

2475

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 19, 2011

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Introduced by M. of A. CANESTRARI, ORTIZ -- Multi-Sponsored by -- M. of  
A. COOK, 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 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 than 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 S 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 S 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 S 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;

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4 the civil practice law and rules are REPEALED.  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