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BILL ANALYSIS

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Senate Bill 990 (as enrolled)  
Sponsor: Senator Michael D. Bishop  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 87 of 2004**

Date Completed: 2-25-05

**RATIONALE**

Under the Revised Judicature Act, a civil lawsuit must be brought within a certain period of time after the events giving rise to the action occurred (that is, after the cause of action arose). If a suit is not brought within the prescribed "statute of limitations" (or "statute of repose"), it is subject to dismissal by the court. Section 5856 of the Act specifies circumstances under which the statute of limitations is tolled, or suspended; that is, if one of the conditions applies, the clock will stop running. This section was the subject of a July 2003 Michigan Supreme Court decision (*Gladych v New Family Homes, Inc.*, 468 Mich 594), which overruled a 1971 decision of the Court interpreting the same language (*Buscaino v Rhodes*, 385 Mich 474). (The decisions are described in **BACKGROUND**, below.) In particular, the Courts addressed provisions tolling the statute of limitations when a complaint is filed and the defendant is served with a copy of the summons and complaint. Although the earlier ruling construed the statute in a way that did not strictly conform to its language, this decision--combined with a court rule setting a time limit on the service of a summons--resolved practical controversies over the tolling of the statute of limitations. When the Court reversed *Buscaino* in 2003, however, it became apparent that the disputes that led to the 1971 decision would arise again. It was suggested that a statutory amendment was needed to settle the matter.

**CONTENT**

The bill amended Section 5856 of the Revised Judicature Act to provide that the

statute of limitations is tolled at the time the complaint is filed if a copy of the summons and complaint is served on the defendant within the time set forth in the Supreme Court rules. Previously, the Act provided that the statute of limitations was tolled when the complaint was filed and a copy of the summons and complaint was served on the defendant.

The bill also deleted a provision that tolled the statute of limitations for up to 90 days when a complaint was filed and a copy of the summons and complaint was placed in the hands of an officer for immediate service.

The bill does not apply to a cause of action if the statute of limitation or repose for that cause of action expired before the bill's effective date. Otherwise, the bill applies to actions filed on or after its effective date. The bill took effect on April 22, 2004.

(The Act also provides that the statute of limitations is tolled at the time jurisdiction is otherwise acquired over the defendant; and at the time notice is given in compliance with the applicable notice period under MCL 600.2912b (which applies to medical malpractice actions), if during that period a claim would be barred by the statute of limitations. The bill did not amend these provisions.)

MCL 600.5856

**BACKGROUND**

In *Buscaino v Rhodes*, the Michigan Supreme Court in 1971 addressed a

situation in which, six days before the statute of limitations expired, the plaintiffs filed a complaint and placed a copy of the summons and complaint in the hands of a deputy sheriff for service. The sheriff was told not to serve the defendants until one of them returned to the State, which occurred approximately two months later. Although the trial court and the Court of Appeals held that the statute of limitations had *not* been tolled, the Supreme Court reversed those decisions. The Supreme Court found that Section 5856 conflicted with a court rule stating that an action is commenced by the filing of a complaint. (The rule at the time was GCR 101. The language presently is found in MCR 2.101(B).) According to the Court, once an action was commenced within the statutory period of limitations, the issue of "tolling" did not arise. "It is only when the action is not commenced within the statutory period—as determined by consulting the date of claim, the date of filing the complaint and a calendar...that tolling comes into play." The Court further found that Section 5856 had replaced an earlier statute that dealt only with prior lawsuits between the parties in which the merits of the action had not been adjudicated.

According to the Court, statutes of limitations were considered to be procedural, rather than substantive. Since the Supreme Court has the constitutional power to make procedure in all courts of the State, the *Buscaino* Court held that the court rule, rather than the statute, was controlling. Essentially, then, the Court decided that merely filing the complaint stopped the statute of limitations from running with respect to the action begun with the complaint, and Section 5856 applied to tolling the statute of limitations only with respect to a subsequent action if an initial action was dismissed.

In 2003, the Supreme Court in *Gladych v New Family Homes, Inc.* stated that the interpretation of Section 5856 in *Buscaino* "...is contrary to the plain language of the statute and should be repudiated". The Court examined both Section 5856 and Section 5805(1) of the Revised Judicature Act. Section 5805(1) provides, "A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff..., the action is commenced

within the periods of time prescribed by this section." According to the Court, if the mere filing of a complaint under Section 5805(1) made the statute of limitations irrelevant, the provisions of Section 5856 that effectuate the tolling would be unnecessary. "Applying § 5856 to all claims as required by the statutory language gives full effect to both the threshold requirement of § 5805 and the tolling requirements of § 5856."

According to the Court, "if one of the four enumerated actions [in § 5856] does not occur, the statutes of limitations or repose are *not* tolled. Nothing in the statutory language permits limiting § 5856 to actions in which a prior suit was not adjudicated on the merits."

Regarding the conflict between the court rule and the statute, the Court stated that it had "...since clarified the distinction between statutes regarding matters of 'practice and procedure' and those regarding substantive law...If the statute concerns a matter that is purely procedural and pertains only to the administration of the courts, the court rule would control." The Court held that statutes regarding periods of limitations are substantive in nature. "Therefore,...it is clear that, to the extent § 5856 enacts additional requirements regarding the tolling of the statute of limitations, the statute would supercede the court rule."

The Court concluded, "We hold that the unambiguous language of §§ 5805 and 5856 provides that the filing of a complaint alone does not toll the running of the limitations period. In addition to filing the complaint, one must also comply with the requirements of § 5856 in order to toll the limitations period." The Court gave its decision limited retroactive effect, applying it only to those cases in which this specific issue had been raised and preserved. In all other cases, the decision was given prospective application, effective September 1, 2003.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Supreme Court's decision in *Gladych* changed the way the statutes of limitations were applied in this State for 30 years.

Evidently, after Section 5856 originally was enacted, there was considerable litigation over whether a defendant actually had been “served” with a complaint before the statute of limitations had run, whether a complaint had been placed in the hands of an officer for immediate service, and how the 90-day tolling period was to be calculated. By holding that merely filing a complaint stopped the statute of limitations from running, the *Buscaino* Court provided a simple method for determining whether the statute of limitations barred a claim.

Although the 1971 decision left open the possibility for a defendant to be served long after the complaint was filed, court rules promulgated by the Supreme Court require a complaint to be served within a fixed period of time after it is filed. Specifically, under MCR 2.102(D), a summons expires 91 days after the complaint is filed, although the judge may order a second summons to be issued for a definite time not exceeding one year after the complaint is filed. Therefore, plaintiffs knew that if they filed a complaint before the period of limitations expired, the action would not be dismissed as long as the defendant was served within 91 days.

By overruling *Buscaino*, however, the Supreme Court reopened the door to disputes and litigation over when the statute of limitations is tolled. Senate Bill 990 essentially restored the rules that applied before the 2003 decision, by making it clear that a defendant must be served within the time prescribed by court rule.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.