

MAINE STATE LEGISLATURE

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L.D. 1812

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M I N O R I T Y
J U D I C I A R Y

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1345, L.D. 1812, Bill, "An Act Amending the Discovery Rule for Damage Resulting from the Placement of Foreign Objects in the Human Body"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 24 MRSA §2902, as repealed and replaced by PL 1985, c. 804, §§13 and 22, is repealed and the following enacted to read:

§2902. Statute of limitations for health care providers and health care practitioners

1. Statute of limitations. Actions for professional negligence must be commenced within 3 years after the cause of action accrues.

2. Statute of limitations for minors. Notwithstanding the provisions of Title 14, section 853, relating to minority, actions for professional negligence by a minor must be commenced within 6 years after the cause of action accrues or within 3 years after the minor reaches the age of majority, whichever first occurs.

If the provision in this section reducing the time allowed for a minor to bring a claim is found to be void or otherwise

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2 invalidated by a court of proper jurisdiction, the statute of
3 limitations for professional negligence is 2 years after the
4 cause of action accrues, except that a claim brought under the
5 3-year statute may not be extinguished by the operation of this
6 paragraph.

7 3. Cause of action accrues. For the purposes of this
8 section, a cause of action accrues on the date of the act or
9 omission giving rise to the injury.

10 4. Discovery rule for foreign objects. This section does
11 not apply where the cause of action is based upon the leaving of
12 a foreign object in the body, in which case the cause of action
13 accrues when the plaintiff discovers or reasonably should have
14 discovered the harm. For the purposes of this section, the term
15 "foreign object" does not include a chemical compound, prosthetic
16 aid or object intentionally implanted or permitted to remain in
17 the patient's body as a part of the health care or professional
18 services, except when the provider of the health care or
19 professional services negligently failed to comply with the
20 requirement to obtain the informed consent of the patient, using
21 the standard of care applicable at the time of the decision to
22 leave the foreign object in the plaintiff's body.'

23 Further amend the bill by inserting at the end before the
24 statement of fact the following:

25 **FISCAL NOTE**

26 The change of the statute of limitations for certain filings
27 may increase the number of cases in the court system. The
28 additional workload and administrative costs associated with the
29 minimal number of new cases filed can be absorbed by the Judicial
30 Department utilizing existing budgeted resources.'

31 **STATEMENT OF FACT**

32 This amendment replaces the bill. It reformats the current
33 law to make it easier to read and retains current law regarding
34 the definition of foreign objects and the applicable statute of
35 limitations except in specific cases. Those cases are when the
36 provider of the health care or professional services was
37 negligent in informing the patient of the risks involved. A
38 provider's negligence in informing a patient of the risks is
39 determined by the information provided at the time of the
40 decision to leave the implant or other foreign object in the body

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2 of the patient as judged against the standard of care relating to
the provision of information in existence at that same time.

4 This change in the law is intended to be prospective only.

6 The amendment includes a fiscal note.

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