

1 HB132  
2 127832-3  
3 By Representative Canfield  
4 RFD: Commerce and Small Business  
5 First Read: 03-MAR-11



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

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

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

11 "(iii) Injury to or wrongful death of a person  
12 caused by any such defect or deficiency;

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

1 time of the ownership, possession, or control shall not be  
2 computed as a portion of the time necessary to create a bar  
3 for the action or of relief by virtue of the passage of time  
4 after the substantial completion of the improvement.

5 "§6-5-222.

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

21 "§6-5-225.

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

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

1 construction of, such improvements designed by and constructed  
2 under the supervision, administration or observation of, or in  
3 accordance with the plans and specifications prepared by an  
4 architect or engineer.

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

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

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

19 "(d) It is the further legislative objective to  
20 provide for the abolishing of rights of action against  
21 architects and engineers and builders which would have accrued  
22 after the passage of ~~thirteen~~ seven years from the substantial  
23 completion of the construction of an improvement on or to real  
24 property, except rights of action for breach of written  
25 express warranties, contracts, or indemnities which extend  
26 beyond ~~thirteen~~ seven years. Where causes of action accrue



1 during the ~~thirteen~~ seven years from completion, an action may  
2 be brought within two years of accrual even though this  
3 extends beyond the ~~thirteen~~ seven-year period. This permits  
4 all injured parties a period of two years to file suit unless  
5 already barred because the cause of action accrues after the  
6 passage of ~~thirteen~~ seven years, which would in certain  
7 circumstances permit the filing of an action up to ~~fifteen~~  
8 nine years after the completion of the improvement (or up to  
9 two years after the expiration of written express warranties,  
10 contracts, or indemnities).

11 "(e) The legislative objective of abolishing  
12 potential liabilities of architects and engineers and builders  
13 after the passage of a sufficient period of time from the  
14 completion of their work is rationally and reasonably related  
15 to the permissible state objective of removing responsibility  
16 from, and preventing suit against these regulated professions  
17 and builders which are least likely to be responsible or at  
18 fault for defects and deficiencies which cause injury long  
19 after their services or work is completed. The Legislature has  
20 deemed that, after a lapse of time of more than ~~thirteen~~ seven  
21 years without incident, the burden on the courts to  
22 adjudicate, the complexities of proof with the obstacle of  
23 faded memories, unavailable witnesses and lost evidence, and  
24 even where evidence is available, the opportunity for  
25 intervening factors such as acts or omissions of others in  
26 inadequate maintenance, improper use, intervening alterations,

1 improvements and services, and other negligence, and such as  
2 changes in standards for design and construction and changes  
3 in building codes, and the burden on architects and engineers  
4 and builders, who have no control over the improvements after  
5 their services are completed, to disprove responsibility after  
6 acceptance and years of possession by other parties, all weigh  
7 more heavily in favor of repose or the abolishing of rights of  
8 action against architects and engineers and builders than  
9 allowing adjudication of the few, if any, meritorious claims  
10 which might have accrued thereafter. The Legislature finds  
11 that the burden of tenuous claims upon both the courts and  
12 architects and engineers and builders sufficiently vindicates  
13 the denial of a right of action after the passage of a period  
14 of ~~thirteen~~ seven years from the substantial completion of the  
15 construction of the improvement.

16 "§6-5-227.

17 "Nothing contained in this article shall be  
18 construed to bar, prior to the expiration of a written express  
19 warranty, contract, or indemnity, causes of action or rights  
20 of action in contract against architects, engineers, and  
21 builders as defined in this article arising out of breach of  
22 contract for written express warranties, contracts, or  
23 indemnities which by the written terms thereof shall extend  
24 beyond the period of ~~thirteen~~ seven years after the  
25 substantial completion of construction of an improvement on or  
26 to the real property. Any written express warranty, contract,

1 or indemnity for the purposes of an action in contract based  
2 upon the written express warranty, contract, or indemnity  
3 shall be enforceable for the period of time specified in  
4 writing, and all civil actions in contract arising out of the  
5 written express warranty, contract, or indemnity against any  
6 architect, engineer, or builder who gave the written express  
7 warranty, contract, or indemnity must be commenced within two  
8 years next after the cause of action accrues or arises, and  
9 not thereafter; and no relief can be granted and shall be  
10 barred on any cause of action which accrues after the  
11 expiration of the term or period of said written express  
12 warranty, contract, or indemnity."

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

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House of Representatives

Read for the first time and re-ferred to the House of Representa-tives committee on Commerce and Small Business..... . . . . . 03-MAR-11

Read for the second time and placed on the calendar with 1 substitute and..... . . . . . 24-MAR-11

Read for the third time and passed as amended..... . . . . . 07-APR-11

Yeas...90, Nays...0, Abstains...0

Greg Pappas  
Clerk