

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1471

H.P. 1049

House of Representatives, February 23, 1999

An Act to Amend the Laws Governing Wrongful Death.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MACK of Standish. (By Request)

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 24 MRSA §2902**, as repealed and replaced by PL 1985,
c. 804, §§13 and 22, is amended to read:

6 **§2902. Statute of limitations for health care providers and**
8 **health care practitioners**

10 ~~Actions Except as provided in section 2902-B, actions~~ for
professional negligence shall ~~shall~~ **must** be commenced within 3 years
12 after the cause of action accrues. For the purposes of this
section, a cause of action accrues on the date of the act or
14 omission giving rise to the injury. Notwithstanding the
provisions of Title 14, section 853, relating to minority,
actions for professional negligence by a minor shall ~~shall~~ **must**
16 be commenced within 6 years after the cause of action accrues or
within 3 years after the minor reaches the age of majority,
18 whichever first occurs. This section does not apply where ~~when~~
the cause of action is based upon the leaving of a foreign object
20 in the body, in which case the cause of action shall--~~accrue~~
accrues when the plaintiff discovers or reasonably should have
22 discovered the harm. For the purposes of this section, the term
"foreign object" does not include a chemical compound,
24 prosthetic aid or object intentionally implanted or permitted to
remain in the patient's body as a part of the health care or
26 professional services.

28 If the provision in this section reducing the time allowed
for a minor to bring a claim is found to be void or otherwise
30 invalidated by a court of proper jurisdiction, then the statute
of limitations for professional negligence shall--~~be~~ **is** 2 years
32 after the cause of action accrues, except that ~~no~~ **a** claim brought
under the 3-year statute may ~~not~~ **be** extinguished by the operation
34 of this paragraph.

36 **Sec. 2. 24 MRSA §2902-B** is enacted to read:

38 **§2902-B. Statute of limitation and other procedures in wrongful**
40 **death action**

42 In an action for professional negligence for wrongful death,
the action may be commenced within the limitation period set
44 forth in Title 18-A, section 2-804, subsection (b) if the death
occurred within 3 years after the date of the act or omission
46 giving rise to the death. In such an action, all provisions of
Title 18-A, section 2-804 apply.

48 **SUMMARY**

50 Under the Maine Health Security Act, the current statute of
52 limitations for a commencement of a lawsuit based on the

2 professional negligence of a health care provider or practitioner
is 3 years from the date of the alleged negligent act, whether
4 that act is alleged to have caused an injury or death. This bill
permits an extension of that limitation period in certain
6 circumstances. When the lawsuit results from an alleged wrongful
death, the limitation period will be 2 years from the date of
8 death, as currently provided under the Maine Probate Code, if the
death occurred within the 3-year period provided under the Maine
10 Health Security Act. In such a lawsuit, all other provisions of
the Maine Probate Code's wrongful death statute, including caps
on the amount of damages recoverable, will apply.