

B-Engrossed
House Bill 2909

Ordered by the House June 19
Including House Amendments dated May 3 and June 19

Sponsored by COMMITTEE ON JUDICIARY

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.

Establishes statute of repose in product liability civil actions equal to useful safe life of product. Defines useful safe life of product. **Establishes conditions under which certain persons are subject to liability after expiration of product's useful safe life.** Establishes rebuttable presumption **that useful safe life of product is 10 years.**

Specifies that specific lightbulbs are not subject to statutes of repose.

A BILL FOR AN ACT

1
2 Relating to statutes of limitation; creating new provisions; and amending ORS 12.115, 12.135, 12.278,
3 12.282, 30.656, 30.905 and 30.907.

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

5 **SECTION 1.** ORS 30.905 is amended to read:

6 30.905. *[(1) Except as provided in ORS 30.907 and 30.908 (1) to (4), a product liability civil action*
7 *may not be brought for any death, personal injury or property damage that is caused by a product and*
8 *that occurs more than eight years after the date on which the product was first purchased for use or*
9 *consumption.]*

10 *[(2) Except as provided in ORS 30.907 and 30.908 (1) to (4), a product liability civil action for*
11 *personal injury or property damage must be commenced not later than the earlier of:]*

12 *[(a) Two years after the date on which the plaintiff discovers, or reasonably should have discov-*
13 *ered, the personal injury or property damage and the causal relationship between the injury or damage*
14 *and the product, or the causal relationship between the injury or damage and the conduct of the de-*
15 *fendant; or]*

16 *[(b) Ten years after the date on which the product was first purchased for use or consumption.]*

17 *[(3) Except as provided in ORS 30.907 and 30.908 (1) to (4), a product liability civil action for death*
18 *must be commenced not later than the earlier of:]*

19 *[(a) The limitation provided by ORS 30.020; or]*

20 *[(b) Ten years after the date on which the product was first purchased for use or consumption.]*

21 **(1) Except as otherwise provided in this section, a product liability civil action must be**
22 **commenced not later than two years after the date on which the plaintiff first discovered,**
23 **or in the exercise of reasonable care should have discovered, the injury, death or damage**
24 **giving rise to a claim for relief and the cause of the injury, death or damage.**

25 **(2) A manufacturer, distributor, seller or lessor of a product is not liable in a product**
26 **liability civil action if the manufacturer, distributor, seller or lessor proves by a preponder-**

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 **ance of the evidence that the injury, death or damage was caused after the useful safe life**
2 **of the product had expired.**

3 **(3) For the purposes of this section, the useful safe life of a new or remanufactured**
4 **product is the period of time beginning on the date that the product is delivered to the pro-**
5 **duct's first purchaser or lessee who is not engaged in the business of selling that product**
6 **or using the product as a component part in another product, and ending on the date on**
7 **which the product would not reasonably be expected to perform in a safe manner or could**
8 **not reasonably be stored in a safe manner.**

9 **(4) A manufacturer, distributor, seller or lessor is subject to liability for injury, death**
10 **or damage caused by a product after the expiration of the product's useful safe life if:**

11 **(a) The manufacturer, distributor, seller or lessor warrants that the product can be**
12 **safely used for a longer period than the useful safe life of the product and the injury, death**
13 **or damage occurs during the warranty period;**

14 **(b) The manufacturer, distributor, seller or lessor intentionally misrepresents facts about**
15 **the product, or intentionally conceals information about the product, and the misrepresen-**
16 **tation or concealment is a proximate cause of the injury, death or damage; or**

17 **(c) The injury, death or damage is caused by exposure to a defective product, the expo-**
18 **sure first occurs during the useful safe life of the product and the injury, death or damage**
19 **caused by the exposure would not have been discovered by a reasonably prudent person until**
20 **after the useful safe life of the product had expired.**

21 **(5) Unless a manufacturer, distributor, seller or lessor of a product has expressly war-**
22 **ranted the product for a longer period, any injury, death or damage caused by the product**
23 **more than 10 years after the commencement of the useful safe life of the product is**
24 **rebuttably presumed to have been caused after the useful safe life of the product. The**
25 **presumption established by this subsection may be rebutted by a preponderance of the evi-**
26 **dence.**

27 **SECTION 2.** ORS 12.115 is amended to read:

28 12.115. (1) In no event shall any action for negligent injury to person or property of another be
29 commenced more than 10 years from the date of the act or omission complained of.

30 (2) Nothing in this section shall be construed to extend any period of limitation otherwise es-
31 tablished by law, including but not limited to the limitations established by ORS 12.110.

32 **(3) This section does not apply to any action under ORS 30.900 to 30.920.**

33 **SECTION 3.** ORS 12.278 is amended to read:

34 12.278. (1) A civil action against a manufacturer of pickup trucks for injury or damage resulting
35 from a fire caused by rupture of a sidesaddle gas tank in a vehicle collision, including any product
36 liability action under ORS 30.900 to 30.920 and any action based on negligence, must be commenced
37 not later than two years after the injury or damage occurs. A civil action against a manufacturer
38 of pickup trucks for death resulting from a fire caused by rupture of a sidesaddle gas tank in a ve-
39 hicle collision, including any product liability action under ORS 30.900 to 30.920 and any action
40 based on negligence, must be commenced not later than three years after the death.

41 (2) A civil action against a manufacturer of pickup trucks for death, injury or damage resulting
42 from a fire caused by rupture of a sidesaddle gas tank in a vehicle collision is not subject to ORS
43 12.115, 30.020, 30.905 [(1)] or any other statute of repose in Oregon Revised Statutes.

44 (3) For the purposes of this section, "sidesaddle gas tank" means a gas tank mounted outside
45 of the side rails of the frame of a pickup truck.

1 **SECTION 4.** ORS 12.282 is amended to read:

2 12.282. (1) A civil action against a manufacturer of extendable equipment for injury or other
3 damage arising out of contact with power lines, including any product liability action under ORS
4 30.900 to 30.920 and any action based on negligence, must be commenced not later than two years
5 after the injury or damage occurs. A civil action against a manufacturer of extendable equipment
6 for death arising out of contact with power lines, including any product liability action under ORS
7 30.900 to 30.920 and any action based on negligence, must be commenced not later than three years
8 after the death.

9 (2) A civil action against a manufacturer of extendable equipment for injury, death or other
10 damage arising out of contact with power lines is not subject to ORS 12.115, 30.020 or 30.905 [(1)]
11 or any other statute of repose in Oregon Revised Statutes.

12 (3) For purposes of this section, “extendable equipment” means cranes, truck-mounted cranes,
13 truck-mounted booms, and any self-powered vehicle with booms or other extensions that can reach
14 power lines from the ground.

15 **SECTION 5.** ORS 30.656 is amended to read:

16 30.656. (1) A person may not bring an action for damages caused by a computer date failure
17 unless the complaint in the action alleges with specificity a material defect in a computer product
18 that caused the computer date failure and that caused the damages that are alleged to have resulted
19 from the computer date failure.

20 (2) Notwithstanding any other provision of law, an action for damages caused by a computer
21 date failure may not be brought by any person later than two years from the date that the person
22 discovered, or in the exercise of reasonable diligence should have discovered, that the computer
23 product or computer service had experienced a computer date failure.

24 (3) **An action for damages caused by a computer date failure is not subject to ORS 30.905.**
25 Except as provided in subsection (4) of this section, a person must bring an action against a man-
26 ufacturer or seller of a computer product or computer service for damages caused by a computer
27 date failure no later than eight years after the product or the service was first purchased for use
28 or consumption in this state. This subsection does not apply to a manufacturer or seller that ex-
29 pressly warranted that the product would not experience a computer date failure.

30 (4) If a manufacturer or seller of an item that contains a computer product expressly warranted
31 to a person that the item had a useful safe life longer than eight years, the person must bring an
32 action against the manufacturer or seller for damages caused by a computer date failure before the
33 end of the time period warranted by the manufacturer or seller as the useful safe life of the item.

34 **SECTION 6.** ORS 30.907 is amended to read:

35 30.907. (1) A product liability civil action for damages resulting from asbestos-related disease
36 shall be commenced not later than two years after the date on which the plaintiff first discovered,
37 or in the exercise of reasonable care should have discovered, the disease and the cause thereof. **A**
38 **product liability civil action for damages resulting from asbestos-related disease is not sub-**
39 **ject to ORS 30.905 or any other statute of repose in Oregon Revised Statutes.**

40 (2) A product liability civil action may not be brought against a contractor, as defined in ORS
41 701.005, for damages resulting from asbestos-related disease if the contractor:

42 (a) Used or installed products containing asbestos pursuant to plans, specifications or directions
43 prepared for a project by or on behalf of the owner of the project;

44 (b) Is not the manufacturer or distributor of the products containing asbestos; and

45 (c) Did not furnish the products containing asbestos independent of the provision of labor.

1 (3) Subsection (2) of this section does not affect a plaintiff's ability to bring a product liability
2 civil action against a contractor if:

3 (a) The contractor substituted a product containing asbestos on a project when the plans, spec-
4 ifications or directions for the project prepared by or on behalf of the owner did not specify the use
5 or installation of a product containing asbestos; and

6 (b) The owner or the owner's representative did not expressly direct or consent to the substi-
7 tution of the product containing asbestos.

8 **SECTION 7. (1) Except as provided by subsection (2) of this section, the amendments to**
9 **ORS 12.115, 12.278, 12.282, 30.656, 30.905 and 30.907 by sections 1 to 6 of this 2007 Act apply**
10 **to all causes of action, whether arising before, on or after the effective date of this 2007 Act.**

11 **(2) The amendments to ORS 12.115, 12.278, 12.282, 30.656, 30.905 and 30.907 by sections 1**
12 **to 6 of this 2007 Act do not act to revive any cause of action that was barred on the effective**
13 **date of this 2007 Act by the operation of ORS 30.905, as in effect immediately before the ef-**
14 **fective date of this 2007 Act.**

15 **SECTION 8.** ORS 12.135 is amended to read:

16 12.135. (1) An action against a person, whether in contract, tort or otherwise, arising from such
17 person having performed the construction, alteration or repair of any improvement to real property
18 or the supervision or inspection thereof, or from such person having furnished the design, planning,
19 surveying, architectural or engineering services for such improvement, shall be commenced within
20 the applicable period of limitation otherwise established by law; but in any event such action shall
21 be commenced within 10 years from substantial completion or abandonment of such construction,
22 alteration or repair of the improvement to real property.

23 (2) Notwithstanding subsection (1) of this section, an action against a person for the practice
24 of architecture, as defined in ORS 671.010, the practice of landscape architecture, as defined in ORS
25 671.310, or the practice of engineering, as defined in ORS 672.005, to recover damages for injury to
26 a person, property or to any interest in property, including damages for delay or economic loss, re-
27 gardless of legal theory, arising from the construction, alteration or repair of any improvement to
28 real property shall be commenced within two years from the date the injury or damage is first dis-
29 covered or in the exercise of reasonable care should have been discovered; but in any event the
30 action shall be commenced within 10 years from substantial completion or abandonment of the con-
31 struction, alteration or repair.

32 (3) For purposes of this section, "substantial completion" means the date when the contractee
33 accepts in writing the construction, alteration or repair of the improvement to real property or any
34 designated portion thereof as having reached that state of completion when it may be used or oc-
35 cupied for its intended purpose or, if there is no such written acceptance, the date of acceptance
36 of the completed construction, alteration or repair of such improvement by the contractee.

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

39 (5) This section:

40 (a) Applies, in addition to other actions, to actions brought in the name of the state or any
41 county or other public corporation therein, or for its benefit; and

42 (b) Does not apply to actions against any person in actual possession and control of the im-
43 provement, as owner, tenant or otherwise, at the time such cause of action accrues.

44 **(6) This section applies to manufactured dwellings, as defined in ORS 446.003, and pre-**
45 **fabricated structures, as defined in ORS 455.010. Manufactured dwellings, as defined in ORS**

1 446.003, and prefabricated structures, as defined in ORS 455.010, are not subject to ORS
2 30.905.

3 **SECTION 9.** (1) As used in this section, “R-type metal halide or mercury vapor
4 lightbulb” means a metal halide or mercury vapor lightbulb that does not have an internal
5 mechanism that shuts off the light automatically within 15 minutes after the bulb is broken.

6 (2) A product liability civil action for damages caused by R-type metal halide or mercury
7 vapor lightbulbs may not be commenced more than two years after the date on which the
8 plaintiff first discovered, or in the exercise of reasonable care should have discovered, the
9 injury and the causal relationship between the injury and the conduct of the defendant.

10 (3) A product liability civil action for damages caused by R-type metal halide or mercury
11 vapor lightbulbs is not subject to ORS 30.905 or any other statute of repose in the Oregon
12 Revised Statutes.

13 (4) Except as provided in subsection (5) of this section, this section applies only to causes
14 of action arising before the effective date of this 2007 Act.

15 (5) This section does not apply to a cause of action for which a judgment was entered
16 before the effective date of this 2007 Act.

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