

House Bill 2709

Sponsored by COMMITTEE ON CONSUMER PROTECTION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes statute of ultimate repose for causes of action arising out of certain services relating to construction, architecture, landscape architecture and engineering. Provides that action must be brought no later than 10 years after act or omission complained of, instead of 10 years after substantial completion or abandonment of improvement to real property.

A BILL FOR AN ACT

1
2 Relating to limitation of actions; creating new provisions; and amending ORS 12.135 and 279C.465.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 12.135 is amended to read:

5 12.135. (1) An action against a person, whether in contract, tort or otherwise, arising from
6 *[such]* **the** person having performed the construction, alteration or repair of *[any]* **an** improvement
7 to real property or the supervision or inspection thereof, or from *[such]* **the** person having furnished
8 the design, planning, surveying, architectural or engineering services for *[such]* **an** improvement **to**
9 **real property**, *[shall]* **must** be commenced within the applicable period of limitation otherwise es-
10 tablished by law; but in any event such action *[shall]* **must** be commenced within 10 years *[from*
11 *substantial completion or abandonment of such construction, alteration or repair of the improvement to*
12 *real property]* **after the act or omission complained of.**

13 (2) Notwithstanding subsection (1) of this section, an action against a person for the practice
14 of architecture, as defined in ORS 671.010, the practice of landscape architecture, as defined in ORS
15 671.310, or the practice of engineering, as defined in ORS 672.005, to recover damages for injury to
16 a person, property or to any interest in property, including damages for delay or economic loss, re-
17 gardless of legal theory, arising from the construction, alteration or repair of any improvement to
18 real property shall be commenced within two years from the date the injury or damage is first dis-
19 covered or in the exercise of reasonable care should have been discovered; but in any event the
20 action shall be commenced within 10 years *[from substantial completion or abandonment of the con-*
21 *struction, alteration or repair]* **after the act or omission complained of.**

22 *[(3) For purposes of this section, "substantial completion" means the date when the contractee ac-*
23 *cepts in writing the construction, alteration or repair of the improvement to real property or any des-*
24 *ignated portion thereof as having reached that state of completion when it may be used or occupied for*
25 *its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed*
26 *construction, alteration or repair of such improvement by the contractee.]*

27 *[(4) For the purposes of this section, an improvement to real property shall be considered aban-*
28 *doned on the same date that the improvement is considered abandoned under ORS 87.045.]*

29 *[(5) This section.]*

30 *[(a)]* **(3)** *[Applies, in addition to other actions,]* **Notwithstanding ORS 12.250, this section ap-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **plies** to actions brought in the name of the state or any county or other public corporation therein,
 2 or for its benefit[; *and*].

3 [(b)] (4) **This section** does not apply to actions against any person in actual possession and
 4 control of the improvement, as owner, tenant or otherwise, at the time such cause of action accrues.

5 **SECTION 2.** ORS 279C.465 is amended to read:

6 279C.465. (1) Any person that loses a competitive bid or proposal for a contract involving the
 7 construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation,
 8 replacement or renovation of a building or structure may bring an action for damages against an-
 9 other person who is awarded the contract for which the bid or proposal was made if the person
 10 making the losing bid or proposal can establish that the other person knowingly violated ORS
 11 279C.840, 656.017, 657.505 or 701.055 while performing the work under the contract, or knowingly
 12 failed to pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

13 (2) A person bringing an action under this section must establish a violation of ORS 279C.840,
 14 316.167, 656.017, 657.505 or 701.055 by a preponderance of the evidence.

15 (3) Upon establishing that the violation occurred, the person shall recover, as liquidated dam-
 16 ages, 10 percent of the total amount of the contract or \$5,000, whichever is greater.

17 (4) In any action under this section, the prevailing party is entitled to an award of reasonable
 18 attorney fees.

19 (5)(a) An action under this section must be commenced within two years of the substantial
 20 completion of the construction, repair, remodeling, alteration, conversion, modernization, improve-
 21 ment, rehabilitation, replacement or renovation.

22 (b) [*For the purposes of*] **As used in** this subsection, “substantial completion” [*has the meaning*
 23 *given that term in ORS 12.135*] **means the date when the contractee accepts in writing the**
 24 **construction, alteration or repair of the improvement to real property or any designated**
 25 **portion thereof as having reached that state of completion when it may be used or occupied**
 26 **for its intended purpose or, if there is no such written acceptance, the date of acceptance**
 27 **of the completed construction, alteration or repair of such improvement by the contractee.**

28 (6) A person may not recover any amounts under this section if the defendant in the action es-
 29 tablishes by a preponderance of the evidence that the plaintiff:

30 (a) Was in violation of ORS 701.055 at the time of making the bid or proposal on the contract;

31 (b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the
 32 plaintiff as of the time of making the bid or proposal on the contract; or

33 (c) Was in violation of ORS 279C.840 with respect to any contract performed by the plaintiff
 34 within one year before making the bid or proposal on the contract at issue in the action.

35 **SECTION 3.** (1) **Except as provided in subsection (2) of this section, the amendments to**
 36 **ORS 12.135 by section 1 of this 2007 Act apply to all causes of action, whether arising before,**
 37 **on or after the effective date of this 2007 Act.**

38 (2) **The amendments to ORS 12.135 by section 1 of this 2007 Act do not apply to causes**
 39 **of action for which an action has been commenced as described in ORS 12.020 before the ef-**
 40 **fective date of this 2007 Act.**