

1 HB132  
2 126542-1  
3 By Representative Canfield  
4 RFD: Commerce and Small Business  
5 First Read: 03-MAR-11

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8 SYNOPSIS: Under existing law, the limitation on the  
9 time for commencement of a civil action against an  
10 architect, engineer, or builder is 13 years.

11 This bill would decrease the statute of  
12 repose for commencing an action against an  
13 architect, engineer, or builder to four years.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To amend Sections 6-5-221, 6-5-222, 6-5-225, and  
20 6-5-227, Code of Alabama 1975, relating to the time limitation  
21 for commencement of an action against an architect, engineer,  
22 or builder to decrease the statute of repose for commencing an  
23 action against an architect, engineer, or builder to four  
24 years.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 6-5-221, 6-5-222, 6-5-225, and  
27 6-5-227, Code of Alabama 1975, are amended to read as follows:

1           "§6-5-221.

2           "(a) All civil actions in tort, contract, or  
3 otherwise against any architect or engineer performing or  
4 furnishing the design, planning, specifications, testing,  
5 supervision, administration, or observation of any  
6 construction of any improvement on or to real property, or  
7 against builders who constructed, or performed or managed the  
8 construction of, an improvement on or to real property  
9 designed by and constructed under the supervision,  
10 administration, or observation of an architect or engineer, or  
11 designed by and constructed in accordance with the plans and  
12 specifications prepared by an architect or engineer, for the  
13 recovery of damages for:

14           "(i) Any defect or deficiency in the design,  
15 planning, specifications, testing, supervision,  
16 administration, or observation of the construction of any such  
17 improvement, or any defect or deficiency in the construction  
18 of any such improvement; or

19           "(ii) Damage to real or personal property caused by  
20 any such defect or deficiency; or

21           "(iii) Injury to or wrongful death of a person  
22 caused by any such defect or deficiency;  
23 shall be commenced within two years next after a cause of  
24 action accrues or arises, and not thereafter. Notwithstanding  
25 the foregoing, no relief can be granted on any cause of action  
26 which accrues or would have accrued more than ~~thirteen~~ four  
27 years after the substantial completion of construction of the

1 improvement on or to the real property, and any right of  
2 action which accrues or would have accrued more than ~~thirteen~~  
3 four years thereafter is barred, except where prior to the  
4 expiration of such ~~thirteen~~ four-year period, the architect,  
5 engineer, or builder had actual knowledge that such defect or  
6 deficiency exists and failed to disclose such defect or  
7 deficiency to the person with whom the architect, engineer, or  
8 builder contracted to perform such service.

9 "(b) This section shall apply to any civil action  
10 commenced against an architect, engineer, or builder as  
11 defined in this article, whether for his or her own act or  
12 omission or failure to act, for the act or omission or failure  
13 to act of his or her agents or employees, or for the act or  
14 omission or failure to act of any person or entity, its  
15 agents, or employees, who are acting under the instructions,  
16 control, or supervision of the architect, engineer, or  
17 builder.

18 "(c) This section shall apply and extend to every  
19 action or demand, whether commenced by direct action, action  
20 for contribution or indemnity, or by counterclaim,  
21 cross-claim, or third party practice and whether commenced by  
22 an owner of the improvement or any other person.

23 "(d) This section shall not apply to, shall not be a  
24 defense for, and does not proscribe a cause or right of action  
25 against any architect, engineer, or builder who, at the time  
26 the cause of action accrues or arises, is the owner or is in

1 actual possession or control as owner, tenant, or otherwise of  
2 the improvement.

3 "(e) When the architect, engineer, or builder has  
4 been the owner or the person in actual possession or control,  
5 in whatever capacity, of the improvement during the ~~thirteen~~  
6 four-year period after the substantial completion of  
7 construction of the improvement on or to real property, but  
8 not at the time the cause of action accrues or arises, the  
9 time of the ownership, possession, or control shall not be  
10 computed as a portion of the time necessary to create a bar  
11 for the action or of relief by virtue of the passage of time  
12 after the substantial completion of the improvement.

13 "§6-5-222.

14 "Section 6-5-221 shall be subject to all existing  
15 provisions of law relating to the computation of statutory  
16 periods of limitation for the commencement of actions, set  
17 forth in Sections 6-2-1, 6-2-2, 6-2-3, 6-2-5, 6-2-6, 6-2-8,  
18 6-2-9, 6-2-10, 6-2-13, 6-2-15, 6-2-16, 6-2-17, 6-2-30 and  
19 6-2-39(b), as amended. Notwithstanding any provisions of  
20 Section 6-2-8, no disability set forth in Section 6-2-8 shall  
21 extend the period of limitations set forth in Section 6-5-221  
22 so as to allow such action to be commenced more than ~~thirteen~~  
23 four years after the cause of action accrues; provided  
24 further, that notwithstanding any provisions of such sections,  
25 no relief can be granted for any cause of action which  
26 accrued, and any right of action is barred which would have

1 accrued, more than ~~thirteen~~ four years after the substantial  
2 completion of construction of such improvement.

3 "§6-5-225.

4 "(a) It is the purpose and intent of the Legislature  
5 in connection with all actions against architects and  
6 engineers, who perform or furnish the design, planning,  
7 specifications, testing, supervision, administration, or  
8 observation of the construction of an improvement on or to  
9 real property, and builders who construct, perform, or manage  
10 the construction of an improvement on or to real property  
11 designed by and constructed under the supervision,  
12 administration or observation of, or in accordance with the  
13 plans and specifications prepared by, an architect or  
14 engineer, to limit the time for commencement of an action to a  
15 period of two years from the date a cause of action accrues  
16 and to bar all causes of action and rights of action which  
17 accrue more than ~~thirteen~~ four years after substantial  
18 completion of such improvement. The Legislature finds that  
19 this classification distinguishing architects, engineers, and  
20 builders is rationally and reasonably related to the  
21 legislative regulatory scheme and is valid. The Legislature  
22 has declared that the practices of architecture and  
23 engineering are subject to regulation and control in the  
24 public interest and has established high professional  
25 standards which must be met by architects and engineers to  
26 qualify them to practice architecture and engineering in the  
27 State of Alabama. These requirements imposed by the

1 Legislature make the practices of architecture and engineering  
2 learned professions fully regulated and accountable to the  
3 state and members of the public. Regulation has also been  
4 imposed by the Legislature upon general contractors who  
5 construct such improvements on or to real property. Builders  
6 distinguished in this article are those licensed as general  
7 contractors who construct, or perform or manage the  
8 construction of, such improvements designed by and constructed  
9 under the supervision, administration or observation of, or in  
10 accordance with the plans and specifications prepared by an  
11 architect or engineer.

12           "(b) This article bears a reasonable relationship to  
13 the proposed legislative objective of limiting the period of  
14 liability for architects and engineers and builders whose  
15 professional services or work on improvements to real property  
16 generally ends at the time of substantial completion of the  
17 improvement. While protecting architects and engineers from  
18 exposure to liabilities for injuries and damages occurring  
19 long after the completion of their professional architectural  
20 and engineering services and builders as defined from exposure  
21 to liabilities for injuries and damages occurring long after  
22 the completion of their work, the article imposes no unfair  
23 burden on the injured party for he or she is still afforded an  
24 avenue of legal action to seek redress from those who are more  
25 likely to have been responsible for or could have prevented  
26 such injury.

1           "(c) It is the legislative intent and purpose to  
2 establish a single period of limitation for all civil actions,  
3 whether in tort, contract or otherwise, commenced against  
4 architects and engineers and builders, which limitation period  
5 is two years from the date the cause of action accrues. This  
6 limitation period is equally applicable to actions in tort  
7 which currently must be commenced within two years from the  
8 date injury occurs, and those founded on contract which  
9 currently may be commenced within two years for oral  
10 contracts, six years for written contracts, or ten years for  
11 written contracts under seal after the completion of the  
12 contract work. The proposed two-year statute provides a  
13 uniform period of two years for filing all causes of action  
14 against architects in tort, contract, or otherwise, but  
15 provides that the statute of limitation does not commence  
16 until the time of injury or damage, which extends the  
17 commencement of the time for filing contract actions, or where  
18 latent or by its nature not reasonably discovered, does not  
19 commence until the time of discovery – thereby applying for  
20 the first time to both these tort and contractual actions, the  
21 so-called "discovery rule." These changes accrue to the  
22 benefit of the injured party, and the Legislature finds that  
23 this benefit constitutes an adequate quid pro quo for  
24 abolishing rights of action which have not accrued within  
25 ~~thirteen~~ four years of substantial completion of their work.

26           "(d) It is the further legislative objective to  
27 provide for the abolishing of rights of action against



1 architects and engineers and builders which would have accrued  
2 after the passage of ~~thirteen~~ four years from the substantial  
3 completion of the construction of an improvement on or to real  
4 property, except rights of action for breach of written  
5 express warranties, contracts, or indemnities which extend  
6 beyond ~~thirteen~~ four years. Where causes of action accrue  
7 during the ~~thirteen~~ four years from completion, an action may  
8 be brought within two years of accrual even though this  
9 extends beyond the ~~thirteen~~ four-year period. This permits all  
10 injured parties a period of two years to file suit unless  
11 already barred because the cause of action accrues after the  
12 passage of ~~thirteen~~ four years, which would in certain  
13 circumstances permit the filing of an action up to ~~fifteen~~ six  
14 years after the completion of the improvement (or up to two  
15 years after the expiration of written express warranties,  
16 contracts, or indemnities).

17 "(e) The legislative objective of abolishing  
18 potential liabilities of architects and engineers and builders  
19 after the passage of a sufficient period of time from the  
20 completion of their work is rationally and reasonably related  
21 to the permissible state objective of removing responsibility  
22 from, and preventing suit against these regulated professions  
23 and builders which are least likely to be responsible or at  
24 fault for defects and deficiencies which cause injury long  
25 after their services or work is completed. The Legislature has  
26 deemed that, after a lapse of time of more than ~~thirteen~~ four  
27 years without incident, the burden on the courts to

1 adjudicate, the complexities of proof with the obstacle of  
2 faded memories, unavailable witnesses and lost evidence, and  
3 even where evidence is available, the opportunity for  
4 intervening factors such as acts or omissions of others in  
5 inadequate maintenance, improper use, intervening alterations,  
6 improvements and services, and other negligence, and such as  
7 changes in standards for design and construction and changes  
8 in building codes, and the burden on architects and engineers  
9 and builders, who have no control over the improvements after  
10 their services are completed, to disprove responsibility after  
11 acceptance and years of possession by other parties, all weigh  
12 more heavily in favor of repose or the abolishing of rights of  
13 action against architects and engineers and builders than  
14 allowing adjudication of the few, if any, meritorious claims  
15 which might have accrued thereafter. The Legislature finds  
16 that the burden of tenuous claims upon both the courts and  
17 architects and engineers and builders sufficiently vindicates  
18 the denial of a right of action after the passage of a period  
19 of ~~thirteen~~ four years from the substantial completion of the  
20 construction of the improvement.

21 "§6-5-227.

22 "Nothing contained in this article shall be  
23 construed to bar, prior to the expiration of a written express  
24 warranty, contract, or indemnity, causes of action or rights  
25 of action in contract against architects, engineers, and  
26 builders as defined in this article arising out of breach of  
27 contract for written express warranties, contracts, or

1 indemnities which by the written terms thereof shall extend  
2 beyond the period of ~~thirteen~~ four years after the substantial  
3 completion of construction of an improvement on or to the real  
4 property. Any written express warranty, contract, or indemnity  
5 for the purposes of an action in contract based upon the  
6 written express warranty, contract, or indemnity shall be  
7 enforceable for the period of time specified in writing, and  
8 all civil actions in contract arising out of the written  
9 express warranty, contract, or indemnity against any  
10 architect, engineer, or builder who gave the written express  
11 warranty, contract, or indemnity must be commenced within two  
12 years next after the cause of action accrues or arises, and  
13 not thereafter; and no relief can be granted and shall be  
14 barred on any cause of action which accrues after the  
15 expiration of the term or period of said written express  
16 warranty, contract, or indemnity."

17 Section 2. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.