

**SB 233 A STAFF MEASURE SUMMARY****Carrier:** Sen. Manning Jr**Senate Committee On Judiciary****Action Date:** 03/31/25**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 6-0-0-0**Yeas:** 6 - Broadman, Gelser Blouin, Manning Jr, McLane, Prozanski, Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Tisha Pascone, LPRO Analyst**Meeting Dates:** 3/19, 3/25, 3/31**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, if the date of the hernia mesh removal occurred on or after January 1, 2018, and before January 1, 2019. The measure does apply to any action settled or adjudicated before the effective date. The measure declares an emergency and takes effect on its passage.

**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
- Particulars of a 2018 medical procedure that prompted the bill
- [Senate Bill 477](#) (1995) permitted a special cause of action for a sidesaddle gas tank explosion

**EFFECT OF AMENDMENT:**

The amendment replaced the measure.

**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 of 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 10-year statute of repose. ORS 12.115.