

BILL TEXT:

STATE OF NEW YORK

269

2005-2006 Regular Sessions

IN ASSEMBLY

January 10, 2005

Introduced by M. of A. CANESTRARI, HOYT, ORTIZ, SCHIMMINGER, SEDDIO --
Multi-Sponsored by -- M. of A. COOK, JOHN, McENENY -- read once and
referred to the Committee on Higher Education

AN ACT to amend the civil practice law and rules, in relation to provid-
ing a statute of limitations for certain actions against professional
engineers, architects, landscape architects, land surveyors and
construction contractors and to repeal section 214-d, subdivision (h)
of rule 3211 and subdivision (i) of rule 3212 of the civil practice
law and rules relating thereto

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Statement of findings and purpose. The legislature finds
2 that (a) the open-ended and continuing liability imposed upon members of
3 the design professions and construction contractors, due to alleged
4 deficiencies relating to improvements to real property, has resulted in
5 an unfair burden on such professionals and a general increase in the
6 cost of both public and private improvements to real property, (b) the
7 cost of maintaining adequate insurance coverage is so expensive that a
8 significant number of design professionals and construction contractors
9 are forced to forego insurance coverage altogether to the detriment of
10 the public's safety and welfare. The legislature further finds that the
11 best designed and constructed improvement is dependent upon proper main-
12 tenance to preserve its integrity and safety and it is thus of impor-
13 tance to the public safety and welfare to ensure that an owner maintains
14 and repairs that which is the property of the owner. The legislature
15 therefore finds that it is necessary and desirable to establish a time
16 limit after which tort claims for personal injury or wrongful death may
17 not be asserted against such professionals and contractors. That statute
18 of repose set forth herein, with a claim accruing on the date that the
19 improvement was completed, will preserve the liability of the profes-
20 sional and contractor during a period in which the defects, if any, will

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 be revealed, and therefore will establish an appropriate limit on
2 liability, while affording adequate protection to the public.

3 § 2. Section 214-d of the civil practice law and rules is REPEALED and
4 a new section 214-d is added to read as follows:

5 § 214-d. Limitations on certain actions against professional engi-
6 neers, architects, landscape architects, land surveyors or construction
7 contractors. 1. Except as otherwise provided in subdivision two of this
8 section, no action to recover damages for injury to the person or for
9 wrongful death or for damage to property nor any action for contribution
10 or indemnity for damages sustained on account of such injury or wrongful
11 death or damage to property arising from any defect in the structure or
12 improvement resulting from the design, planning, or supervision of
13 construction of an improvement to real property shall be brought against
14 a professional engineer, architect, landscape architect, land surveyor
15 or construction contractor more than ten years after the completion of
16 such improvement.

17 2. If, by reason of such defect, an injury to the person or an injury
18 causing wrongful death or damages to property occurs during the tenth
19 year after completion, an action to recover damages for such injury or
20 wrongful death or damage to property may be brought within one year
21 after the date on which such injury occurred, but in no event may such
22 action be brought more than eleven years after the completion of the
23 improvement.

24 3. The limitations prescribed by this section shall not apply to
25 actions brought by one in contractual or professional privity with the
26 engineer, architect, landscape architect, land surveyor or construction
27 contractor and shall not be asserted by way of defense by any person in
28 actual possession or control as owner, tenant, or otherwise, of such an
29 improvement at the time any defect in such improvement constitutes the
30 proximate cause of the injury or death for which it is proposed to bring
31 an action.

32 4. For purposes of this section an improvement shall be deemed to be
33 "completed" (a) when, after the improvement has been started, a perma-
34 nent certificate of occupancy is issued by the municipality in which the
35 improvement is situated, if such is required or is actually issued
36 pursuant to law or regulation; or (b) if a public improvement, upon the
37 acceptance of the improvement by the owner, if a certificate of occupan-
38 cy is not required and has not been issued or (c) on the earlier of the
39 following dates, if the provisions of paragraphs (a) and (b) of this
40 subdivision do not apply (i) four months prior to the last day on which
41 mechanic's lien, resulting from work performed or materials furnished
42 with respect to such improvement, can be filed; or (ii) upon the owner's
43 final payment for services rendered or materials supplied with respect
44 to such improvement.

45 5. An architect, engineer, landscape architect, or land surveyor shall
46 mean a person licensed or registered as an architect, engineer, land-
47 scape architect or land surveyor, pursuant to the provisions of the
48 education law or any partnership or corporation lawfully performing
49 architectural, engineering, landscape architectural or surveying
50 services.

51 § 3. Subdivisions 4 and 5 of section 214 of the civil practice law and
52 rules, as separately amended by chapters 485 and 682 of the laws of
53 1986, are amended to read as follows:

54 4. an action to recover damages for an injury to property except as
55 provided in [~~section~~] sections 214-c and 214-d;

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1 5. an action to recover damages for a personal injury except as
2 provided in sections 214-b, 214-c, 214-d and 215;

3 § 4. Subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of
4 the civil practice law and rules are REPEALED.

5 § 5. Nothing contained in this act shall be construed as affecting
6 rights, obligations or duties arising under any contract entered into or
7 any cause of action resulting from an injury which occurred prior to the
8 effective date of this act.

9 § 6. This act shall take effect on the first of January next succeed-
10 ing the date on which it shall have become a law and shall apply to all
11 actions commenced on or after its effective date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A269

SPONSOR: Canestrari (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to providing a statute of limitations for certain actions against professional engineers, architects, landscape architects, land surveyors and construction contractors and to repeal section 214-d, subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of the civil practice law and rules relating thereto

PURPOSE OR GENERAL IDEA OF BILL:

To establish time limits after which tort claims for personal injury or wrongful death may not be asserted against design professionals and construction contractors.

SUMMARY OF SPECIFIC PROVISIONS:

Repeals section 214(d), subdivision (h) of Rule 3211 and subdivision (i) of Rule 3212, and adds a new section 214(d) to the Civil Practice Law and Rules ("CPLR") to establish a ten year statute of repose for professional injury or wrongful death actions brought against professional engineers, architects, landscape architects, land surveyors or construction contractors. The accrual date for the limitations period would be the date of completion of the project. The term completion is defined in subsection 4 of the proposed statute. The bill also includes a one year extension of time (or grace period) so that if an injury or death occurs during the tenth year after completion of the project the plaintiff will have an extra year to commence an action.

Subsection 3 of the proposed statute provides that the affirmative defense shall not be asserted by an architect, engineer, landscape architect, land surveyor or construction contractor in actual possession or control of the premises at the time an injury occurs. Subsection 3 also limits the applicability of the ten year statute of repose to third party actions, thereby leaving intact the existing 3 or 6 year statute of limitations governing actions by an owner/client.

EXISTING LAW:

Under current law, a cause of action grounded on a theory of simple negligence brought by a third party (not an owner of building or structure) against a design professional or construction contractor is governed by a three year statute of limitations and the cause of action does not accrue until the injury takes place -- even if the plaintiff is injured 20, 30, 50 or 100 years after the design professional has completed work on the building or structure. (See

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51 N.Y.2d 900, affirming 69 A.D.2d 738 (1980)). Although there is an expedited procedure for those claims brought more than 10 years 'after the completion of the design professionals' or contractors' work, design professionals and contractors remain answerable to alleged negligence claims commenced indefinitely after project completion; many design professionals and contractors are thus forced to carry insurance coverage even after they retire from the profession. The insurance problem is exacerbated because insurance coverage is only available on a "claims-made" basis rather than an "occurrence" basis -- thereby requiring the professional and contractor to maintain insurance coverage well into retirement.

JUSTIFICATION:

When a contractor or design professional's client (i.e., an owner of a building) sues a contractor or design professional, the CPLR's general statute of limitation rules apply and operate to cut off any claim within a three year or six year period. In an action brought by an owner/client against a design professional or contractor for damages resulting from a personal injury based on negligence, a three year statute of limitations applies and the cause of action accrues at the time of injury. A malpractice claim against a design professional or contractor by an owner/client carries a three year statute of limitations and the cause of action accrues upon completion of the project. Similarly, an owner/client claim based on breach of contract is governed by a six year statute of limitations and the cause of action accrues upon completion of the contractual duties.

Chapter 682 of the Laws of 1996, which instituted an expedited procedure for claims against design professionals brought more than 10 years after completion of work, was a positive, yet modest, first-step to protect design professionals from meritless claims that are brought years, sometimes decades, after completion of a design professional's work.

It is still unfair, however, to hold design professionals and contractors liable for errors in design where injuries are sustained many years after the rendition of services and where the design professional or contractor no longer has supervision or control over the premises. This legislation recognizes the fact that there comes a time when a structure passes from a well-designed building to a well-maintained building. The bill seeks to place liability on the person in the best position to correct the defects -- the present owner of the building, and to relieve the design professional and the contractor from the threat of perpetual liability that exists under current law.

The outer limit of a ten year statute of repose was selected because a study of insurance claims against design professionals and contractors prepared for the American Institute of Architects demonstrated that the majority of third party claims are brought within seven years of project completion. More specifically, the study indicates that if a ten year statute of repose were in place and the claims were measured from completion of the project, 100% of all claims brought during the study period would have been allowed. The additional one year grace period which sets an outside limit of eleven years for those injured in the

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tenth year following completion of the project, would provide additional assurance that injured parties will have a right of recourse. These numbers demonstrate that the problem is not the number of actual claims brought after ten years -- the problem is the threat of potential lawsuits which forces design professionals and contractors to carry insurance coverage long after the project has been completed and for years after they supposedly retire from the profession.

Further justification for establishing a statute of repose is that the longer the period of time between the completion of the structure and the injury, the greater the opportunity for some intervening negligence to occur. The longer the owner is in possession of the improvement, using it, altering it, and maintaining it, the more likely it is that an injury will be the result of the owner's negligence rather than that of the design professionals or contractors.

Thirty-two other states have enacted legislation establishing a statute of repose of seven years or more with completion of the project serving as the accrual date for the cause of action.

LEGISLATIVE HISTORY:

2003-04, S. 4172/A.9201.
2001-02, S. 1696/A.3497.
1999-00, S.2272/A.3474.
1997-98, S.5008/A.7598.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

The first of November after the date it becomes law.
