

3/22/95 Referred to Judiciary
S-3/28/95 Judiciary

MAR 13 1995

HOUSE FILE 394
BY COMMITTEE ON ECONOMIC
DEVELOPMENT

Place On Calendar

(SUCCESSOR TO HSB 17)

Passed House, ^(p.995) Date 3-27-95 Passed Senate, Date _____
Vote: Ayes 71 Nays 24 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the statute of limitations for medical
2 malpractice actions regarding minors under six years of age.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

1 Section 1. FINDINGS. The general assembly finds that the
2 exception to the general statute of limitations provided
3 minors in section 614.8, Code 1995, impedes efforts of the
4 state to make maternal and child health care widely available
5 in order to provide for the health and welfare of children and
6 pregnant women of this state. Because providers of health
7 care rendering services to children and pregnant women remain
8 liable to claims made by the children involved for as long as
9 nineteen years after the service is rendered, or even longer
10 if the child claims the injury was prenatal, a disincentive
11 results for the provision of these services. The long period
12 of limitation influences medical students to not pursue
13 obstetrical and pediatric practices and physicians practicing
14 in those areas to cease practice many years in advance of
15 normal retirement in order to avoid defending claims during
16 their advanced years. Evidence of both tendencies exists and
17 is especially obvious in the less populated areas of the state
18 where these medical services are in dangerously short supply.
19 Because of the extended period of limitation provided minors,
20 a significant number of primary care physicians have stopped
21 providing obstetrical services. These trends also have an
22 adverse impact upon the state's efforts to provide for the
23 economic development of less populated areas of the state.
24 The shortage of physicians providing obstetrical care in those
25 areas is a significant impediment to attracting new economic
26 activity. Available data show that more than 97 percent of
27 all such claims are brought within eight years of occurrence.
28 Claims brought after such a passage of time would logically be
29 very difficult to prove or defend successfully. Fading of
30 memories, the absence of records, and changes in the standard
31 of care make litigating claims after such a period
32 prohibitively expensive and difficult. Public policy should
33 encourage claimants to bring claims within a more reasonable
34 period of time when there is greater likelihood of success.
35 Providers of health care, to the extent that a reasonable

1 period of limitation can provide protection, should be
2 relieved of concern that they or their estates could be placed
3 in the position of having to defend actions based upon events
4 that occurred many years in the past. The general assembly
5 recognizes the potentially conflicting public interests
6 between access to the courts and access to health care and
7 finds that the state has a compelling interest in access to
8 health care which must be paramount in furtherance of the
9 government's obligation to provide for the general health and
10 welfare of its citizens.

11 Sec. 2. Section 614.8, Code 1995, is amended to read as
12 follows:

13 614.8 MINORS AND MENTALLY ILL PERSONS.

14 The Other than an action by a minor brought for medical
15 malpractice, the times limited for actions herein, except
16 those brought for penalties and forfeitures, shall-be are
17 extended in favor of minors-and-mentally-ill-persons a minor
18 or a mentally ill person, so that they-shall-have the minor or
19 the mentally ill person has one year from and after the
20 termination of such disability within which to commence said
21 an action. The time limited for an action brought for medical
22 malpractice is extended in favor of a minor less than six
23 years of age so that the minor has until the minor's eighth
24 birthday to commence an action. As used in this section,
25 "medical malpractice" means an action founded on injuries to
26 the person or wrongful death against any physician and
27 surgeon, osteopath, osteopathic physician and surgeon,
28 dentist, podiatrist, optometrist, pharmacist, chiropractor, or
29 nurse, licensed under chapter 147, or a hospital licensed
30 under chapter 135B, arising out of patient care.

31

EXPLANATION

32 This bill makes legislative findings regarding the need for
33 a shortened statute of limitations for medical malpractice
34 actions involving minors who are injured under the age of six.
35 The bill provides that an action for medical malpractice

1 allegedly committed on a minor under age six must be commenced
2 prior to the minor's eighth birthday.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

H-3419

- 1 Amend House File 394 as follows:
 2 1. Page 2, by striking lines 14 and 15 and
 3 inserting the following: "The times limited for
 4 actions herein, except".
 5 2. Page 2, by striking lines 21 through 24 and
 6 inserting the following: "an action. However, in an
 7 action brought for medical malpractice any extension,
 8 in favor of a minor, of the limitation on commencing
 9 the action shall not exceed eight years. As used in
 10 this section,".
 11 3. Title page, line 2, by striking the words
 12 "under six years of age".

By O'BRIEN of Boone

H-3419 FILED MARCH 22, 1995

lost 3-27-95
(P. 989)

HOUSE FILE 394

H-3427

- 1 Amend House File 394 as follows:
 2 1. By striking page 1, line 1, through page 2,
 3 line 10.
 4 2. By renumbering as necessary.

By DODERER of Johnson

H-3427 FILED MARCH 22, 1995

lost 3-27-95
(P. 994)

HOUSE FILE 394

H-3408

- 1 Amend House File 394 as follows:
 2 1. Page 2, by striking line 28 and inserting the
 3 following: "or".

By MORELAND of Wapello

H-3408 FILED MARCH 22, 1995

lost 3-27-95
P. 991

HOUSE FILE 394

H-3409

- 1 Amend House File 394 as follows:
 2 1. Page 2, by inserting after line 30 the
 3 following:
 4 "Sec. ____ . APPLICABILITY. This Act applies only
 5 to causes of action accruing on or after July 1,
 6 1995."
 7 2. Title page, line 2, by inserting after the
 8 word "age" the following: "and providing for the
 9 Act's applicability".

By MORELAND of Wapello

H-3409 FILED MARCH 22, 1995

lost 3-27-95
(P. 992)

MARCH 23, 1995 Page 20
HOUSE FILE 394

H-3417

1 Amend House File 394 as follows:
2 1. Page 2, by inserting after line 30 the
3 following:
4 "Sec. _____. The Iowa department of public health
5 shall prepare annually for the general assembly an
6 assessment of the impact of the passage of this Act.
7 The assessment shall include, but is not limited to,
8 the relative availability of medical personnel and
9 services relating to obstetrics, including prenatal
10 and neonatal care in rural versus urban areas, the
11 relative frequency and amount of claims and costs
12 associated with claims or potential claims in rural
13 versus urban areas, and the apparent causes of any
14 discrepancies concerning service availability or costs
15 between rural and urban areas. Other state agencies
16 shall provide relevant data and otherwise cooperate in
17 the preparation of the annual assessment at the
18 request of the Iowa department of public health.
19 Sec. _____. REPEAL. This Act is repealed effective
20 June 30, 2000, and the Code editor shall return the
21 language of section 614.8 to the language which
22 appeared in the 1995 Code of Iowa."

By BRAND of Benton

H-3417 FILED MARCH 22, 1995

Lot 3-27-95
(P.995)

HOUSE FILE 394

H-3418

1 Amend House File 394 as follows:
2 1. Page 2, line 24, by inserting after the word
3 "action." the following: "However, if an injury
4 occurs due to medical malpractice which could not have
5 been discovered within the periods provided in this
6 section due to the latent onset of symptoms or because
7 medical technology was not sophisticated enough to
8 detect the result, then a minor shall have until two
9 years after discovery of the injury to commence an
10 action."

By BRAND of Benton

H-3418 FILED MARCH 22, 1995

Lot 3-27-95
(P.990)

HOUSE FILE 394

H-3441

- 1 Amend House File 394 as follows:
 2 1. Page 2, line 15, by inserting after the word
 3 "malpractice" the following: "occurring at birth".
 4 2. Page 2, line 22, by inserting after the word
 5 "malpractice" the following: "occurring at birth".

By HARPER of Black Hawk

H-3441 FILED MARCH 23, 1995

lost 3-27-95
(p. 988)

HOUSE FILE 394

H-3443

- 1 Amend House File 394 as follows:
 2 1. Page 2, line 24, by inserting after the word
 3 "action." the following: "If the medical malpractice
 4 occurs or is discovered after the minor's sixth
 5 birthday, the minor shall be subject to the
 6 limitations period contained in section 614.1,
 7 subsection 9."
 8 2. Title page, line 2, by striking the words
 9 "under six years of age".

By MORELAND of Wapello

H-3443 FILED MARCH 23, 1995

lost 3-27-95
(p. 990)

HOUSE FILE 394

H-3444

- 1 Amend House File 394 as follows:
 2 1. Page 2, by inserting after line 30 the
 3 following: "However, the restricted extension of the
 4 limitation period for bringing actions for medical
 5 malpractice on behalf of a minor shall not apply if a
 6 health care provider or another person modifies a
 7 medical record in an attempt to conceal medical
 8 malpractice, and the minor shall have one year from
 9 and after the termination of the minor's disability
 10 within which to commence an action."

By MORELAND of Wapello

H-3444 FILED MARCH 23, 1995

lost 3-27-95
(p. 992)

HOUSE FILE 394

H-3448

- 1 Amend House File 394 as follows:
 2 1. Page 2, line 30, by inserting after the word
 3 "care." the following: "The time for bringing a
 4 medical malpractice action on behalf of a minor shall
 5 be limited by this section or section 614.1,
 6 subsection 9, whichever is longer."
 7 2. Title page, line 2, by striking the words
 8 "under six years of age".

By MORELAND of Wapello

H-3448 FILED MARCH 23, 1995

lost 3-27-95
(p. 991)

HOUSE FILE 394

H-3452

- 1 Amend House File 394 as follows:
- 2 1. Page 2, by inserting after line 30 the
- 3 following:
- 4 "Sec. ____ . The commissioner of insurance shall
- 5 study the reasons for the unavailability of medical
- 6 malpractice liability insurance covering all acts or
- 7 omissions which may constitute medical malpractice
- 8 which occur during the period of time a policy is in
- 9 force. The study shall include an examination of
- 10 potential actions which could be pursued by the state
- 11 to assure the availability of medical malpractice
- 12 liability insurance. The commissioner shall report
- 13 the findings and conclusions of the study, including
- 14 recommendations for action, to the general assembly by
- 15 January 15, 1996."
- 16 2. By renumbering as necessary.

By McCOY of Polk
MORELAND of Wapello

H-3452 FILED MARCH 23, 1995

Nat Germane
Motion to Suspend Rules

3-27-95
(P. 994)

WVARCHITW

HOUSE FILE 394

H-3492

- 1 Amend the amendment, H-3417, to House File 394 as
- 2 follows:
- 3 1. Page 1, by striking lines 19 through 22.

By KREIMAN of Davis

H-3492 FILED MARCH 27, 1995

ADOPTED

(P. 995)

HOUSE FILE 394

H-3449

- 1 Amend House File 394 as follows:
- 2 1. Page 2, by inserting after line 30 the
- 3 following: "A minor whose cause of action is
- 4 extinguished by the expiration of the limitations
- 5 period in this section shall be immediately eligible
- 6 for medical assistance under chapter 249A."

By JOCHUM of Dubuque

H-3449 FILED MARCH 23, 1995

(P.993) *Not Serrano*
Motion to Suspend - Lost 3/27/95

HOUSE FILE 394

H-3450

- 1 Amend House File 394 as follows:
- 2 1. Page 2, by inserting after line 30 the
- 3 following: "A minor whose cause of action is
- 4 extinguished by the expiration of the limitations
- 5 period in this section shall not have a cause of
- 6 action against the minor's parent for failure to bring
- 7 an action on behalf of the minor in a timely fashion."

By BERNAU of Story

H-3450 FILED MARCH 23, 1995

WITHDRAWN
 3-27-95 (P.993)

HOUSE FILE 394

H-3451

- 1 Amend House File 394 as follows:
- 2 1. Page 2, by inserting after line 10 the
- 3 following:
- 4 "Sec. ____ . NEW SECTION. 507B.15 MEDICAL
- 5 MALPRACTICE POLICIES.
- 6 A person shall not offer an insurance policy
- 7 providing liability coverage for medical malpractice
- 8 unless the policy provides coverage for all acts or
- 9 omissions, which may constitute medical malpractice,
- 10 which occur during the period the policy is in force."
- 11 2. Title page, line 1, by inserting after the
- 12 word "to" the following: "medical malpractice
- 13 including the coverage of medical malpractice
- 14 liability insurance policies and".

By McCOY of Polk
MORELAND of Wapello

H-3451 FILED MARCH 23, 1995

Not Serrano
Motion to Suspend Rules Lost 3/27/95
 (P.987-988)

HSB 17

ECONOMIC DEVELOPMENT

SF/HE 394
HOUSE FILE

BY (PROPOSED COMMITTEE ON
ECONOMIC DEVELOPMENT BILL
BY CHAIRPERSON LARSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the statute of limitations for medical
2 malpractice actions regarding minors under six years of age.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

1 Section 1. Section 614.8, Code 1995, is amended to read as
2 follows:

3 614.8 MINORS AND MENTALLY ILL PERSONS.

4 The Other than an action by a minor or mentally ill person
5 brought for medical malpractice, the times limited for actions
6 herein, except those brought for penalties and forfeitures,
7 shall-be are extended in favor of ~~minors-and-mentally-ill~~
8 ~~persons~~ the minor or mentally ill person, so that they-shall
9 have the minor or mentally ill person has one year from and
10 after the termination of such disability within which to
11 commence ~~said~~ an action. The time limited for an action
12 brought for medical malpractice is extended in favor of a
13 minor less than six years of age so that the minor has until
14 the minor's eighth birthday to commence an action.

15 EXPLANATION

16 This bill provides that an action for medical malpractice
17 allegedly committed on a minor under age six must be commenced
18 prior to the minor's eighth birthday.

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35