

1 SB59
2 128285-7
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11

1 SB59

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4 ENROLLED, An Act,

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 6-5-221, 6-5-222, 6-5-225, and
13 6-5-227, Code of Alabama 1975, are amended to read as follows:

14 "§6-5-221.

15 "(a) All civil actions in tort, contract, or
16 otherwise against any architect or engineer performing or
17 furnishing the design, planning, specifications, testing,
18 supervision, administration, or observation of any
19 construction of any improvement on or to real property, or
20 against builders who constructed, or performed or managed the
21 construction of, an improvement on or to real property
22 designed by and constructed under the supervision,
23 administration, or observation of an architect or engineer, or
24 designed by and constructed in accordance with the plans and

1 specifications prepared by an architect or engineer, for the
2 recovery of damages for:

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

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

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

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

6 "§6-5-222.

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

22 "§6-5-225.

23 "(a) It is the purpose and intent of the Legislature
24 in connection with all actions against architects and
25 engineers, who perform or furnish the design, planning,

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

1 construct such improvements on or to real property. Builders
2 distinguished in this article are those licensed as general
3 contractors who construct, or perform or manage the
4 construction of, such improvements designed by and constructed
5 under the supervision, administration or observation of, or in
6 accordance with the plans and specifications prepared by an
7 architect or engineer.

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

23 "(c) It is the legislative intent and purpose to
24 establish a single period of limitation for all civil actions,
25 whether in tort, contract or otherwise, commenced against

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

23 "(d) It is the further legislative objective to
24 provide for the abolishing of rights of action against
25 architects and engineers and builders which would have accrued

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

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

1 complexities of proof with the obstacle of faded memories,
2 unavailable witnesses and lost evidence, and even where
3 evidence is available, the opportunity for intervening factors
4 such as acts or omissions of others in inadequate maintenance,
5 improper use, intervening alterations, improvements and
6 services, and other negligence, and such as changes in
7 standards for design and construction and changes in building
8 codes, and the burden on architects and engineers and
9 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 seven 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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB59
Senate 19-APR-11
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 26-MAY-11

By: Senator Ward