

Enrolled
Senate Bill 284

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CHAPTER

AN ACT

Relating to civil actions; creating new provisions; and amending ORS 12.135, 12.276, 12.278, 12.282, 30.905, 30.907 and 30.908.

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

SECTION 1. ORS 30.905 is amended to read:

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

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

[(a) Two years after the date on which the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant; or]

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

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

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

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

(1) Subject to the limitation imposed by subsection (2) of this section, a product liability civil action for personal injury or property damage must be commenced not later than two years after the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant.

(2) A product liability civil action for personal injury or property damage must be commenced before the later of:

(a) Ten years after the date on which the product was first purchased for use or consumption; or

(b) The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign

country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported.

(3) Subject to the limitation imposed by subsection (4) of this section, a product liability civil action for death must be commenced not later than three years after the decedent, the personal representative for the decedent or a person for whose benefit an action could be brought under ORS 30.020 discovers, or reasonably should have discovered, the causal relationship between the death and the product, or the causal relationship between the death and the conduct of the defendant.

(4) A product liability civil action for death must be commenced before the earlier of:

(a) Three years after the death of the decedent;

(b) Ten years after the date on which the product was first purchased for use or consumption; or

(c) The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported.

(5) This section does not apply to a civil action brought against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010. Actions described in this subsection are subject to the statute of limitations provided by ORS 12.135.

SECTION 2. The amendments to ORS 30.905 by section 1 of this 2009 Act apply only to causes of action that arise on or after the effective date of this 2009 Act.

SECTION 3. ORS 12.135 is amended to read:

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

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

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

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

(5) This section:

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

(b) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010; and

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

SECTION 4. ORS 12.276 is amended to read:

12.276. (1) Notwithstanding ORS 12.110 (1) or 30.020, an action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component must be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered:

(a) The death or specific injury, disease or damage for which the plaintiff seeks recovery;

(b) The tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant; and

(c) All other elements required to establish plaintiff's claim for relief.

(2) Except as provided in subsections (3) and (4) of this section, an action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component is not subject to ORS 12.110 (1), 12.115 or any other **statute of limitation** or statute of **ultimate** repose in Oregon Revised Statutes.

(3) An action for death, injury or damage against a physician licensed pursuant to ORS chapter 677, or against a health care facility licensed under ORS chapter 442, resulting from breast implants containing silicone, silica or silicon as a component, remains subject to the limitations imposed by ORS 12.110 (4), 12.115, 30.020 and 30.075.

(4) An action for death, injury or damage against a person that supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component remains subject to the limitations imposed by ORS 12.110 (1), 12.115, 30.020 and 30.075 if:

(a) The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and

(b) The person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time.

(5) For the purposes of subsection (1) of this section, an action for wrongful death must be commenced not later than two years after the earliest date that the discoveries required by subsection (1) of this section are made by any of the following persons:

(a) The decedent;

(b) The personal representative for the decedent; or

(c) Any person for whose benefit the action could be brought.

SECTION 5. ORS 12.278 is amended to read:

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

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

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

SECTION 6. ORS 12.282 is amended to read:

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

30.900 to 30.920 and any action based on negligence, must be commenced not later than three years after the death.

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

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

SECTION 7. ORS 30.907 is amended to read:

30.907. (1) A product liability civil action for damages resulting from asbestos-related disease [shall] **must** be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the disease and the cause thereof.

(2) A product liability civil action for damages resulting from asbestos-related disease is not subject to ORS 30.905 or any other statute of limitation or statute of ultimate repose in Oregon Revised Statutes.

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

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

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

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

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

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

(b) The owner or the owner's representative did not expressly direct or consent to the substitution of the product containing asbestos.

SECTION 8. Section 9 of this 2009 Act is added to and made a part of ORS 30.900 to 30.920.

SECTION 9. A physician licensed pursuant to ORS chapter 677 is not a manufacturer, distributor, seller or lessor of a product for the purposes of ORS 30.900 to 30.920 if the product is provided by the physician to a patient as part of a medical procedure and the physician was not involved in the design or manufacture of the product.

SECTION 10. ORS 30.908 is amended to read:

30.908. (1) Notwithstanding ORS 30.020, a product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component must be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered:

(a) The death or specific injury, disease or damage for which the plaintiff seeks recovery;

(b) The tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant; and

(c) All other elements required to establish plaintiff's claim for relief.

(2) A product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component is not subject to ORS 30.905 or any other **statute of limitation** or statute of **ultimate** repose in Oregon Revised Statutes.

(3) For the purposes of subsection (1) of this section, an action for wrongful death must be commenced not later than two years after the earliest date that the discoveries required by subsection (1) of this section are made by any of the following persons:

(a) The decedent;

(b) The personal representative for the decedent; or

(c) Any person for whose benefit the action could be brought.

(4) Subsections (1) to (3) of this section do not apply to a person that supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component, and the person shall remain subject to the limitations on actions imposed by ORS 30.020 and 30.905, if:

(a) The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and

(b) The person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time.

[*(5) A physician licensed pursuant to ORS chapter 677 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the physician to a patient as part of a medical implant procedure.*]

[*(6) (5) A health care facility licensed under ORS chapter 442 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the facility to a patient as part of a medical implant procedure.*]

SECTION 11. (1) As used in this section, "R type metal halide or mercury vapor light bulb" means a metal halide or mercury vapor light bulb that does not have an internal mechanism that shuts off the light automatically within 15 minutes after the bulb is broken.

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

(3) A product liability civil action for damages caused by R type metal halide or mercury vapor light bulbs is subject only to the limitation imposed by this section and is not subject to ORS 30.905 or any other statute of limitation or statute of ultimate repose.

SECTION 12. (1) Except as provided in subsection (2) of this section, section 11 of this 2009 Act applies only to deaths, personal injuries or property damage that occur on or after the effective date of this 2009 Act.

(2) Section 11 of this 2009 Act revives a cause of action for death, personal injury or property damage that occurred before the effective date of this 2009 Act if:

(a) A civil action for the death, personal injury or property damage was filed within the time provided by section 11 of this 2009 Act; and

(b) A final judgment was entered in the civil action on or after January 1, 2008, and before the effective date of this 2009 Act.

(3) A civil action based on a cause of action revived by subsection (2) of this section must be refiled within one year after the effective date of this 2009 Act.

Passed by Senate May 26, 2009

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Secretary of Senate

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President of Senate

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Speaker of House

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.....M,....., 2009

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Governor

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Secretary of State