

1 HOUSE BILL NO. 408

2 INTRODUCED BY C. SMITH, TAYLOR, MCGILLVRAY, SKEES, STAHL, BLASDEL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE STATUTE OF LIMITATIONS FOR MEDICAL
5 MALPRACTICE CLAIMS FROM 3 YEARS TO 2 YEARS; AMENDING SECTION 27-2-205, MCA; AND
6 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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8 WHEREAS, the provision of medical services to Montana residents is imperative to their health and
9 happiness; and

10 WHEREAS, it is increasingly difficult for Montana communities to attract and retain qualified medical
11 providers; and

12 WHEREAS, the acquisition of reasonably priced medical malpractice insurance coverage is a factor in
13 attracting medical providers to Montana and in retaining them; and

14 WHEREAS, the Legislature has determined that a shortage of health care providers in the state and an
15 inability to attract health care providers to the state would pose a serious threat to the health, welfare, and safety
16 of Montanans; and

17 WHEREAS, the number of insurance carriers that provide liability insurance for hospitals, physicians, and
18 dentists has declined significantly in the past decade; and

19 WHEREAS, insurance premiums for liability insurance for health care providers have historically forced
20 physicians and other providers in Montana to consider either curtailing certain medical services or, in the
21 alternative, relocating to other states where premiums are stabilized; and

22 WHEREAS, Montana has a compelling state interest in ensuring that Montana residents receive quality
23 and reasonably priced health care; and

24 WHEREAS, recently enacted federal health care reform failed to address tort reform measures, defensive
25 medicine costs, and abusive litigation practices; and

26 WHEREAS, all of Montana's neighboring states (Idaho, Wyoming, South Dakota, and North Dakota) have
27 a 2-year or less statute of limitations for medical malpractice actions; and

28 WHEREAS, the Legislature declares that it is the policy of the State of Montana to attempt to attract and
29 retain qualified health care providers to care for the residents of Montana and that reducing the statute of
30 limitations to 2 years will put Montana on a level playing field with its neighboring states.

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2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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22 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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24 NEW SECTION. **Section 3. Applicability.** [This act] applies to civil actions filed on or after ~~[the effective~~
25 ~~date of this act]~~ JULY 1, 2012.

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