



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 549

H.P. 354

House of Representatives, February 9, 2023

**An Act Regarding a Discovery Rule for the Statute of Limitations
for Cases of Medical Negligence**

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative MOONEN of Portland.
Cosponsored by Representatives: BOYER of Poland, GATTINE of Westbrook, GRAMLICH
of Old Orchard Beach, RECKITT of South Portland, SHEEHAN of Biddeford, Senator:
BAILEY of York.

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

2 **Sec. 1. 24 MRSA §2902**, as amended by PL 2013, c. 329, §2, is further amended
3 by amending the section headnote to read:

4 **§2902. Statute of limitations for health care providers and health care practitioners**
5 **~~excluding claims based on sexual acts~~**

6 **Sec. 2. 24 MRSA §2902, first ¶**, as amended by PL 2013, c. 329, §2, is further
7 amended to read:

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

21 **SUMMARY**

22 Under current law, the statute of limitations on a medical malpractice claim begins to
23 run on the date of the act or omission that gave rise to the injury, unless the medical
24 malpractice claim is based on the leaving of a foreign object in the body. The statute of
25 limitations does not begin to run on a medical malpractice claim based on the leaving of a
26 foreign object in the body until the plaintiff discovers or reasonably should have discovered
27 the harm.

28 This bill provides that the statute of limitations does not begin to run on any medical
29 malpractice claim, regardless of whether the claim is based on the leaving of a foreign
30 object in the body, until the plaintiff discovers or reasonably should have discovered the
31 harm.

32 The bill also makes a technical change to remove an obsolete cross-reference in the
33 law.