

SB 233 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Tisha Pascone, LPRO Analyst

Meeting Dates: 5/19

WHAT THE MEASURE DOES:

The measure 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 in 2018. The measure does not revive or apply to any action settled or adjudicated before the measure's effective date, and it declares an emergency, effective on passage.

FISCAL: Has minimal fiscal impact

REVENUE: No revenue impact

SENATE VOTE: Ayes, 25; Nays, 4

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

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 occurs when a 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 of action by a date certain regardless of when the plaintiff discovered the claim, with some exceptions. For medical malpractice, the statute of ultimate 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 10-year statute of repose. ORS 12.115.

Mr. Jim Evangelista, the founder and operator of the non-profit Reality Kitchen, testified before the Senate Committee on Judiciary regarding his personal medical injuries that resulted in the introduction of Senate Bill 233. The bill originally sought to extend the statute of ultimate repose to 10 years for all medical malpractice claims. SB 233 was amended to instead allow a narrow exception to the statute of ultimate repose for persons who suffered injuries from medical negligence related to a hernia mesh removal performed in 2018. The Legislature enacted a similarly narrow right of action in 1995 with [Senate Bill 477](#) (ORS 12.278). It created a special products liability cause of action against truck manufactures for injuries resulting from a sidesaddle gas tank explosion, with a statute of limitations of three years instead of the general two-year limitation.