

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 410

SPONSOR: Committee on Judiciary and Senator Forman

SUBJECT: Limitations on Actions

DATE: April 24, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This Committee Substitute to Senate Bill 410 amends s. 95.031(2)(b), F.S., to repeal the products liability statute of repose for aircraft used in commercial or contract carrying of passengers or freight. The Committee Substitute also adds a new subparagraph 4. to subsection (2)(b) of s. 90.031, F.S., to expressly provide that aircraft and their component parts are not subject to the statute of repose in s. 90.031(2), F.S.

This bill substantially amends section 95.031 of the Florida Statutes.

II. Present Situation:

Statutes of Limitation and Statutes of Repose

Statutes of limitation and statutes of repose impose time limits in which parties must institute actions. Statutes of limitation are generally shorter than statutes of repose and have less finality because they do not operate as a limitation upon the underlying substantive right of action. Statutes of limitation may be asserted as an affirmative defense against a claim to bar an action but if the defense is not affirmatively pled, the defense is waived and the plaintiff may proceed with the claim. Statutes of limitations are predicated on public policy to encourage plaintiffs to assert their cause of action with reasonable diligence and to shield defendants against stale claims. Chapter 95, F.S., sets forth different time frames for various categories of civil causes of action. Specifically, s. 95.11, F.S., provides a 4-year statute of limitation for product liability actions, negligence actions, certain personal injury actions, actions to recover personal property, and other types of actions to be measured from the time the cause of action accrues.

Statutes of repose are generally longer and involve a greater degree of finality than statutes of limitation. Courts construe a cause of action as rescinded by a statute of repose as if the right to sue never existed in the first place. In *Bauld v. J.A. Jones Constr. Co.*, 357 So.2d 401 (Fla. 1978), the Court stated that statutes of repose cut off the right of action after a specified time measured

from the delivery of a product or completion of work, regardless of the accrual of the cause of action or notice of the invasion of a legal right. The courts have strictly construed the constitutionality of certain statutes of repose based upon the right of access to courts for redress of injuries as guaranteed under Art. I, s. 21, Florida constitution.

In 1999, the Florida Legislature amended s. 95.031, F.S., relating to limitations on actions. *See* ch. 99-225, L.O.F. It created a 12-year statute of repose for product liability actions, including actions for wrongful death or other claims for personal injury or property damages caused by a product. The new statute of repose generally bars any action based on products liability more than 12 years after the date of delivery of the completed product to the original purchaser or lessee, regardless of the date on which the facts giving rise to the cause of action were or should have been discovered. A 20-year statute of repose period, however, is provided for aircraft used in commercial or contract carrying of passengers or freight, vessels of more than 100 gross tons, railroad equipment used in commercial or contract carrying of passengers or freight, and improvements to real property.

A product with an expressly represented or warranted useful life greater than the applicable repose period can not be barred until the end of that stated useful life.

III. Effect of Proposed Changes:

The Committee Substitute repeals the statute of repose for aircraft used in commercial or contract carrying of passengers or freight. It expressly provides that aircraft and their component parts are not subject to the products liability statute of repose contained in s. 95.031(2), F.S. The term “component parts” is not defined.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Committee Substitute would have a negative impact upon aircraft manufacturers that currently are covered by the products liability statute of repose as these manufacturers would be subject to such lawsuits. However, the precise impact is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.