

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 112

NJSA: 2A:29B-1 to 2A:29B-2
(Engineers -- liability)

BILL NO: A210 (substituted for S617 SCS)

SPONSOR(S): Bodine and Felice

DATE INTRODUCED: Pre-filed

COMMITTEE:

ASSEMBLY: Banking and Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE:

ASSEMBLY: March 29, 1999

SENATE: February 25, 1999

DATE OF APPROVAL: May 19, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Senate Committee Substitute
(Amendments during passage denoted by superscript numbers)

SCS for A210

SPONSORS STATEMENT: *No*

COMMITTEE STATEMENT:

ASSEMBLY:*No*

SENATE:*Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

A210

SPONSORS STATEMENT: *Yes*
(Begins on page 2 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*Yes*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

SCS for S617

SPONSORS STATEMENT: *No*

COMMITTEE STATEMENT:

ASSEMBLY:*No*

SENATE: *Yes*

Identical to Senate Statement for A210 SCS

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

S617

SPONSORS STATEMENT: *Yes*
(Begins on page 2 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

Title 2A.
Chapter 29B (New)
Construction Project
Liability
§§1,2
C. 2A:29B-1 &
2A:29B-2
§3
Note To §§1,2

P.L. 1999, CHAPTER 112, *approved May 19, 1999*
Senate Committee Substitute for
Assembly, No. 210

1 **AN ACT** concerning the liability of professional engineers in certain
2 circumstances.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. A professional engineer or engineering firm, or any employee
8 or representative of a professional engineer or engineering firm, who
9 is assisting or representing the professional engineer or firm, shall only
10 be liable for any injury on a construction project or site resulting from
11 a breach or disregard of construction safety standards or practices on
12 the construction project or site for which compensation is recoverable
13 under R.S.34:15-7 et seq., if:

14 a. The professional engineer or firm has by written contract
15 expressly assumed, to the extent stated therein, responsibility for the
16 implementation, discharge or monitoring of safety standards or
17 practices; or

18 b. In a multi-prime project, the professional engineer or firm is the
19 representative of the project owner and no contractor has been
20 designated to be responsible for site safety; or

21 c. It is shown that:

22 (1) The professional engineer or firm, including its employees or
23 representatives, was present at the portion of the project or site for
24 which the engineer had provided services, prior to or at the time of the
25 accident, or both; and

26 (2) The professional engineer or firm, including its employees or
27 representatives, had actual knowledge of the site conditions which are
28 alleged to be a cause of an imminent danger; and

29 (3) The professional engineer or firm, including its employees or
30 representatives, had the opportunity to notify the responsible
31 contractor and worker of the presence of the site conditions which are
32 alleged to be a cause of an imminent danger, and failed to do so within
33 a reasonable period of time. If that notice is provided, and the
34 responsible contractor fails to respond within one business day, the
35 engineer or firm shall immediately provide that notice to the project
36 owner.

1 2. The limitations provided by this act shall not apply to willful
2 misconduct or gross negligence.

3

4 3. The act shall take effect on the 60th day following enactment,
5 except that the act shall not apply to projects that have been advertised
6 on or before the effective date of this act or projects under contract on
7 or before the effective date of this act.

8

9

10

11

12 Establishes liability of professional engineers under certain
13 circumstances.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 210

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Senate Commerce Committee reports favorably Senate Committee Substitute for Assembly Bill No. 210.

This bill, a Senate Committee Substitute for Assembly Bill No. 210, provides that a professional engineer shall only be liable for an injury on a construction project resulting from a breach or disregard of construction safety standards or practices for which compensation is recoverable under the "workers' compensation law," if: (1) the professional engineer has assumed by written contract responsibility for the safety standards or practices on the project; (2) the professional engineer is the representative of the project owner in a multi-prime contractor project in which no contractor has been designated to be responsible for site safety; or (3) the professional engineer is present at the site, has actual knowledge of site conditions alleged to be a cause of an imminent danger, and fails to advise the responsible contractor and worker of the presence of such conditions.

The provisions of the bill would not apply to willful misconduct or gross negligence. The bill does not interfere with the injured worker's ability to collect workers' compensation benefits, when the worker is entitled to those benefits.

The bill is in response to a New Jersey Supreme Court case, Carvalho v. Toll Bros. and Developers, 143 N.J.565 (1996), and attempts to codify that decision.

ASSEMBLY, No. 210

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman FRANCIS L. BODINE

District 8 (Atlantic, Burlington and Camden)

Assemblyman NICHOLAS R. FELICE

District 40 (Bergen and Passaic)

SYNOPSIS

Provides immunity from liability to professional engineers in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the liability of professional engineers for injuries
2 on construction sites and amending P.L.1967, c.59.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1967, c.59 (C.2A:14-1.1) is amended to read
8 as follows:

9 1. **[No]** a. Except as provided in subsection b. of this section, no
10 action, whether in contract, in tort, or otherwise, to recover damages
11 for any deficiency in the design, planning, supervision or construction
12 of an improvement to real property, or for any injury to property, real
13 or personal, or for an injury to the person, or for bodily injury or
14 wrongful death, arising out of the defective and unsafe condition of an
15 improvement to real property, nor any action for contribution or
16 indemnity for damages sustained on account of such injury, shall be
17 brought against any person performing or furnishing the design,
18 planning, supervision of construction or construction of such
19 improvement to real property, more than 10 years after the
20 performance or furnishing of such services and construction. This
21 limitation shall not apply to any person in actual possession and
22 control as owner, tenant, or otherwise, of the improvement at the time
23 the defective and unsafe condition of such improvement constitutes
24 the proximate cause of the injury or damage for which the action is
25 brought.

26 b. No professional engineer who is retained to perform only
27 professional services on a construction project, nor any employee of
28 a professional engineer who is assisting or representing the
29 professional engineer in the performance of professional services on
30 the site of the construction project, shall be liable for any injury on
31 the construction project for which compensation is recoverable under
32 R.S.34:15-7 et seq., unless responsibility for safety practices is
33 specifically assumed by contract. The immunity provided by this
34 subsection shall not apply to willful misconduct or gross negligence in
35 the preparation of design plans or specifications.

36 (cf: P.L.1967, c.59, s.1)

37

38 2. This act shall take effect immediately.

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41

STATEMENT

42

43 In Carvalho v. Toll Bros. and Developers, 143 N.J. 565 (1996), the

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

Matter underlined thus is new matter.

A210 BODINE, FELICE

3

1 New Jersey Supreme Court held that a professional engineer may be
2 liable for a worker's death caused by unsafe worksite conditions,
3 despite the fact that the contractor, not the engineer, was contractually
4 responsible for safety conditions at the site. As a result, professional
5 engineers are often sued for workplace injuries even though they are
6 not contractually responsible for workplace safety. The costs of these
7 lawsuits inevitably drive up engineering costs.

8 This bill would not interfere with the collection of worker's
9 compensation benefits when the worker is entitled to those benefits.
10 However, it would shield professional engineers from liability for
11 workers' personal injury suits, if: (1) the engineer did not assume
12 contractual responsibility for safety conditions at the worksite; or (2)
13 the engineer is not grossly negligent in the preparation of design plans
14 or specifications.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 210

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Assembly Banking and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 210

This bill, as amended by the committee, provides that unless responsibility for safety practices is specifically assumed by contract by a professional engineer, the professional engineer who is retained to perform only professional services on a construction project, or any employee of a professional engineer who is assisting or representing the professional engineer in the performance of professional services on the site of the construction project, shall not be liable for any injury on the construction project for which compensation is recoverable under the "workers' compensation law." The immunity provisions of the bill would not apply to willful misconduct or gross negligence. The bill is in response to a New Jersey Supreme Court case, Carvalho v. Toll Bros. and Developers, 143 N.J. 565 (1996), which held that a professional engineer may be liable for a construction worker's death caused by unsafe worksite conditions, despite the fact that the contractor, not the engineer, was contractually responsible for safety conditions at the construction worksite.

The bill does not interfere with the injured worker's ability to collect workers' compensation benefits, when the worker is entitled to those benefits.

This bill was prefiled for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 617

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 617.

This bill, a Senate Committee Substitute for Senate Bill No.617, provides that a professional engineer shall only be liable for an injury on a construction project resulting from a breach or disregard of construction safety standards or practices for which compensation is recoverable under the "workers' compensation law," if: (1) the professional engineer has assumed by written contract responsibility for the safety standards or practices on the project; (2) the professional engineer is the representative of the project owner in a multi-prime contractor project in which no contractor has been designated to be responsible for site safety; or (3) the professional engineer is present at the site, has actual knowledge of site conditions alleged to be a cause of an imminent danger, and fails to advise the responsible contractor and worker of the presence of such conditions.

The provisions of the bill would not apply to willful misconduct or gross negligence. The bill does not interfere with the injured worker's ability to collect workers' compensation benefits, when the worker is entitled to those benefits.

The bill is in response to a New Jersey Supreme Court case, Carvalho v. Toll Bros. and Developers, 143 N.J. 565 (1996), and attempts to codify that decision.

SENATE, No. 617

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 23, 1998

Sponsored by:

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senator Bark

SYNOPSIS

Provides immunity from liability to professional engineers in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/3/1998)

S617 MATHEUSSEN

2

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2 on construction sites and amending P.L.1967, c.59.

3
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5 of New Jersey:

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7 1. Section 1 of P.L.1967, c.59 (C.2A:14-1.1) is amended to read
8 as follows:

9 1. ~~1. [No] a. Except as provided in subsection b. of this section, no~~
10 ~~action, whether in contract, in tort, or otherwise, to recover damages~~
11 ~~for any deficiency in the design, planning, supervision or construction~~
12 ~~of an improvement to real property, or for any injury to property, real~~
13 ~~or personal, or for an injury to the person, or for bodily injury or~~
14 ~~wrongful death, arising out of the defective and unsafe condition of an~~
15 ~~improvement to real property, nor any action for contribution or~~
16 ~~indemnity for damages sustained on account of such injury, shall be~~
17 ~~brought against any person performing or furnishing the design,~~
18 ~~planning, supervision of construction or construction of such~~
19 ~~improvement to real property, more than 10 years after the~~
20 ~~performance or furnishing of such services and construction. This~~
21 ~~limitation shall not apply to any person in actual possession and~~
22 ~~control as owner, tenant, or otherwise, of the improvement at the time~~
23 ~~the defective and unsafe condition of such improvement constitutes the~~
24 ~~proximate cause of the injury or damage for which the action is~~
25 ~~brought.~~

26 b. No professional engineer who is retained to perform only
27 professional services on a construction project, nor any employee of
28 a professional engineer who is assisting or representing the
29 professional engineer in the performance of professional services on
30 the site of the construction project, shall be liable for any injury on the
31 construction project for which compensation is recoverable under
32 R.S.34:15-7 et seq., unless responsibility for safety practices is
33 specifically assumed by contract. The immunity provided by this
34 subsection shall not apply to willful misconduct or gross negligence in
35 the preparation of design plans or specifications.

36 (cf: P.L.1967, c.59, s.1)

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S617 MATHEUSSEN

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2 despite the fact that the contractor, not the engineer, was contractually
3 responsible for safety conditions at the site. As a result, professional
4 engineers are often sued for workplace injuries even though they are
5 not contractually responsible for workplace safety. The costs of these
6 lawsuits inevitably drive up engineering costs.

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10 workers' personal injury suits, if: (1) the engineer did not assume
11 contractual responsibility for safety conditions at the worksite; or (2)
12 the engineer is not grossly negligent in the preparation of design plans
13 or specifications.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: May 19, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-51, sponsored by Senators Walter J. Kavanaugh (R- Morris/Somerset) and Robert J. Martin (R- Essex/Morris/Passaic) and Assembly Member Marion Crecco (R- Essex/Passaic), creates the "Parents Education Program," a mandatory education program for all parties filing an action for divorce. The program will be designed to assist and advise divorced parents on issues concerning divorce, separation and custody and to provide the parties with a better understanding of the legal process, costs and financial responsibilities both parties would most likely face during the divorce, as well as the effect of divorce on children.

The bill embodies a recommendation in the 1995 report of the Commission to Study the Law of Divorce. Failure of a party to participate in the program would be considered as a factor by the court in making any custody and visitation determinations. The bill requires all participants to pay a registration fee of \$25, which would be deposited in the Parents Education Fund, a separate, nonlapsing, revolving fund in the state General Fund. This fund would be dedicated to the development, operation and maintenance of the Parents Education Program, which would be administered by the Administrative Office of the Courts. The bill allows the court to exempt a party from attending the program for good cause. It also exempts parties who are protected by or restricted by a temporary restraining order. The bill also authorizes the creation of a temporary nine-member advisory committee, appointed by the Governor with the advice and consent of the Senate, consisting of professionals in the area of divorce and child care as well as a custodial parent and a non-custodial parent. The committee will be required to develop a specific curriculum, determine the program length, establish guidelines and qualifications for the program moderators and develop any other necessary program requirements.

S-942, sponsored by Senators John O. Bennett (R-Monmouth) and Andrew R. Ciesla (R-Monmouth/Ocean) and Assembly Member Carol J. Murphy (R- Essex/Morris/Passaic), requires the Victims of Crime Compensation Board (VCCB) to establish maximum payment rates and service limitations for medical expenses paid on behalf of crime victims. The VCCB, which is in but not of the Department of Law and Public Safety, is authorized to pay compensation to crime victims for losses they sustained as a result of the crime. The VCCB is funded through a \$50 penalty imposed upon all criminal defendants for each crime of which they are convicted. losses to victims or their dependents. The bill requires that the VCCB adopt payment rates reflected in the medical fee schedules established by the Commissioner of Banking and Insurance for automobile insurance personal injury protection coverage. The bill prohibits a medical care provider who accepts payment at the maximum rate from the VCCB from seeking additional monies from the victim for the same services.

S-1060, sponsored by Senator William L. Gormley (R-Atlantic) and Assembly Members Francis J. Blee (R-Atlantic) and Joseph R. Malone, III, (R-Burlington/Monmouth/Ocean), provides that the district of residence for children who are placed by a state agency in a skill development home will be

the present district of residence of the parent or guardian with whom the child lived prior to placement. Previously, the Department of Education considered the school district in which the skill development home is located to be the student's district of residence for funding purposes because the child's residence is considered to be the skill development home. The bill will assign the responsibility for funding to the home district of the child's parent or guardian which, but for the placement, would be responsible for educating the child.

A-210, sponsored by Assembly Members Francis L. Bodine (R- Atlantic/Burlington/Camden) and Nicholas R. Felice (R- Bergen/Passaic), and Senator John J. Matheussen (R- Camden/ Gloucester), provides immunity from liability to professional engineers in certain circumstances. The bill is in response to the Supreme Court case of *Carvalho v. Toll Bros. and Developers*, 143 N.J. 454 (1996), which held a professional engineer liable for a worker's personal injury arising from the collapse of a trench at a construction site. The bill codifies the *Carvalho* decision and provides a limited immunity to professional engineers from workers' personal injury suits for which compensation is recoverable under the Workers' Compensation Act. The immunity will apply only if the engineer did not assume contractual responsibility for workplace site safety and if the engineer was retained to perform only professional services on the construction project.

AJR-29, sponsored by Assembly Members Christopher "Kip" Bateman (R- Morris/Somerset) and Peter J. Biondi (R-Morris/Somerset), establishes "Human Potential Week" to promote a greater awareness of the needs and concerns of people with disabilities and to highlight the significant contributions these individuals have made to their families, communities, and society as a whole. The resolution calls upon the Governor to annually issue a proclamation establishing the second week in May as "Human Potential Week" and to encourage appropriate activities and programs throughout the state to celebrate the week.

SJR-12, sponsored by Senator Peter A. Inverso (R- Mercer/Middlesex), designates May of each year as "Kindness Awareness Month" in New Jersey. It urges all citizens to engage in educational programs and activities to foster kindness. The resolution recognizes the role of kindness in fostering social responsibility, happiness and harmony, particularly among children. Students, teachers, and parents, as special agents of kindness, are encouraged to bring this message to young people across the state.