

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: SB 266 Amending ORS 12.020 re: date upon which an action is commenced for purposes of the statutes of limitations.

Submitted by: Oregon State Bar Procedure & Practice Committee

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1. Does this amend current law or program? Yes.

This proposal would amend ORS 12.020(1) to deem an action commenced when the complaint is filed, for purposes of complying with the applicable statute of limitations.

This amendment would remove the second requirement of ORS 12.020(2), which requires that a complaint be served within 60 days of the filing of the complaint in order to meet the statute of limitations.

2. PROBLEM PRESENTED:

Oregon Rule of Civil Procedure (ORCP) 3 provides the date upon which an action is commenced for the purposes of trial court calendaring, procedural deadlines, and case management.

ORS 12.020 sets forth the date upon which an action is deemed commenced solely for purposes of complying with the applicable statutes of limitations.

ORS 12.020 as currently written is confusing because of its overlap with ORCP 3. ORCP 3 states that an action is commenced by filing a complaint with the clerk of the court except for purposes of the statutes of limitations. In order to determine how to meet the deadline for the applicable statute of limitations, members of the public or attorneys must refer to ORS 12.020.

ORS 12.020 states that in order for an action to be “commenced” within the applicable statute of limitations, the complaint must be properly served upon all defendants within 60 days after filing the complaint with the court.

A frequent problem arises when a number of defendants are named in a suit, and service cannot be accomplished upon all the defendants within the 60 day time period allowed by ORS 12.020(2). Also, many persons who read ORCP 3 incorrectly interpret the rule to mean that the filing of a complaint in itself tolls the statute of limitations. The rule as written leads to unnecessary malpractice claims when the provisions are incorrectly

interpreted and requires unnecessary and costly court interventions when a defendant is difficult to serve.

3. SOLUTION:

Amend ORS 12.020 to read: “A civil action is commenced by filing a complaint with the court.”

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

Promotes a policy of allowing a litigant an appropriate amount of time for service upon a defendant evading service and protects that litigant’s right to adjudication of a dispute.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? No.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

The proposed change is non controversial to the bar’s knowledge. The Procedure and Practice Committee is comprised of attorneys for both plaintiffs and defendants as well as a trial court judge. This group unanimously approved the proposal.

8. Has this been introduced in a prior session? No.