after which a person cannot be held liable for injury or damage. When the period of repose expires, an action may not be brought even if the injury or damage has not yet occurred.) The periods of limitations set in the Act are subject to any applicable period of repose.

Specifically, the Act states that a person may not bring or maintain an action to recover damages for personal injury or property damage unless, after the claim first "accrues" to the plaintiff, the action is brought within the period of limitations. (As a rule, the period of limitations for malpractice actions is two years.)

Except as otherwise provided in Section 5838a (for medical malpractice actions), if a claim is based on the malpractice of a person who is a member of a State licensed profession, the claim accrues (and the two-year period is triggered) at the time the person discontinues serving the plaintiff in a professional capacity as to the matters that were the basis for the malpractice action, regardless of when the plaintiff discovers or otherwise has knowledge of the claim.

In addition, except as otherwise in Section 5838a, a malpractice action may be commenced at any time within the applicable period of limitations (the two-year period), or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.

Under the bill, these provisions apply except as otherwise provided in Section 5838a or in Section 5838b.

Under Section 5838b, an action for legal malpractice against an attorney-at-law or a law firm may not be begun after whichever of the following is earlier:

- The expiration of the applicable period of limitations.
- Six years after the date of the act or omission that is the basis for the claim.

A legal malpractice action that is not begun within the time prescribed above will be barred.

The bill defines "attorney-at-law" as an individual licensed to practice law in this State or elsewhere.

The bill defines "law firm" as a person that is primarily engaged in the practice of law, regardless of whether organized as a sole proprietorship, partnership, limited liability partnership, professional limited liability company, professional corporation, or other business entity. The term includes a legal services organization.

The bill took effect on January 2, 2013.

MCL 600.5838 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.