

Minority Report
A-Engrossed
Senate Bill 284

Ordered by the Senate May 7
Including Senate Minority Report Amendments dated May 7

Sponsored by nonconcurring members of the Senate Committee on Judiciary: Senators BOQUIST, WHITSETT

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.

[Clarifies that rules for procedural matters in justice court civil actions are same as rules prescribed for civil actions in circuit courts.]

Exempts certain product liability cases from statute of ultimate repose. Provides that civil action for damages caused by R type metal halide or mercury vapor light bulbs is not subject to any statute of ultimate repose. Applies to causes of action for damages caused by R type metal halide or mercury vapor light bulbs arising before, on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to civil actions; creating new provisions; and amending ORS 12.135, 30.905 and 30.908.

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

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

5 30.905. (1) Except as provided in ORS 30.907 and 30.908 (1) to (4), a product liability civil action
6 may not be brought for any death, personal injury or property damage that is caused by a product
7 and that occurs more than eight years after the date on which the product was first purchased for
8 use or consumption.

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

11 (a) Two years after the date on which the plaintiff discovers, or reasonably should have dis-
12 covered, the personal injury or property damage and the causal relationship between the injury or
13 damage and the product, or the causal relationship between the injury or damage and the conduct
14 of the defendant; or

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

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

18 (a) The limitation provided by ORS 30.020; or

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

20 **(4) This section does not apply to a civil action brought against a manufacturer, distrib-**
21 **utor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefab-**
22 **ricated structure, as defined in ORS 455.010. Actions described in this subsection are subject**
23 **to the statute of limitations provided by ORS 12.135.**

24 **SECTION 2.** ORS 12.135 is amended to read:

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

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

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

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

24 (5) This section:

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

27 **(b) Applies to an action against a manufacturer, distributor, seller or lessor of a manu-**
28 **factured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in**
29 **ORS 455.010; and**

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

32 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS 30.900 to 30.920.**

33 **SECTION 4. A physician licensed pursuant to ORS chapter 677 is not a manufacturer,**
34 **distributor, seller or lessor of a product for the purposes of ORS 30.900 to 30.920 if the**
35 **product is provided by the physician to a patient as part of a medical procedure and the**
36 **physician was not involved in the design or manufacture of the product.**

37 **SECTION 5.** ORS 30.908 is amended to read:

38 30.908. (1) Notwithstanding ORS 30.020, a product liability civil action for death, injury or
39 damage resulting from breast implants containing silicone, silica or silicon as a component must be
40 commenced not later than two years after the date on which the plaintiff first discovered, or in the
41 exercise of reasonable care should have discovered:

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

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

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

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

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

7 (a) The decedent;

8 (b) The personal representative for the decedent; or

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

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

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

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

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

21 *[(6)] (5) A health care facility licensed under ORS chapter 442 is not a manufacturer, distributor,*
22 *seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is pro-*
23 *vided by the facility to a patient as part of a medical implant procedure.*

24 **SECTION 6. (1) As used in this section, “R type metal halide or mercury vapor light**
25 **bulb” means a metal halide or mercury vapor light bulb that does not have an internal**
26 **mechanism that shuts off the light automatically within 15 minutes after the bulb is broken.**

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

31 **(3) A product liability civil action for damages caused by R type metal halide or mercury**
32 **vapor light bulbs is not subject to ORS 30.905 or any other statute of limitation or statute**
33 **of ultimate repose in Oregon Revised Statutes.**

34 **SECTION 7. (1) Except as provided in subsection (2) of this section, section 6 of this 2009**
35 **Act applies to all causes of action, whether arising before, on or after the effective date of**
36 **this 2009 Act.**

37 **(2) Section 6 of this 2009 Act does not apply to a cause of action for which a judgment**
38 **was entered before the effective date of this 2009 Act.**

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