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Proposed Bill in Missouri Senate to Lower Personal Injury Statute of Limitations to Two Years

Sarah Thompson*

Tort reform legislation is not a new concept in the United States. State legislatures have been passing tort reform laws for years.¹ They includes caps on noneconomic damages, attorney fee limits, amendment of rules for joint and several liability, and lowering of statutes of limitations.² A tort reform bill in the Missouri Senate would lower the current statute of limitations for personal injury claims, not including medical malpractice or wrongful death claims, to two years from the date of injury.³

Missouri's current statute of limitations for personal injury claims is five years from the date of injury.⁴ The Missouri legislature has attempted to pass similar bills every year since 2018 but has not yet succeeded.⁵ The 2018 bill attempted to lower the statute of limitations to three years and was still rejected.⁶

When determining how long statutes of limitations should be, there are competing interests to consider between plaintiffs seeking just compensation and defendants who need assurance that they won't be

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¹ Andrew Cook, *Tort Reform Update: Recently Enacted Legislative Reforms and State Court Challenges*, THE FEDERALIST SOCIETY (Jan. 10, 2013)

<https://fedsoc.org/commentary/publications/tort-reform-update-recently-enacted-legislative-reforms-and-state-court-challenges>.

² Michelle M. Mello et al., *Policy Experimentation with Administrative Compensation for Medical Injury: Issues Under State Constitutional Law*, 45 HARV. J. ON LEGIS. 59, 60 (2008).

³ S.B. 631, 101st Leg., 2d Reg. Sess. (Mo. 2022).

⁴ MO. REV. STAT. § 516.120 (2018).

⁵ Magdaline Duncan, *Bill Would Reduce Missourians' Time Frame for Personal Injury Lawsuits*, COLUMBIA MISSOURIAN (Feb. 7, 2018),

https://www.columbiamissourian.com/news/state_news/bill-would-reduce-missourians-time-frame-for-personal-injury-lawsuits/article_bd5fd528-0c5d-11e8-b1ab-03a107abf738.html (last visited Feb. 16, 2022).

⁶ *Id.*

sued years and years after an incident occurs.⁷ In addition to the competing interests of the parties to tort litigation, many tort reform supporters set out public interest factors to persuade legislatures to enact tort reform legislation.

Tort reform supporters claim shorter statutes of limitations can give potential defendants peace of mind in that a lawsuit can only be filed against them for a short time.⁸ With the passage of time before filing, the defendant's evidence can also deteriorate, tort reformers argue, giving an unfair advantage to plaintiffs who have spent years gathering and preserving evidence.⁹ Further, the more time passes from the incident to litigation, the more difficult it is to litigate, which increases the costs of litigation both to the parties and the legal system as a whole.¹⁰ Other incentives to adopt shorter statutes of limitations that are put forth are to reduce the overall volume of litigation, to lower insurance premiums, and to reduce the number of unmeritorious claims being filed with the courts.¹¹

Those who oppose tort reform argue that there is a strong public policy for deciding cases on the merits, not disposing of them on procedural grounds.¹² To deny injured plaintiffs recourse because of passage of time offends fundamental notions of fairness.¹³ Plaintiffs would not only carry the bodily injury but the costs of the medical expenses as well. If a plaintiff is severely injured, they may not even be thinking about consulting a lawyer or filing a claim before the two-year statute of limitations would bar their claim. Another point posed in opposition of this type of tort reform is that the barring enforcement of substantive law due to passage

⁷ See generally Tyler Ochoa et al., *The Puzzling Purpose of Statutes of Limitations*, 28 PAC. L. J. 453 (1997).

⁸ *Id.* at 456.

⁹ *Id.* at 472.

¹⁰ *Id.* at 480.

¹¹ *Id.* at 467, 495.

¹² *Id.* at 500.

¹³ *Id.* at 501.

of time “impairs the implementation of substantive law policy.”¹⁴ The law is in place to discourage certain kinds of conduct by allowing bad or negligent actors to be held liable for injuries they cause.

There are, of course, counter arguments for each of the above reasons to lower or to expand statutes of limitations. Currently, Missouri is on the longer end of statutes of limitations at five years.¹⁵ No other states have a five-year statute of limitations and only four have the longest statute of limitations at six years.¹⁶ Proponents of the bill claim that Missouri is behind in implementing tort reform measures since the majority of states have a two-year statute of limitations.¹⁷ They also insist that lowering the statute of limitations will make courts run more smoothly.¹⁸ Opponents of the bill say the shorter statute of limitations will actually cause more litigation because people are going to file suit to preserve the statute of limitations on a case that may have settled out of court with a longer statute period.¹⁹

In addition to all the above points when deciding if the statute of limitations should be lowered, the following hypotheticals may illuminate the importance of balancing the interests at stake.

First, consider that plaintiff Abby gets badly injured by a negligent driver,

¹⁴ *Id.* at 506

¹⁵ MO. REV. STAT. § 516.120 (2018).

¹⁶ Matthiesen, Wickert & Lehrer, S.C., *Statutes of Limitations for all 50 States* (Apr. 15, 2021), <https://www.mw1-law.com/wp-content/uploads/2013/03/statute-of-limitations-for-all-50-states.pdf> (last visited Feb. 16, 2022).

¹⁷ PJ Randhawa et al., *Imaging clinic shuts down after patients say their mammograms missed cancer*, KSDK (Jan. 12, 2022), https://www.ksdk.com/article/news/investigations/imaging-clinic-shuts-down-patients-say-mammograms-missed-cancer/63-499d0f2c-43e7-40e0-9d2c-37db3de480d5?fbclid=IwAR0_5ShWPjF1DQnVW9zhXqTLOBz6Nngkj82w5RdirskuEAHFgB12MwRV9oc.

¹⁸ Vic Faust, *Missouri Senate debates bill to reduce statute of limitations; how would that affect you?*, FOX 2 NOW (Jan. 12, 2022), <https://fox2now.com/legal-lens/missouri-senate-debates-bill-to-reduce-statute-of-limitations-how-would-that-affect-you/>.

¹⁹ Duncan, *supra* note 5.

needs surgery, and has months of recovery. Several months after the accident, because Abby has had more pressing issues to worry about, Abby files a claim with their automobile insurance. The insurance adjuster does not tell Abby about the two-year statute of limitations. Abby has submitted all of her medical bills to the adjuster who makes her an offer of less than the amount of the medical bills. Abby responds with a counteroffer, and the adjuster doesn't get back with her for a few weeks. This pattern continues on with low offers until the statute of limitations has passed. Abby now has no legal recourse to pursue a claim for damages.

Alternatively, consider a driver who was in a collision, and no claim was filed with their insurance company for four years and the statute of limitations is five years. Suddenly, the person they hit has filed a claim with the insurance company and a lawsuit with the court. The driver has not thought about that collision in a long time. The car was totaled, so they no longer have it; he has photos of it somewhere, but they might have been deleted when he heard nothing from his insurance company. The plaintiff has gathered evidence the entire time. The driver is now at a distinct disadvantage in this case and may not be able to effectively rebut the plaintiff's evidence.

Lastly, consider an injured plaintiff that first had physical therapy after their injury. They do that for a year and do not recover. The only other option is surgery, but there have to be consultations, which take months to get into. Then the surgery has to be scheduled, then after the surgery they need physical therapy again. This plaintiff knew that getting compensation for their injuries was going to be more than they could handle, so they get an attorney who tells them the statute of limitations is two years.

The plaintiff was hit by a tractor-trailer, so the policy limits of the insurance are likely very large, and they will need to use the full amount of the medical bills to negotiate a settlement. The attorney will then file a petition with the appropriate court to preserve the plaintiff's rights to sue

the truck driver. The plaintiff will now have to pay court fees and, depending on the contingency fee contract, the attorney's fees may have increased. This is not to mention the additional time constraints if it is a diversity action and gets removed to federal court.

In sum, when considering the appropriate length of statutes of limitations, legislatures should take a close look at the competing interests and potential outcomes of higher and lower statutes of limitations. The Missouri legislature will consider a reduction in the personal injury statute of limitations for a fifth time this term and perhaps every year until tort reformers get what they want. If the bill passes, Missourians will have to wait and see if the effects from lowering the statutes are what the proponents of the bill say they will be. If they are, are these benefits enough to balance the injured party's interests that are reduced by a shorter statute of limitations?

Edited by Alex Beezley