

# Rethinking Florida's Statute of Repose for Automotive Product Liability

by Leslie M. Kroeger, Adam J. Langino, and Diana L. Martin

Florida's statute of repose for product liability actions is found at §95.031(2)(b), Fla. Stat., and provides, in part, that "[u]nder no circumstances may a claimant commence an action for products liability, including a wrongful death action or any other claim arising from personal injury or property damage caused by a product, to recover for harm allegedly caused by a product with an expected useful life of 10 years or less, if the harm was caused by exposure to or use of the product more than 12 years after delivery of the product to its first purchaser or lessee who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product."<sup>1</sup>

With limited exception, all products, including motor vehicles, are conclusively presumed to have an expected useful life of 10 years or less.<sup>2</sup> However, "[a]ircraft 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, including elevators and escalators" are not subject to the statute of repose.<sup>3</sup> For these products, "except for escalators, elevators, and improvements to real property, no action for products liability may be brought more than 20 years after delivery of the product to its first purchaser or lessor who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. However, if the manufacturer specifically warranted, through express representation or labeling, that the product has an expected useful life exceeding 20 years, the repose period shall be the time period warranted in representations or label."<sup>4</sup>

Another exception to the useful life presumption of 10 years or less is when "the manufacturer specifically warranted, through express representation or labeling, as having an expected useful life exceeding 10 years, [then the product] has an expected useful life commensurate with the time period indicated by the warranty or label."<sup>5</sup> However, "[u]nder such circumstances, no action for products lia-

bility may be brought after the expected useful life of the product, or more than 12 years after delivery of the product to its first purchaser or lessee who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product, whichever is later."<sup>6</sup>

Finally, the repose period for products does not apply when a plaintiff "was exposed to or used the product within the repose period, but an injury caused by such exposure or use did not manifest itself until after expiration of the repose period."<sup>7</sup> And it is tolled "for any period during which the manufacturer through its officers, directors, partners, or managing agents had actual knowledge that the product was defective in the manner alleged by the claimant and took affirmative steps to conceal the defect."<sup>8</sup>

Prior to Florida House Bill 775, which took effect July 1, 1999, and included an amendment to §95.031, as well as numerous other tort reform measures, Florida did not have a statute of repose that restricted lawsuits for injuries caused by defective products.<sup>9</sup> It was at that time that the "useful life" qualification found in §95.031(2)(b) — which implicitly includes motor vehicles as products presumed to have a useful life of less than 10 years — subjected motor vehicles for the first time to a 12-year statute of repose in Florida. The purpose of adding the repose period in H.B. 775 was to limit the rights of Florida residents to bring product liability claims to court.<sup>10</sup> Yet, in his explanation of the Conference Committee Report to the House in Session on April 30, 1999, Judiciary Chairman Johnnie B. Byrd rationalized that H.B. 775 was necessary for reasons including, but not limited to, "enhancing substantial fairness by reducing payments by innocent parties."<sup>11</sup>

Almost 20 years later, is H.B. 775 and by extension, §95.031(2)(b), living up to its promise of enhancing the substantial fairness of those Floridians who have been injured by defective automobiles? Is it protecting innocent Floridians by reducing payments by them? Arguably, not.

Data collected from Office of Highway Policy Information of the Federal Highway Administration shows a marked increase in the number of vehicles on Florida roadways between 1999 to 2015, up from 11.5 million to nearly 17 million.<sup>12</sup> According to a July 29, 2015, report, the average age of vehicles on the road in the U.S. is rising and by 2015 the typical car on the road in the U.S. was 11.5 years old.<sup>13</sup> Simply put, consumers are driving their vehicles longer — a fact well recognized by consumers, auto manufacturers, and the Insurance Institute of Highway Safety.<sup>14</sup> Citing the Institute for Highway Safety, that same report showed that in 2015 about 14 million vehicles on the road were at least 25 years old, up from 8 million in 2002, and 44 million vehicles were between 16 and 24 years old, up from 26 million in 2002.<sup>15</sup> *USA Today's* report mirrors that of the Federal Bureau of Transportation Statistics May 23, 2017, report, which showed that the average age of vehicles on the roadway increased from 8.8 years in 1999 to 11.4 years in 2014.<sup>16</sup> And, the U.S. Energy Information Administration reported on August 21, 2018, that households with lower incomes tend to hold on to their vehicles the longest.<sup>17</sup> Homes with yearly incomes less than \$25,000 had vehicles on average 13.0 years old compared to those with incomes greater than \$100,000 whose vehicles averaged 8.9 years old.<sup>18</sup> It reported the average age of pickup trucks on the road to be 13.6 years old. Finally, Statista, a consumer data research company, estimates that by 2019, the average age of vehicles on the roadway is expected to be about 11.8 years old.<sup>19</sup>

When H.B. 775 took effect in 1999, the average age of vehicles of Florida's roadways was 8.98 years — a few years below the newly enacted statute of repose.<sup>20</sup> Today, however, as Floridians continue to keep their vehicles longer, their average age will soon fall beyond Florida's 12-year statute of repose. What does this mean to Floridians? In a motor vehicle accident if a catastrophic injury or death occurs because of a defective design, manufacturing process, or failure to warn in a vehicle older than 12 years, that claim cannot be brought. Floridians will not be protected from auto manufacturers who have failed to use reasonable care in the design, manufacture, or warnings regarding its vehicles. And if a manufacturer has failed to use reasonable care, can it really be considered an "innocent" party? None of the major auto manufacturers have assembly or manufacturing plants in Florida. These corporations are simply benefiting from a law that

protects them at the expense of our safety. To the extent that §95.031(2)(b) ever achieved its proposed purpose of "enhancing the substantial fairness" for all Floridians by "reducing payments by innocent parties," it certainly isn't now. To that end, the obvious should be recognized — that, contrary to the presumption found in §95.031(2)(b), motor vehicles have a useful life of more than 10 years and those who use them should be afforded the same level of protection as those who use other modes of transportation, which is a 20-year statute of repose. It is time for the Florida legislature to reexamine §95.031(2)(b), Fla. Stat. ■



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<sup>1</sup>Fla. Stat. §95.031(2)(b)

<sup>2</sup>Id.

<sup>3</sup>Fla. Stat. §95.031(2)(b)(1)

<sup>4</sup>Fla. Stat. §95.031(2)(b)(3)

<sup>5</sup>Fla. Stat. §95.031(2)(b)(2)

<sup>6</sup>Id.

<sup>7</sup>Fla. Stat. §95.031(2)(c)

<sup>8</sup>Fla. Stat. §95.031(2)(d)

<sup>9</sup>Fla. House of Rep. Staff Analysis, H.B. 99-775 (February 12, 1999.)

<sup>10</sup>Id.

<sup>11</sup>Fla. House of Rep. Staff Analysis, H.B. 99-775 (June 2, 1999.)

<sup>12</sup>*U.S. Department of Transportation Federal Highway Administration* (last accessed August 28, 2018).

<sup>13</sup>Bomey, Nathan, "Average age of cars on U.S. roads breaks record," *USA Today*, July 29, 2015. Available at (last accessed August 28, 2018).

<sup>14</sup>Id.

<sup>15</sup>Id.

<sup>16</sup>"Table 1-26: Average Age of Automobiles and Trucks in Operation in the United States," *Bureau of Transportation Statistics*, May 23, 2017. Available at (last accessed August 28, 2018.)

<sup>17</sup>*Independent Statistics & Analysis U.S. Energy Information Administration*, "U.S. households are holding on to

their vehicles longer." Available at (last accessed August 29, 2018.)

<sup>18</sup>Id.

<sup>19</sup>*Statista*, "Projected U.S. vehicle age from 2017 to 2019 (in years)." Available at last accessed August 28, 2018.)

<sup>20</sup>*Bureau of Transportation Statistics*, "Table 1-26: Average Age of Automobiles and Trucks in Operation in the United States," May 23, 2017. Available at [https://www.bts.gov/archive/publications/national\\_transportation\\_statistics/table\\_01\\_26](https://www.bts.gov/archive/publications/national_transportation_statistics/table_01_26) (last accessed August 28, 2018.)