



How Statutes of Repose Hurt Oklahomans

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Statutes of repose typically protect the special interests of a few while sacrificing the rights of millions of Oklahomans. One type serves as a get out of jail free card for negligent manufacturers, so long as their defective products injure people years after they were sold. Another ensures that health care providers will escape liability to their patients for negligent medical care after a certain number of years. Anyone whose injuries arise after such time will have no recourse to hold the negligent parties accountable, even if the patient or their family does not know, or can't be expected to know, that medical mistakes caused their injuries.

- **Statutes of repose act keep manufacturers from publicizing and repairing defective products that are still in use.** Rather than locating and fixing problems, it companies find it more cost effective to hide product defects when they are discovered near the end of their potential liability. As a result, more Oklahomans will be injured by defective products, and to add insult to injury, those people will never be able to recoup lost wages and medical bills that were caused by the defective product in the first place.
- **Statutes of repose disproportionately affect low-income Americans.** Since statutes of repose limit liability based on time in the marketplace, they will disproportionately harm those people who cannot afford to buy new products. Consumer protections should affect all income levels equally; statutes that disproportionately effect the low-income are particularly egregious.
- **Statutes of repose are likely to hurt Oklahoma farmers most of all.** Because agricultural machines and automobiles are often longer than the statute of repose,¹ Proposed legislation would effectively close the door on these hardest working of Oklahomans when they are injured by defective machinery. Instead of opening the courthouse doors to those in need of justice, the law would in effect slam the door in their face, rewarding negligent manufacturers with absolute protection. Legislators owe a duty to their constituents, including farmers, the backbone of Oklahoma's economy.
- **Statutes of repose skate on thin constitutional ice.** Because these statutes distinguish people who are injured by defective products and medical negligence from people hurt through other forms of tortious conduct, a strong argument can be made that these statutes violate constitutional rights of Equal Protection and Due Process. Furthermore, statutes of repose may also deny citizens their constitutional right to a jury trial. Accordingly, statutes of repose have been struck down by courts in Alabama, Alaska, Arizona, Colorado, Florida, Illinois, Kentucky, New Hampshire, New Mexico, Nevada, North Dakota, Rhode Island, South Dakota, Texas, Utah, and Wisconsin.²



¹ The economic life of a machine is the number of years for which costs are to be estimated. It is often less than the machine's service life because most farmers trade a machine for a different one before it is completely worn out. A good rule of thumb is to use an economic life of 10 to 12 years for most farm machines and a 15-year life for tractors, unless you know you will trade sooner. See <http://www.extension.iastate.edu/agdm/crops/html/a3-29.html>. Bemis Manufacturing, the hood supplier to John Deere, touts an expected life expectancy of twenty years and beyond for its hoods. See <http://www.plasticparts.org/2002/Agriculture.pdf>.

² See, e.g., *Jaramillo v. Heaton*, (N.M.App. 2004.), 100 P.3d 204; *Hales v. Industrial Comm'n* (Utah App. 1993), 854 P.2d 537. *Best v. Taylor Machine Works* (Ill. 1997), 689 N.E.2d 1057; *Hazine v. Montgomery Elevator Co.* (Ariz. 1993), 861 P.2d 625; *Lee v. Gaufin* (Utah 1993), 867 P.2d 572; *Perkins v. Northeastern Log Homes* (Ky. 1991), 808 S.W.2d 809; *McCullum v. Sisters of Charity* (Ky. 1990), 799 S.W.2d 15; *Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.* (Utah 1989), 782 P.2d 188; *Horton v. Goldminer's Daughter* (Utah 1989), 785 P.2d 1087; *Funk v. Wollin Silo & Equip., Inc.* (Wis. 1989), 435 N.W.2d 244; *Turner Constr. Co., Inc. v. Scales* (Alaska 1988), 752 P.2d 467; *Hanson v. Williams County* (N.D. 1986), 389 N.W.2d 319; *Tabler v. Wallace* (Ky. 1985), 704 S.W.2d 179; *Zacher v. Budd Co.* (S.D. 1986), 396 N.W.2d 122; *Berry v. Beech Aircraft Corp.* (Utah 1985), 717 P.2d 670; *Daugaard v. Baltic Coop. Bldg. Supply Ass'n* (S.D. 1984), 349 N.W.2d 419; *Nelson v. Krusen* (Tex. 1984), 678 S.W.2d 918; *Kennedy v. Cumberland Engineering Co., Inc.* (R.I. 1984), 471 A.2d 195; *Austin v. Litvak* (Colo. 1984), 682 P.2d 41; *Heath v. Sears, Roebuck & Co.* (N.H. 1983), 464 A.2d 288; *State Farm Fire and Casualty Co. v. All Electric, Inc.* (Nev. 1983), 660 P.2d 995; *Jackson v. Mannesmann Demag Corp.* (Ala. 1983), 435 So.2d 725; *Lankford v. Sullivan, Long & Hagerty* (Ala. 1982), 416 So.2d 996; *Diamond v. E. R. Squibb & Sons, Inc.* (Fla. 1981), 397 So.2d 671.