

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 453

(Senators Stone and Jacobs)

Judicial Proceedings

Judiciary

**Wrongful Death and Survival Causes of Action - Criminal Homicide - Time
Limits for Bringing Civil Action**

This bill delays the accrual of the cause of action in civil wrongful death and survival actions arising from a criminal homicide. If the conduct of an adverse party or an accessory or accomplice of an adverse party prevents a party from acquiring knowledge of a cause of action or the identity of the person whose wrongful act contributed to the homicide, the statutory period of limitations must begin to run at the time the party discovered the homicide and the identity of the person who contributed to the homicide or the time at which the party should have discovered this information through ordinary diligence. A civil wrongful death or survival action subject to the bill's provisions must be filed within three years after the cause of action accrues.

The bill applies retroactively to any cause of action that is not barred by application of any time condition or limit before October 1, 2012, but may not revive a cause of action barred before October 1, 2012.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect State finances.

Local Effect: The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a presumption that a party exercising ordinary diligence should have discovered the identity of the person who contributed to the homicide after (1) a charging document is filed against the person alleged to have participated in the homicide; and (2) the charging document is unsealed and available to the public.

Current Law/Background: A survival action is a lawsuit brought on behalf of a decedent's estate for injuries or damages sustained by the decedent prior to his or her death – damages that the decedent would have been able to recover if he/she had survived. In contrast, a wrongful death action is a lawsuit brought by a decedent's *survivors* for their damages resulting from the wrongful act that caused the decedent's death.

A civil wrongful death or survival action must be filed within three years after the death of the injured person. However if the injured person died as the result of a disease caused by exposure to any toxic substance in the person's workplace that the person contracted in the course of employment, the action must be filed within 10 years of the time of death or within 3 years of the date when the cause of death was discovered, whichever is shorter.

There are several provisions in statute that specify when the statutes of limitations for particular causes of action begin to accrue and make accommodations for specific circumstances. For instance, if the fraud of an adverse party keeps a party from acquiring knowledge of a cause of action, the cause of action begins to accrue at the time at which the party discovered the fraud or should have discovered the fraud by the exercise of ordinary diligence.

Additional Information

Prior Introductions: None.

Cross File: HB 707 (Delegate Valentino-Smith, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2012
ncs/kdm

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