

# MAINE STATE LEGISLATURE

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DATE: *March 18, 1998*

(Filing No. S- 541)

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STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 261, L.D. 869, Bill, "An Act to Amend the Statute of Limitations for Health Care Providers and Health Care Practitioners to Include a Discovery Rule"

Amend the bill by striking out everything after the enacting clause and before the summary 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'Sec. 1. 24 MRSA §2902, as repealed and replaced by PL 1985, c. 804, §§13 and 22, is repealed and the following enacted in its place:

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

1. Discovery. Except as provided in subsections 2 and 3, an action for professional negligence must be commenced within 3 years after the cause of action accrues, but not more than 6 years after the date of the act or omission giving rise to the injury. For the purposes of this subsection, a cause of action accrues when the plaintiff discovers or reasonably should have discovered the injury and its causal relationship to the act or omission of which the plaintiff complains.

2. Foreign objects; 3 years after discovery. When the cause of action is based upon the leaving of a foreign object in the body, an action for professional negligence must be commenced within 3 years after the cause of action accrues. For the purposes of this subsection, the cause of action accrues when the plaintiff discovers or reasonably should have discovered the harm. For the purposes of this section, the term "foreign object" does not include a chemical compound, prosthetic aid or

2 object intentionally implanted or permitted to remain in the  
3 patient's body as a part of the health care or professional  
4 services.

5 3. Minors. Notwithstanding the provisions of Title 14,  
6 section 853 relating to minority, actions by a minor for  
7 professional negligence must be commenced within 6 years after  
8 the cause of action accrues or within 3 years after the minor  
9 reaches the age of majority, whichever first occurs. For the  
10 purposes of this subsection, the cause of action accrues on the  
11 date of the act or omission giving rise to the injury.'

12 Further amend the bill by inserting at the end before the  
13 summary the following:

14  
15 **FISCAL NOTE**

16  
17 This bill may increase the number of civil suits filed in  
18 the court system. The additional workload and administrative  
19 costs associated with the minimal number of new cases filed can  
20 be absorbed within the budgeted resources of the Judicial  
21 Department. The collection of additional filing fees may also  
22 increase General Fund revenue by minor amounts.'

23  
24  
25 **SUMMARY**

26  
27 This amendment replaces the bill. It creates a modified  
28 discovery rule for medical malpractice actions, called actions  
29 for professional negligence. Under this statute of limitations,  
30 an action for professional negligence must be brought within 3  
31 years after the cause of action accrues, but not more than 6  
32 years after the date of the act or omission of the health care  
33 provider or the health care practitioner that caused the injury.  
34 The cause of action accrues when the plaintiff discovers or  
35 reasonably should have discovered the injury and the fact that  
36 the injury was caused by the act or omission of the health care  
37 provider or the health care practitioner. The 6-year maximum  
38 limitation applies in all cases other than causes of action  
39 related to foreign objects and cases in which a minor is the  
40 injured party.

41  
42 The current statute of limitations that applies to actions  
43 based on the leaving of a foreign object in the body is not  
44 changed.

45  
46 The current statute of limitations that applies to minors is  
47 not changed.

48  
49 The amendment also adds a fiscal note to the bill.