

SB 233 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/19, 3/25, 3/31

WHAT THE MEASURE DOES:

The measure extends the statute of ultimate repose for medical malpractice claims to ten years, from five years. The measure applies to claims arising before, on, or after the measure's effective date. Declares emergency, effective on passage.

FISCAL: Has minimal fiscal impact.

REVENUE: No revenue impact.

ISSUES DISCUSSED:

- Other states' limitations on medical malpractice claims
- How many claims have been barred by the statute of ultimate repose
- Potential impacts on malpractice insurance
- 1995 bill that permitted a special cause of action for a sidesaddle gas tank explosion

EFFECT OF AMENDMENT:

-1 The amendment replaces the measure and allows a person to bring a cause of action within one year of the measure's effective date, for claims arising from or connected to medical or surgical treatment, omission or operation in the removal of a hernia mesh, if the date of the hernia mesh removal occurred on or after January 1, 2018 and before January 1, 2019. The amendment does apply to any action settled or adjudicated before the effective date. Takes effect on the 91st day following adjournment sine die.

FISCAL: Has minimal fiscal impact.

REVENUE: No revenue impact.

BACKGROUND:

The statute of limitations for medical malpractice is two years from the date the injury is first discovered or in the reasonable exercise of care should have been discovered. ORS 12.110 (4). Discovery of a claim is when plaintiff knows or should have known the existence of three elements: (1) the plaintiff suffered harm; (2) the harm was caused by the defendant's acts; and (3) the defendant's acts were tortious. *Gaston v. Parsons*, 318 Or. 247, 255 (1994); *Greene v. Legacy Emanuel Hosp. and Health Care Center*, 335 Or. 115 (2002). A statute of ultimate repose (S.O.U.R.) cuts off the right action by a date certain regardless of when the plaintiff discovered the claim, with some exceptions. For medical malpractice, the statute of repose is five years, unless fraud, deceit or misleading representation has caused the plaintiff to not file an action within that time; in such a case the plaintiff has an additional two years from the discovery of the fraud, deceit or misleading representation. General negligence claims must be filed within two years and have a ten-year statute of repose. ORS 12.115.