



**S.B. 142**

124th General Assembly  
(As Introduced)

**Sen. Ryan**

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**BILL SUMMARY**

- Provides that if a person with a claim for malpractice, other than for medical, dental, optometric, or chiropractic malpractice, cannot bring a court action due to a disability, the action may be commenced at any time within two years after the disability is removed.
- Increases to two years the statute of limitations for claims of medical, dental, optometric, or chiropractic malpractice and provides that if a person cannot bring an action on such a claim due to disability the action may be brought within one year of removal of the disability.
- Eliminates a statutory provision under which an action on a claim of medical, dental, optometric, or chiropractic malpractice must in most cases be brought not later than four years after occurrence of the action or omission on which the claim is based.

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**BACKGROUND**

The bill deals with time limits on actions for malpractice by extending the statute of limitations and eliminating a statute of repose. These terms are not defined in the bill, but a standard legal reference, Black's Law Dictionary, defines them as follows:

Malpractice--an "instance of negligence or incompetence on the part of a professional."<sup>1</sup>

Statute of limitations--a "statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or

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<sup>1</sup> *Black's Law Dictionary 971 (7th ed. 1999).*

was discovered).<sup>2</sup> For example, in a medical malpractice case, the statute of limitations begins to run when the injury occurs or is discovered, regardless of when the act or omission precipitating the injury occurred.

Statute of repose--a "statute that bars a suit a fixed number of years after the defendant acts in some way . . . even if this period ends before the plaintiff has suffered any injury."<sup>3</sup> The statute of repose is based on the act or omission that caused the injury, and therefore begins to run when that act or omission occurred regardless of when the plaintiff incurs or discovers the injury.

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## **CONTENT AND OPERATION**

### **Malpractice claims accruing during a period of disability**

(sec. 2305.11(A))

Under Ohio statutes, a person may have a limited period of time within which to bring a civil action for certain losses or injuries. This statute of limitations may be suspended (tolled) while the person is under a disability.<sup>4</sup> An action for malpractice, other than an action on a medical, dental, optometric, or chiropractic claim, must be brought within one year from the date of the injury or loss that is the basis of the action.

The bill specifies that if a claim for malpractice, other than for medical, dental, optometric, or chiropractic malpractice, accrues while the potential claimant cannot commence an action due to a disability, an action may be commenced within two years after removal of the disability.

### **Claims for medical, dental, optometric, and chiropractic malpractice**

#### **Statute of limitations**

(sec. 2305.11(B)(1) to (3))

Under current law, an action for medical, dental, optometric, or chiropractic malpractice must be commenced within one year after occurrence of the act or omission constituting the alleged basis of the claim. This period may be extended

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<sup>2</sup> *Id.* at 1422.

<sup>3</sup> *Id.* at 1423.

<sup>4</sup> A disability exists with regard to a person when the person is a minor; a court determines that the person is of unsound mind; or the person is confined to an institution with a condition that has rendered the person of unsound mind (sec. 2305.16).

if a potential claimant files written notice before the statute of limitations expires with the person who is the subject of the claim that action may be commenced against the person notified at any time within 180 days after the notice is given.

The bill extends the statute of limitations to two years from the date the injury or loss constituting the alleged basis of the medical, dental, optometric, or chiropractic malpractice claim occurs or is discovered.

**Claims accruing during period of disability**

(sec. 2305.11(B)(3))

The bill specifies that if a medical, dental, optometric, or chiropractic claim accrues and the person who might commence a legal action cannot do so due to a disability, an action may be commenced within one year after the removal of the disability.

**Statute of repose**

(current sec. 2305.11(B))

Under current law, a cause of action for medical, dental, optometric, or chiropractic malpractice must be filed within four years of the occurrence of the alleged malpractice, unless the potential claimant is under a disability. The bill eliminates this provision, which is known as a statute of repose. Therefore, under the bill, the only limitation on when an action may be commenced is the statute of limitations described above.

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**COMMENT**

**Technical changes to Revised Code section 2305.11**

Ohio Revised Code section 2305.11, is presented in this bill as a newly enacted section of law to create one harmonized version of the section. A number of the existing provisions of this section are similar to those in the bill, despite their appearance as new language. All differences between existing versions and the bill are noted in this analysis.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced S0142-I.124/jc	06-28-01	p. 785

