

Minority Report
B-Engrossed
Senate Bill 284

Ordered by the Senate May 21
Including Senate Amendments dated May 7 and Senate Minority Report
Amendments dated May 21

Sponsored by nonconcurring members of the Senate Committee on Rules: Senators ATKINSON, FERRIOLI

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.

[Increases duration of statute of ultimate repose for product liability cases.] Exempts from statute of ultimate repose certain civil actions. *[Applies to causes of action arising on or after effective date of Act.]*

[Provides that certain civil actions are not subject to any statute of ultimate repose, including civil action for damages caused by R type metal halide or mercury vapor light bulbs.] **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 **and before effective date of Act if cause of action meets certain criteria.**

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**

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 **to the statute of limitations provided by ORS 12.135.**

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

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

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

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

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

26 (5) This section:

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

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

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

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

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

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

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

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

45 (b) The tortious nature of the act or omission of the defendant that gives rise to a claim for

1 relief against the defendant; and

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

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

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

9 (a) The decedent;

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

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

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

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

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

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

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

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

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

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

36 **SECTION 7. (1) Except as provided in subsection (2) of this section, section 6 of this 2009
37 Act applies only to deaths, personal injuries or property damage that occur on or after the
38 effective date of this 2009 Act.**

39 **(2) Section 6 of this 2009 Act revives a cause of action for death, personal injury or
40 property damage that occurred before the effective date of this 2009 Act if:**

41 **(a) A civil action for the death, personal injury or property damage was filed within the
42 time provided by section 6 of this 2009 Act; and**

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

45 **(3) A civil action based on a cause of action revived by subsection (2) of this section must**

1 **be refiled within one year after the effective date of this 2009 Act.**

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