S T A T E O F N E W Y O R K

4394

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

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

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Statement of findings and purpose. The legislature finds that (a) the open-ended and continuing liability imposed upon members of the design professions and construction contractors, due to alleged deficiencies relating to improvements to real property, has resulted in an unfair burden on such professionals and a general increase in the cost of both public and private improvements to real property, (b) the cost of maintaining adequate insurance coverage is so expensive that a significant number of design professionals and construction contractors are forced to forego insurance coverage altogether to the detriment of the public's safety and welfare. The legislature further finds that the best designed and constructed improvement is dependent upon proper maintenance to preserve its integrity and safety and it is thus of importance to the public safety and welfare to ensure than an owner maintains and repairs that which is the property of the owner. The legislature therefore finds that it is necessary and desirable to establish a time limit after which tort claims for personal injury or wrongful death may not be asserted against such professionals and contractors. That statute of repose set forth herein, with a claim accruing on the date that the improvement was completed, will preserve the liability of the professional 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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be revealed, and therefore will establish an appropriate limit on liability, while affording adequate protection to the public.

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 Section 214-d of the civil practice law and rules is REPEALED and a new section 214-d is added to read as follows:

S 214-D. LIMITATIONS ON CERTAIN ACTIONS AGAINST PROFESSIONAL ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, LAND SURVEYORS OR CONSTRUCTION CONTRACTORS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, NO ACTION TO RECOVER DAMAGES FOR INJURY TO THE PERSON OR FOR WRONGFUL DEATH OR FOR DAMAGE TO PROPERTY NOR ANY ACTION FOR CONTRIBUTION OR INDEMNITY FOR DAMAGES SUSTAINED ON ACCOUNT OF SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY ARISING FROM ANY DEFECT IN THE STRUCTURE OR IMPROVEMENT RESULTING FROM THE DESIGN, PLANNING, OR SUPERVISION OF CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY SHALL BE BROUGHT AGAINST A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR MORE THAN TEN YEARS AFTER THE COMPLETION OF SUCH IMPROVEMENT.

2. IF, BY REASON OF SUCH DEFECT, AN INJURY TO THE PERSON OR AN INJURY CAUSING WRONGFUL DEATH OR DAMAGES TO PROPERTY OCCURS DURING THE TENTH YEAR AFTER COMPLETION, AN ACTION TO RECOVER DAMAGES FOR SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY MAY BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH SUCH INJURY OCCURRED, BUT IN NO EVENT MAY SUCH ACTION BE BROUGHT MORE THAN ELEVEN YEARS AFTER THE COMPLETION OF THE IMPROVEMENT.

3. THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL NOT APPLY TO ACTIONS BROUGHT BY ONE IN CONTRACTUAL OR PROFESSIONAL PRIVITY WITH THE ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR AND SHALL NOT BE ASSERTED BY WAY OF DEFENSE BY ANY PERSON IN ACTUAL POSSESSION OR CONTROL AS OWNER, TENANT, OR OTHERWISE, OF SUCH AN IMPROVEMENT AT THE TIME ANY DEFECT IN SUCH IMPROVEMENT CONSTITUTES THE PROXIMATE CAUSE OF THE INJURY OR DEATH FOR WHICH IT IS PROPOSED TO BRING AN ACTION.

4. FOR PURPOSES OF THIS SECTION AN IMPROVEMENT SHALL BE DEEMED TO BE "COMPLETED" (A) WHEN, AFTER THE IMPROVEMENT HAS BEEN STARTED, A PERMANENT CERTIFICATE OF OCCUPANCY IS ISSUED BY THE MUNICIPALITY IN WHICH THE IMPROVEMENT IS SITUATED, IF SUCH IS REQUIRED OR IS ACTUALLY ISSUED PURSUANT TO LAW OR REGULATION; OR (B) IF A PUBLIC IMPROVEMENT, UPON THE ACCEPTANCE OF THE IMPROVEMENT BY THE OWNER, IF A CERTIFICATE OF OCCUPANCY IS NOT REQUIRED AND HAS NOT BEEN ISSUED OR (C) ON THE EARLIER OF THE FOLLOWING DATES, IF THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION DO NOT APPLY (I) FOUR MONTHS PRIOR TO THE LAST DAY ON WHICH MECHANIC'S LIEN, RESULTING FROM WORK PERFORMED OR MATERIALS FURNISHED WITH RESPECT TO SUCH IMPROVEMENT, CAN BE FILED; OR (II) UPON THE OWNER'S FINAL PAYMENT FOR SERVICES RENDERED OR MATERIALS SUPPLIED WITH RESPECT TO SUCH IMPROVEMENT.

5. AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL MEAN A PERSON LICENSED OR REGISTERED AS AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT OR LAND SURVEYOR, PURSUANT TO THE PROVISIONS OF THE EDUCATION LAW OR ANY PARTNERSHIP OR CORPORATION LAWFULLY PERFORMING ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL OR SURVEYING SERVICES.

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

4. an action to recover damages for an injury to property except as provided in [section] SECTIONS 214-c AND 214-D;

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

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

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

S 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all actions commenced on or after its effective date.