

1 SENATE BILL NO. 167

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE TERMINATION DATES FOR MEDICAL
5 MALPRACTICE-RELATED PROVISIONS OF THE HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP
6 ACT; AMENDING SECTIONS 25-3-106 AND 27-2-205, MCA; AMENDING SECTION 28, CHAPTER 368,
7 LAWS OF 2015, AND SECTION 38, CHAPTER 415, LAWS OF 2019; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

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

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12 **Section 1.** Section 25-3-106, MCA, is amended to read:

13 **"25-3-106. (Temporary) Medical malpractice claims -- time limit.** A plaintiff in a medical
14 malpractice action shall accomplish service within 6 months after filing the complaint. If the plaintiff fails to do
15 so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant
16 has made an appearance. (~~Terminates June 30, 2025--sec. 38, Ch. 415, L. 2019.~~)"

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

19 **"27-2-205. (Temporary) Actions for medical malpractice.** (1) Action in tort or contract for injury or
20 death against a physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced
21 practice registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed
22 physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical
23 laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed
24 medical professional corporation, based upon alleged professional negligence or for rendering professional
25 services without consent or for an act, error, or omission, must, except as provided in subsection (2), be
26 commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through the
27 use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an
28 action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period

1 during which there has been a failure to disclose any act, error, or omission upon which an action is based and
 2 that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or
 3 omission would have been known to the defendant.

4 (2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was
 5 under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run
 6 when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for
 7 commencement of the action is tolled during any period during which the minor does not reside with a parent or
 8 guardian. (~~Terminates June 30, 2025--sec. 38, Ch. 415, L. 2019.~~)

9 ~~**27-2-205. (Effective July 1, 2025) Actions for medical malpractice.**~~ (1) ~~Action in tort or contract for~~
 10 ~~injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator,~~
 11 ~~dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor,~~
 12 ~~clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or~~
 13 ~~long-term care facility, or licensed medical professional corporation, based upon alleged professional~~
 14 ~~negligence or for rendering professional services without consent or for an act, error, or omission, must, except~~
 15 ~~as provided in subsection (2), be commenced within 3 years after the date of injury or within 3 years after the~~
 16 ~~plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever~~
 17 ~~occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this~~
 18 ~~time limitation is tolled for any period during which there has been a failure to disclose any act, error, or~~
 19 ~~omission upon which an action is based and that is known to the defendant or through the use of reasonable~~
 20 ~~diligence subsequent to the act, error, or omission would have been known to the defendant.~~

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

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27 **Section 3.** Section 28, Chapter 368, Laws of 2015, is amended to read:

28 **"Section 28. Termination.** (1) ~~[This act]~~Except as provided in subsection (2), ~~[this act]~~ terminates

1 June 30, ~~2019~~2025.

2 (2) [Sections 19 and 21] do not terminate.

3 (3) The department may reapply for the same waiver received to implement the Montana Health and
4 Economic Livelihood Partnership Act program if the waiver expires before June 30, ~~2019~~2025."

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6 **Section 4.** Section 38, Chapter 415, Laws of 2019, is amended to read:

7 "Section 38. Section 28, Chapter 368, Laws of 2015, is amended to read:

8 "**Section 28. Termination.** (1) ~~[This act]~~Except as provided in subsection (2), [this act]
9 ~~terminates June 30, 2019~~ June 30, 2025.

10 (2) [Sections 19 and 21] do not terminate.

11 (3) The department may reapply for the same waiver received to implement the Montana Health and
12 Economic Livelihood Partnership Act program if the waiver expires before ~~June 30, 2019~~ June 30, 2025.""

13

14 NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
16 the part remains in effect in all valid applications that are severable from the invalid applications.

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18 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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