

2A:14-1.1

October 8, 1969

LEGISLATIVE HISTORY OF R.S. 2A:14-1.1
(Limitation of actions; 10 years; improvement to real property)

Previous bills:

COPY NO. 1

1966 - S252

March 7 - Introduced by Kelly.

June 6 - Passed in Senate, amended.

June 27 - Passed in Assembly.

March 6, 1967 - Filed in State Library; no Governor's message.
No statement.

Amended during passage; copy of original bill and
amendments attached.

The bill which became law was:

L. 1967, Chapter 59 - S406

March 20 - Introduced by Kelly and Bigley.

May 8 - Passed in Senate.

May 8 - Passed in Assembly under emergency resolution.

May 18 - Approved, Chapter 59.

No statement.

Not amended during passage.

JH/PC

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2A:14-1.1

2/9/70

See also:

Lunch, M.F.
Why statutes of limitations?
Consulting Engineer Magazine, Feb. 1964.

COPY NO. 1

(R.L.)

We consulted the Governor's Counsel's File on S252 of 1966. It contained many letters from architects and engineers urging adoption of such a statute so they would be relieved from the cost of maintaining negligence insurance indefinitely, even after they retire. It also contained the following list of states and their years of limitations as of that date:

- Idaho - 6
- Illinois - 4
- Kansas - 10
- Kentucky - 5
- Louisiana - 10
- Massachusetts - 6
- Minnesota - 10
- Mississippi - 10
- Nevada - 6
- New Hampshire - 6
- North Carolina - 6
- Ohio - 10
- Pennsylvania - 12
- South Carolina - 6
- South Dakota - 10
- Tennessee - 4
- Virginia - 5
- Wisconsin - 6

RSL/PC

SENATE, No. 252

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1966

By Senator KELLY

Referred to Committee on Judiciary

AN ACT concerning limitations of actions and supplementing chapter 14 of
Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. No action to recover damages for any injury to property, real or per-
2 sonal, or for an injury to the person, or for bodily injury or wrongful death,
3 arising out of the defective and unsafe condition of an improvement to real
4 property, nor any action for contribution or indemnity for damages sus-
5 tained on account of such injury, shall be brought against any person perform-
6 ing or furnishing the design, planning, supervision of construction or construc-
7 tion of such improvement to real property, more than 4 years after the per-
8 formance or furnishing of such services and construction. This limitation
9 shall not apply to any person in actual possession and control as owner,
10 tenant, or otherwise, of the improvement at the time the defective and un-
11 safe condition of such improvement constitutes the proximate cause of the in-
12 jury or damage for which the action is brought.

1 2. This act shall take effect immediately.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 252

STATE OF NEW JERSEY

ADOPTED MAY 31, 1966

Amend page 1, section 1, line 1, after "action", insert "whether in contract in tort or otherwise".

Amend page 1, section 1, line 1, after "damages", insert "for any deficiency in the design, planning, supervision or construction of an improvement to real property, or".

Amend page 1, section 1, line 7, delete "4", insert "6".

Filed in St. Libby 3/6/67 no MESSAGE
by the Governor

[OFFICIAL COPY REPRINT]

SENATE, No. 252

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1966

By Senator KELLY

Referred to Committee on Judiciary

AN ACT concerning limitations of actions and supplementing chapter 14 of
Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. No action **whether in contract, in tort, or otherwise** to recover dam-
2 ages **for any deficiency in the design, planning, supervision or construction*
3 *of an improvement to real property, or** for any injury to property, real or
4 personal, or for an injury to the person, or for bodily injury or wrongful
4A death, arising out of the defective and unsafe condition of an improvement to
4B real property, nor any action for contribution or indemnity for damages sus-
5 tained on account of such injury, shall be brought against any person perform-
6 ing or furnishing the design, planning, supervision of construction or construc-
7 tion of such improvement to real property, more than ***[4]* *6*** years after
8 the performance or furnishing of such services and construction. This limita-
9 tion shall not apply to any person in actual possession and control as owner,
10 tenant, or otherwise, of the improvement at the time the defective and un-
11 safe condition of such improvement constitutes the proximate cause of the in-
12 jury or damage for which the action is brought.

1 2. This act shall take effect immediately.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.

CHAPTER 59 LAWS OF N. J. 1967

APPROVED 5-18-67

SENATE, No. 406

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1967

By Senators KELLY and BIGLEY

Referred to Committee on Judiciary

AN ACT concerning limitations of actions and supplementing chapter 14 of Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

3 1. No action whether in contract, in tort, or otherwise to recover
4 damages for any deficiency in the design, planning, supervision
5 or construction of an improvement to real property, or for any
6 injury to property, real or personal, or for an injury to the person,
7 or for bodily injury or wrongful death, arising out of the defec-
8 tive and unsafe condition of an improvement to real property, nor
9 any action for contribution or indemnity for damages sustained
10 on account of such injury, shall be brought against any person
11 performing or furnishing the design, planning, supervision of
12 construction or construction of such improvement to real property,
13 more than 10 years after the performance or furnishing of such
14 services and construction. This limitation shall not apply to any
15 person in actual possession and control as owner, tenant, or other-
16 wise, of the improvement at the time the defective and unsafe
17 condition of such improvement constitutes the proximate cause
18 of the injury or damage for which the action is brought.

19 2. This act shall take effect immediately.

Normally this provides an adequate period for the defendant to know of the possibility of suit following the injury caused by his alleged negligence and to collect his evidence, preserve pertinent documents, obtain statements from witnesses, and perform any other task related to his defense.

But take the case of a mechanical consulting engineer who designed a heating system for a structure this year. His work is completed, his fee paid, his plans filed away, and, so far as the engineer knows, all is well. Then 5, 10, or 15 years later the boiler explodes and third persons are killed or injured. Suddenly the engineer is faced with a lawsuit based on his alleged negligence in the inadequate design of the heating system — a transaction that is remote in his memory. His plans may have disappeared. The heating contractor who may have committed an error in installing the unit by not following the engineer's design may be out of business. Employees of the engineer who may have been most familiar with the details may have departed for parts unknown. Under these circumstances the engineer can never know for certain that any professional assignment performed by him throughout his career may not come back to haunt him.

Typical Cases

This situation is not completely hypothetical, for these actual cases are typical of a growing concern:

* A granary designed by an engineer in 1934 exploded in 1957. Suit was brought in 1959 for negligence in design and construction. The case is still in court, but even if the engineer wins on the merits he has faced considerable expense in defense costs for damages occurring almost a quarter of a century after the completion of his professional services.

* An office building designed by an architect in 1940 had safety hooks for outside window cleaning. In 1956 the hooks pulled out and a window washer was killed. His estate sued the architect; it was awarded damages based on its claim of negligent design.

* A building designed in 1954 included underground piping to the water wells that supplied the building. In 1960 trouble developed because the piping had corroded, and both the architect and engineer were sued for negligence in specifying a kind of piping material that was not suitable for the soil conditions. An arbitrator has decided against the defendants, but the amount of damages is yet to be determined.

* A leading case — repudiating the old rule that a suit will not be entertained unless there is privity (contractual relations) between the parties — involved injuries resulting from the fall of an infant from a low concrete porch of an apartment house. The suit was brought six years after the apartment house was completed, based on the architect's failure to provide a protective railing. In this situation, how-

ever, the court dismissed the suit on the ground that liability must be based on a hidden danger, and here the danger was obvious.

An important consideration in cases of this type is not necessarily whether damages are assessed against the design professional. Even if the architect or engineer wins the case he has been put to considerable expense and time to formulate and present his defense. And it is not an adequate answer to point to professional liability insurance as the source of bearing the defense costs. Costs of defense are one of the most important ingredients making for high premiums for liability insurance.

Statute of Limitations Legislation

What can the design professions do to offset or limit stale claims or suits? Engineers, architects, and contractors in Wisconsin paved the way with an answer in 1961 when legislation was obtained for a special statute of limitations under which legal actions will not be heard for damages or injuries occurring more than six years after the performance of design, planning, supervision of construction, or construction of a facility or building. The special statute does not apply, however, to persons in actual possession and control as owner, tenant, or otherwise.

Following the Wisconsin initiative, a number of other societies of engineers and architects have moved in a similar direction. So far only Ohio and Illinois have been successful. The Ohio limitation is for 10 years, however, and is limited to persons who are certified or licensed as architects or professional engineers under the state law. The Illinois statute was first introduced for a one year period, but this was felt by the legislature to be an unreasonably short time. The legislation, as enacted, adopted a four year period. Pennsylvania architects and engineers came close in 1963; the legislature enacted a bill with a 10 year period, but the Governor vetoed it.

The practical and legal difficulties in drafting and securing enactment of similar legislation in the other states has led to a national effort to provide a "model" statute of limitations. Through the joint efforts of AIA, NSPE, and AGC a model statute has been prepared and circulated to the state groups of each organization. Like all model statutes, this one must be taken as a guide and tailored to meet the legal technicalities of other state laws to which it may relate; for practical political considerations it may have to be revised as to scope of application or the number of years within which an action may be brought. The model, drafted with the aid of the legal counsel of the sponsoring organizations, goes somewhat beyond the existing state laws in legal details and extent of coverage. It suggests four years as the reasonable period of time for an action, and also a limitation on damages to property as well as

persons. The full text of the model statute is as follows:

Section 1. No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages

- (i) for any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,
- (ii) for injury to property, real or personal, arising out of any such deficiency, or
- (iii) for injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person performing or furnishing the design, planning, supervision or observation of construction, or construction of such an improvement more than four years after substantial completion of such an improvement.

Section 2. Notwithstanding the provisions of Section 1 of this act, in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred (irrespective of the date of death) but in no event may such an action be brought more than five years after the substantial completion of construction of such an improvement.

Section 3. Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

Section 4. The limitation prescribed by this act shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant, or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

Section 5. As used in this act, the term "person" shall mean an individual, corporation, partnership, business trust, unincorporated organization, association, or joint stock company.

Need Concerted Action

Professional liability problems are bound to grow if the past few years is an indication of the future. Bringing the time element on liability claims under control will not solve the over-all liability problem, but it can be a significant step. Consulting engineers therefore should join forces promptly with architects and contractors in a concerted effort to obtain the best possible legislation to bring the problem into balance with the fair interests of the public and of the design professions and the construction industry.

On occasion the courts have taken it upon themselves to reject stale claims as a matter of equity and justice. The Supreme Court of Tennessee recently dismissed a suit filed in 1958 against a surveying firm alleging an error in the survey of a parcel of land performed in 1934. The Tennessee high court commented: "If these surveyors could be held liable to such an unforeseeable and remote purchaser 24 years after the survey, they might, with equal reason, be held liable to any and all purchasers to the end of time. We think no duty so broad and no liability so limitless should be imposed."

This type of sound reasoning will be helpful in meeting similar cases while corrective legislation is being considered. However, it should not be regarded as an adequate substitute for pinning down in law the principle indicated by the Tennessee tribunal. Judges, like other professionals, are notoriously independent in their views. The design professions may be leaning on a thin reed to hope other jurists will likewise see the problem so clearly and fairly. ▲▲

