

1 SB59
2 126486-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11

2
3
4
5
6
7
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.