

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass the A-Engrossed Measure
Vote: 3 - 2 - 0
Yeas: Prozanski, Walker, Burdick
Nays: Beyer, Kruse
Exc.: 0
Prepared By: Matt Kalmanson, Counsel
Meeting Dates: 5/29

WHAT THE MEASURE DOES: Establishes four-year statute of limitations in product liability or negligence actions for injuries, and six-year statute of limitations in actions for death, based on the use of a “COX-2 inhibitor.” Establishes that the statute of limitations begins to run when the plaintiff discovers, or should have discovered, the causal relationship between the injury and the product, or the causal relationship between the injury and the conduct of the defendant. Establishes that a civil action for injury or death resulting from the use of a COX-2 inhibitor is not subject to any statute of ultimate repose. Applies to causes of action arising on or before January 1, 2007.

ISSUES DISCUSSED:

- Statutes of limitation and the “discovery rule”
- *Gladhart v. Oregon Vineyard Supply Co.*, 332 Or 226 (2001)
- The legislative response to the *Gladhart* decision
- Actions against pharmaceutical companies that manufacture Vioxx and Celebrex
- Victims without recourse due to the *Gladhart* decision

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: In 2001, the Oregon Supreme Court held that the two-year statute of limitations in a product liability action begins to run when a plaintiff is injured, irrespective of when the plaintiff discovers the connection between the injury and the defendant. *See Gladhart v. Oregon Vineyard Supply Co.*, 332 Or 226 (2001). The legislature enacted a “discovery rule” in 2003, providing in ORS 30.905 that plaintiffs must bring their lawsuit within two years of the date that the plaintiff discovers, or should have discovered, the injury, the relationship between the injury and the product, or the relationship between the injury and the conduct of the defendant. However, the legislature made the discovery rule applicable only to injuries that occurred on or after January 1, 2004. Thus, the statute of limitations for a plaintiff who was injured in 2003 expired in 2005, even if the plaintiff did not discover the connection between the injury and the defendant until 2006. HB 2448 A would enact a discovery rule and extend the statute of limitations for persons who were allegedly injured or killed by a “COX-2 inhibitor,” (e.g., Vioxx and Celebrex), in order to provide a cause of action for persons whose claims were extinguished because they were injured or killed after the Supreme Court’s ruling in *Gladhart* but before the Legislature’s fix in 2004.