

Testimony before House Judiciary Committee
In support of House Bill 2333
On behalf of the OSB Procedure and Practice Committee
February 4, 2015

Chair Barker and members of the committee:

My name is Erin Olson. I am an attorney in private practice, and I am here today on behalf of the Oregon State Bar's Procedure and Practice Committee. This committee is charged with monitoring changes to civil procedure and civil law in general and looking for opportunities to improve the law in Oregon. Currently the committee is made up of 15 members representing a wide variety of attorneys from throughout Oregon.

This bill stems from a problem that was created by the passage of HB 2366 in 2007, which was a bill proposed by the Procedure and Practice Committee. An unintended consequence of HB 2366 has been a finding by at least two circuit courts that ORS 12.160, the minority tolling statute, is inapplicable to claims against public bodies, resulting in the dismissal of at least two lawsuits brought against the State of Oregon on behalf of injured children.

The Origin of the Problem

In 2006, the Procedure and Practice Committee proposed what later became HB 2366 (2007). The purpose of that proposal was to address an inconsistency between the statutes of limitations for claims of parents and children arising from the same incident. Under the appellate courts' interpretation of then-existing law, ORS 12.160 acted to toll statutes of limitation for injured minors, including claims mentioned in the Oregon Tort Claims Act's statute of limitations, ORS 30.275(9). However, if the minor's parent suffered some economic loss as a result of the child's injury (for example, for payment the minor's medical bills), the parents' claim would be subject to the normal two year statute of limitations without benefit of the minority tolling statute.

The Procedures and Practice Committee proposed HB 2366 to address this discrepancy, but the language of the bill was amended by Legislative Counsel in a seemingly innocuous way: the proposed amendment to ORS 30.275 was changed from "an action **mentioned in** ORS 12.010 to 12.050, 12.070 to 12.250 and 12.276" to "an action that is **subject to**" the statutes of limitation in these various statutes. From the legislative history of HB 2366, it is apparent that no one advocating for the bill considered this change to be substantive, and the legislature never even discussed the wording change.

Since that time, in at least two suits against state governmental entities, the defendants have successfully argued at the trial court level that the two-word change from "mentioned in" to "subject to" has rendered ORS 12.160 inapplicable to claims brought by minors under the Oregon Tort Claims Act. The Procedure and Practice Committee never intended that the claims of children injured by governmental actors should be treated differently than those of children injured by non-governmental actors.

What the Bill Does

HB 2333 simply reverts the language in ORS 12.160 back to the "mentioned in" phrasing used pre-2007.

I appreciate the change to talk to you today, and I'd happy to answer any questions that you might have.