

Proposed Changes To The New Jersey Legal Malpractice Statute of Limitations

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The bill entitled “Requires certain civil against licensed persons to be brought within two years” was originally introduced to the New Jersey Legislature in the Assembly 2010-2011 session as A3929 by Assemblymen Vincent Prieto, Charles Mainor and Assemblywoman Amy Handler on May 5, 2011. It was subsequently referred to the Assembly Regulated Professions Committee on December 8, 2011 whereby it was put to a vote where it passed 5-1 (1 not voting). The session then ended December 31, 2011 with the bill still in committee. The bill was re-introduced in the Assembly during the 2012-2013 session as A2553 on February 21, 2012, with Assemblyman Vincent Prieto as the primary sponsor. The Bill was then referred to the Assembly Judiciary Committee where it remains. Subsequently a parallel bill was introduced in the Senate, on October 1, 2012 as S2215, with Senator Stephen Sweeney as the primary sponsor whereby the bill was referred to the Senate Judiciary Committee where it remains.

If enacted, the statute of limitations to bring malpractice claims will be shortened from six years until two years. If passed, it will shorten the statute of limitations period for malpractice actions for certain licensed persons (accountants, architects, attorneys, dentists, engineers, physicians, podiatrists, chiropractors, registered professional nurse, health care facility, physical therapist, pharmacists, veterinarian, insurance provider, midwife, pharmacy practice site). The rationale is that malpractice should be viewed similarly to tort law, which also has a two year statute of limitation. Here, the two year period would commence after the cause of action has accrued – the same language as the current statute. This bill is the first of its kind to reach the judiciary committee.

As attorneys, the notion of a malpractice claim is a constant reminder that we must remain ethical and act in the best interest of our clients. Lessening the window of opportunity to bring a claim would hopefully decrease the cost of malpractice insurance and lower the overall number of claims brought against professionals, including attorneys. As insurance rates climb this would lessen the burden of carrying costs on large firms and solo practitioners, alike. If costs decrease, this could also have an impact on the hiring capabilities of firms across the state.

The bill as drafted also states “[a]ttorneys’ fees shall not be awarded in any action subject to the limitations period in this subsection, except where authorized by statute or the New Jersey Rules of Court.” This would overrule the decision in **Saffer v. Willoughby** which held that a prevailing plaintiff in legal malpractice cases can recover legal fees.

We will continue to monitor this bill as it goes through both the Senate and Assembly Judiciary Committees and, if passed, brought to a vote on the floor. This bill has some great significance in its implications for the legal profession.

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