

1 SB59
2 128285-5
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 6-5-221, 6-5-222, 6-5-225, and
12 6-5-227, Code of Alabama 1975, relating to the time limitation
13 for commencement of an action against an architect, engineer,
14 or builder to decrease the statute of repose for commencing an
15 action against an architect, engineer, or builder to seven
16 years.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 6-5-221, 6-5-222, 6-5-225, and
19 6-5-227, Code of Alabama 1975, are amended to read as follows:

20 "§6-5-221.

21 "(a) All civil actions in tort, contract, or
22 otherwise against any architect or engineer performing or
23 furnishing the design, planning, specifications, testing,
24 supervision, administration, or observation of any
25 construction of any improvement on or to real property, or
26 against builders who constructed, or performed or managed the
27 construction of, an improvement on or to real property

1 designed by and constructed under the supervision,
2 administration, or observation of an architect or engineer, or
3 designed by and constructed in accordance with the plans and
4 specifications prepared by an architect or engineer, for the
5 recovery of damages for:

6 "(i) Any defect or deficiency in the design,
7 planning, specifications, testing, supervision,
8 administration, or observation of the construction of any such
9 improvement, or any defect or deficiency in the construction
10 of any such improvement; or

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

13 "(iii) Injury to or wrongful death of a person
14 caused by any such defect or deficiency;
15 shall be commenced within two years next after a cause of
16 action accrues or arises, and not thereafter. Notwithstanding
17 the foregoing, no relief can be granted on any cause of action
18 which accrues or would have accrued more than ~~thirteen~~ seven
19 years after the substantial completion of construction of the
20 improvement on or to the real property, and any right of
21 action which accrues or would have accrued more than ~~thirteen~~
22 seven years thereafter is barred, except where prior to the
23 expiration of such ~~thirteen~~ seven-year period, the architect,
24 engineer, or builder had actual knowledge that such defect or
25 deficiency exists and failed to disclose such defect or
26 deficiency to the person with whom the architect, engineer, or
27 builder contracted to perform such service.

1 "(b) This section shall apply to any civil action
2 commenced against an architect, engineer, or builder as
3 defined in this article, whether for his or her own act or
4 omission or failure to act, for the act or omission or failure
5 to act of his or her agents or employees, or for the act or
6 omission or failure to act of any person or entity, its
7 agents, or employees, who are acting under the instructions,
8 control, or supervision of the architect, engineer, or
9 builder.

10 "(c) This section shall apply and extend to every
11 action or demand, whether commenced by direct action, action
12 for contribution or indemnity, or by counterclaim,
13 cross-claim, or third party practice and whether commenced by
14 an owner of the improvement or any other person.

15 "(d) This section shall not apply to, shall not be a
16 defense for, and does not proscribe a cause or right of action
17 against any architect, engineer, or builder who, at the time
18 the cause of action accrues or arises, is the owner or is in
19 actual possession or control as owner, tenant, or otherwise of
20 the improvement.

21 "(e) When the architect, engineer, or builder has
22 been the owner or the person in actual possession or control,
23 in whatever capacity, of the improvement during the ~~thirteen~~
24 seven-year period after the substantial completion of
25 construction of the improvement on or to real property, but
26 not at the time the cause of action accrues or arises, the
27 time of the ownership, possession, or control shall not be

1 computed as a portion of the time necessary to create a bar
2 for the action or of relief by virtue of the passage of time
3 after the substantial completion of the improvement.

4 "§6-5-222.

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

20 "§6-5-225.

21 "(a) It is the purpose and intent of the Legislature
22 in connection with all actions against architects and
23 engineers, who perform or furnish the design, planning,
24 specifications, testing, supervision, administration, or
25 observation of the construction of an improvement on or to
26 real property, and builders who construct, perform, or manage
27 the construction of an improvement on or to real property

1 designed by and constructed under the supervision,
2 administration or observation of, or in accordance with the
3 plans and specifications prepared by, an architect or
4 engineer, to limit the time for commencement of an action to a
5 period of two years from the date a cause of action accrues
6 and to bar all causes of action and rights of action which
7 accrue more than ~~thirteen~~ seven years after substantial
8 completion of such improvement. The Legislature finds that
9 this classification distinguishing architects, engineers, and
10 builders is rationally and reasonably related to the
11 legislative regulatory scheme and is valid. The Legislature
12 has declared that the practices of architecture and
13 engineering are subject to regulation and control in the
14 public interest and has established high professional
15 standards which must be met by architects and engineers to
16 qualify them to practice architecture and engineering in the
17 State of Alabama. These requirements imposed by the
18 Legislature make the practices of architecture and engineering
19 learned professions fully regulated and accountable to the
20 state and members of the public. Regulation has also been
21 imposed by the Legislature upon general contractors who
22 construct such improvements on or to real property. Builders
23 distinguished in this article are those licensed as general
24 contractors who construct, or perform or manage the
25 construction of, such improvements designed by and constructed
26 under the supervision, administration or observation of, or in

1 accordance with the plans and specifications prepared by an
2 architect or engineer.

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

18 "(c) It is the legislative intent and purpose to
19 establish a single period of limitation for all civil actions,
20 whether in tort, contract or otherwise, commenced against
21 architects and engineers and builders, which limitation period
22 is two years from the date the cause of action accrues. This
23 limitation period is equally applicable to actions in tort
24 which currently must be commenced within two years from the
25 date injury occurs, and those founded on contract which
26 currently may be commenced within two years for oral
27 contracts, six years for written contracts, or ten years for

1 written contracts under seal after the completion of the
2 contract work. The proposed two-year statute provides a
3 uniform period of two years for filing all causes of action
4 against architects in tort, contract, or otherwise, but
5 provides that the statute of limitation does not commence
6 until the time of injury or damage, which extends the
7 commencement of the time for filing contract actions, or where
8 latent or by its nature not reasonably discovered, does not
9 commence until the time of discovery – thereby applying for
10 the first time to both these tort and contractual actions, the
11 so-called "discovery rule." These changes accrue to the
12 benefit of the injured party, and the Legislature finds that
13 this benefit constitutes an adequate quid pro quo for
14 abolishing rights of action which have not accrued within
15 ~~thirteen~~ seven years of substantial completion of their work.

16 "(d) It is the further legislative objective to
17 provide for the abolishing of rights of action against
18 architects and engineers and builders which would have accrued
19 after the passage of ~~thirteen~~ seven years from the substantial
20 completion of the construction of an improvement on or to real
21 property, except rights of action for breach of written
22 express warranties, contracts, or indemnities which extend
23 beyond ~~thirteen~~ seven years. Where causes of action accrue
24 during the ~~thirteen~~ seven years from completion, an action may
25 be brought within two years of accrual even though this
26 extends beyond the ~~thirteen~~ seven-year period. This permits
27 all injured parties a period of two years to file suit unless

1 already barred because the cause of action accrues after the
2 passage of ~~thirteen~~ seven years, which would in certain
3 circumstances permit the filing of an action up to ~~fifteen~~
4 nine years after the completion of the improvement (or up to
5 two years after the expiration of written express warranties,
6 contracts, or indemnities).

7 "(e) The legislative objective of abolishing
8 potential liabilities of architects and engineers and builders
9 after the passage of a sufficient period of time from the
10 completion of their work is rationally and reasonably related
11 to the permissible state objective of removing responsibility
12 from, and preventing suit against these regulated professions
13 and builders which are least likely to be responsible or at
14 fault for defects and deficiencies which cause injury long
15 after their services or work is completed. The Legislature has
16 deemed that, after a lapse of time of more than ~~thirteen~~ seven
17 years without incident, the burden on the courts to
18 adjudicate, the complexities of proof with the obstacle of
19 faded memories, unavailable witnesses and lost evidence, and
20 even where evidence is available, the opportunity for
21 intervening factors such as acts or omissions of others in
22 inadequate maintenance, improper use, intervening alterations,
23 improvements and services, and other negligence, and such as
24 changes in standards for design and construction and changes
25 in building codes, and the burden on architects and engineers
26 and builders, who have no control over the improvements after
27 their services are completed, to disprove responsibility after

1 acceptance and years of possession by other parties, all weigh
2 more heavily in favor of repose or the abolishing of rights of
3 action against architects and engineers and builders than
4 allowing adjudication of the few, if any, meritorious claims
5 which might have accrued thereafter. The Legislature finds
6 that the burden of tenuous claims upon both the courts and
7 architects and engineers and builders sufficiently vindicates
8 the denial of a right of action after the passage of a period
9 of ~~thirteen~~ seven years from the substantial completion of the
10 construction of the improvement.

11 "§6-5-227.

12 "Nothing contained in this article shall be
13 construed to bar, prior to the expiration of a written express
14 warranty, contract, or indemnity, causes of action or rights
15 of action in contract against architects, engineers, and
16 builders as defined in this article arising out of breach of
17 contract for written express warranties, contracts, or
18 indemnities which by the written terms thereof shall extend
19 beyond the period of ~~thirteen~~ seven years after the
20 substantial completion of construction of an improvement on or
21 to the real property. Any written express warranty, contract,
22 or indemnity for the purposes of an action in contract based
23 upon the written express warranty, contract, or indemnity
24 shall be enforceable for the period of time specified in
25 writing, and all civil actions in contract arising out of the
26 written express warranty, contract, or indemnity against any
27 architect, engineer, or builder who gave the written express

1 warranty, contract, or indemnity must be commenced within two
2 years next after the cause of action accrues or arises, and
3 not thereafter; and no relief can be granted and shall be
4 barred on any cause of action which accrues after the
5 expiration of the term or period of said written express
6 warranty, contract, or indemnity."

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 01-MAR-11

Read for the second time and placed on the calen-
dar with 1 substitute and..... 31-MAR-11

Read for the third time and passed as amended 19-APR-11

Yeas 29
Nays 1

Patrick Harris
Secretary