

Senate Bill 266

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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**.

Provides that civil action is commenced for purposes of statutes of limitation when complaint is filed with court.

A BILL FOR AN ACT

1
2 Relating to the commencement of actions; creating new provisions; and amending ORS 12.020, 12.220,
3 87.055 and 130.515 and ORCP 3.

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

5 **SECTION 1.** ORS 12.020 is amended to read:

6 12.020. [(1) *Except as provided in subsection (2) of this section,*] For the purpose of determining
7 whether an action has been commenced within the time [*limited*] **allowed by law**, an action [*shall*
8 *be deemed*] **is** commenced [*as to each defendant,*] when the complaint is filed[, *and the summons*
9 *served on the defendant, or on a codefendant who is a joint contractor, or otherwise united in interest*
10 *with the defendant*] **with the court.**

11 [(2) *If the first publication of summons or other service of summons in an action occurs before the*
12 *expiration of 60 days after the date on which the complaint in the action was filed, the action against*
13 *each person of whom the court by such service has acquired jurisdiction shall be deemed to have been*
14 *commenced upon the date on which the complaint in the action was filed.*]

15 **SECTION 2.** (1) **Except as provided in subsection (2) of this section, the amendments to**
16 **ORS 12.020 by section 1 of this 2009 Act apply to all causes of action, whether arising before,**
17 **on or after the effective date of this 2009 Act.**

18 (2) **The amendments to ORS 12.020 by section 1 of this 2009 Act do not apply to any cause**
19 **of action for which a judgment was entered before the effective date of this 2009 Act.**

20 **SECTION 3.** ORCP 3 is amended to read:

21 **Commencement of action.** [*Other than for purposes of statutes of limitations,*] An action [*shall*
22 *be*] **is** commenced by filing a complaint with the clerk of the court.

23 **SECTION 4.** ORS 12.220 is amended to read:

24 12.220. [(1) *Notwithstanding ORS 12.020, if an action is filed with a court within the time allowed*
25 *by statute, and the action is involuntarily dismissed without prejudice on any ground not adjudicating*
26 *the merits of the action, or is involuntarily dismissed with prejudice on the ground that the plaintiff*
27 *failed to properly effect service of summons within the time allowed by ORS 12.020 and the statute of*
28 *limitations for the action expired, the plaintiff may commence a new action based on the same claim*
29 *or claims against a defendant in the original action if the defendant had actual notice of the filing of*
30 *the original action not later than 60 days after the action was filed.*]

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 [(2) *If, pursuant to subsection (1) of this section, a new action is commenced in the manner provided*
 2 *by ORS 12.020 not later than 180 days after the judgment dismissing the original action is entered in*
 3 *the register of the court, the new action is not subject to dismissal by reason of not having been com-*
 4 *menced within the time allowed by statute.*]

5 [(3) *A new action may be commenced only once under this section for the same claim or claims.*]

6 [(4) *All defenses that would have been available if the original action had been commenced within*
 7 *the time otherwise allowed by statute shall be available in a new action commenced under this*
 8 *section.*]

9 **(1) Notwithstanding ORS 12.020, if a civil action is commenced within the time allowed**
 10 **by statute but the action is involuntarily dismissed without prejudice on any ground not ad-**
 11 **judicating the merits of the action, and within 180 days after the judgment dismissing the**
 12 **action is entered the plaintiff commences a new action based on the same claim or claims**
 13 **against a defendant in the original action, the new action is not subject to dismissal by rea-**
 14 **son of not having been commenced within the time allowed by statute.**

15 **(2) A new action may be commenced only once under this section for the same claim or**
 16 **claims.**

17 **(3) All defenses that would have been available if the original action had been commenced**
 18 **within the time otherwise allowed by statute shall be available in a new action commenced**
 19 **in the manner provided by subsection (1) of this section.**

20 **SECTION 5. The amendments to ORS 12.220 by section 4 of this 2009 Act apply only to**
 21 **actions dismissed on or after the effective date of this 2009 Act.**

22 **SECTION 6.** ORS 87.055 is amended to read:

23 87.055. [No] A lien created under ORS 87.010 [shall] **does not** bind any improvement for a longer
 24 period than 120 days after the claim of lien is filed unless [suit is brought] **an action is filed** in a
 25 proper court within that time to enforce the lien, or if extended payment is provided and the terms
 26 thereof are stated in the claim of lien, then 120 days after the expiration of such extended payment,
 27 but [no lien shall be continued] **a lien may not continue** in force for a longer time than two years
 28 from the time the claim of lien is filed under ORS 87.035 by any agreement to extend payment. [For
 29 purposes of this section:]

30 [(1) *Subject to subsection (2) of this section, a suit to enforce the lien shall be deemed commenced*
 31 *as provided in ORS 12.020.*]

32 [(2) *With regard to other parties who are construction lien claimants under ORS 87.035, a suit to*
 33 *enforce the lien shall be deemed to commence when the complaint is filed, whether or not summons or*
 34 *service with regard to such parties is completed within the time required by ORS 12.020.*]

35 **SECTION 7. The amendments to ORS 87.055 by section 6 of this 2009 Act apply only to**
 36 **liens filed under ORS 87.035 on or after the effective date of this 2009 Act.**

37 **SECTION 8.** ORS 130.515 is amended to read:

38 130.515. (1) A person must [commence a judicial proceeding] **file an action** to contest the validity
 39 of a trust that was revocable at the settlor's death [in the manner prescribed by ORS 12.020] within
 40 the earlier of:

41 (a) Three years after the settlor's death; or

42 (b) Four months after the trustee sends the person a copy of the trust instrument and notice
 43 informing the person of the trust's existence, of the trustee's name and address and of the time al-
 44 lowed for commencing a proceeding.

45 (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee

1 may proceed to distribute the trust property in accordance with the terms of the trust. The trustee
2 is not subject to liability for distribution of the property unless:

3 (a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

4 (b) Any person has notified the trustee in writing that the person might commence a judicial
5 proceeding to contest the trust and a judicial proceeding is commenced by the person within 60 days
6 after the person gives the notification.

7 (3) If a trust is determined to be invalid, any beneficiary who received a distribution from the
8 trust is liable to the person entitled to the distributed property for the amount or value of the dis-
9 tribution.

10 **SECTION 9. (1) Except as provided in subsection (2) of this section, the amendments to**
11 **ORS 130.515 by section 8 of this 2009 Act apply to all actions to contest the validity of a trust,**
12 **whether filed before, on or after the effective date of this 2009 Act.**

13 **(2) The amendments to ORS 130.515 by section 8 of this 2009 Act do not apply to an action**
14 **to contest the validity of a trust in which a judgment was entered before the effective date**
15 **of this 2009 Act.**

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