

CS FOR SENATE BILL NO. 109 (2d JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/27/92
Referred: Rules

Sponsor(s): SENATORS HALFORD, Pearce, Sturgulewski, Collins, Rodey

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the time for filing certain civil actions; and providing for an effective
2 date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. FINDINGS.** The legislature finds that

5 (1) upon the completion of the construction of an improvement to real property, those
6 persons involved in the design of the improvement relinquish control over the determination of the need
7 for, or responsibility for, maintenance and control over the use of the facility, and may not be made
8 aware of or have the opportunity to evaluate the effect of subsequent forces that may result in excessive
9 stress or strain to the structure;

10 (2) a recent study by Victor O. Schinnerer and Co., the major provider of professional
11 liability insurance, indicates 83.6 percent of claims filed against design professionals for injuries due to
12 alleged design deficiencies associated with improvements to real property are brought within five years
13 of substantial completion of the improvement, 95.5 percent within eight years, and 96.8 percent within
14 10 years; the study also indicates that claims made 10 or more years after substantial completion of an

1 improvement are primarily the result of inadequate maintenance by the owner of the facility and not as
2 a result of inadequate service by the original design professionals;

3 (3) unlike manufactured products, the useful life of an improvement to real property can
4 be hundreds of years; the availability of relevant evidence and witnesses is problematic in all suits, but
5 can be especially acute in suits involving improvements to real property because of this potential for long
6 life; the inherently complex nature of construction projects and the numerous parties typically involved
7 further exacerbate this problem; for these reasons, the burden of maintaining appropriate records and
8 other documentation beyond a certain reasonable period of time may be excessive or even impossible;

9 (4) even though design professionals or others involved in design may be proven to have
10 no responsibility for claimed damages, the legal costs of defending against a claim can be substantial;

11 (5) this Act is in the public interest and in the interest of providing the due process rights
12 to potential litigants in the area of design of an improvement to real property in an equitable manner;
13 this Act also adjusts the standard of care so that those attempting to bring an action under a general
14 standard of care against a person involved in the design of an improvement to real property may bring
15 the action only within 10 years following substantial completion of the construction, unless the claimed
16 deficiency can be shown to have been the result of gross negligence, fraud, fraudulent concealment,
17 fraudulent misrepresentation, breach of an expressed warranty or guaranty, or intentional misconduct in
18 the design of the improvement.

19 * Sec. 2. AS 09.10.050 is amended to read:

20 Sec. 09.10.050. ACTIONS TO BE BROUGHT IN SIX YEARS. Unless the action is
21 commenced within six years, a [NO] person may not bring an action

22 (1) upon a contract or liability, express or implied, excepting those mentioned in
23 AS 09.10.040 [OR 09.10.055];

24 (2) for waste or trespass upon real property; or

25 (3) for taking, detaining, or injuring personal property, including an action for its
26 specific recovery [, EXCEPT THOSE MENTIONED IN AS 09.10.055; UNLESS COMMENCED
27 WITHIN SIX YEARS].

28 * Sec. 3. AS 09.10.055 is repealed and reenacted to read:

29 Sec. 09.10.055. CERTAIN ACTIONS THAT MUST BE BROUGHT IN TEN YEARS.

30 (a) Notwithstanding AS 09.10.140, a person may not bring an action for personal injury, death,
31 or property damage, if the action is based on a defect in the design, planning, supervision, or

1 inspection of an improvement to real property unless the action is brought within 10 years of the
2 date of substantial completion of the improvement.

3 (b) Notwithstanding (a) of this section, if personal injury, death, or property damage
4 occurs in the 10th year after substantial completion of the improvement, a person may bring a
5 negligence action to recover damages if the negligence action is brought within one year after
6 the date on which the personal injury, death, or property damage occurs.

7 (c) This section does not apply

8 (1) to an action against a person who was in actual possession and lawful control
9 of the improvement at the time the defect caused the personal injury, death, or property damage;

10 (2) if the personal injury, death, or property damage was caused intentionally or
11 resulted from gross negligence, fraud, fraudulent concealment, fraudulent misrepresentation, or
12 breach of an express warranty or guarantee; or

13 (3) if a longer period of time for bringing the action was provided under a
14 contract.

15 (d) In this section, "substantial completion" means the date when construction is
16 sufficiently completed to allow the owner or a person authorized by the owner to occupy the
17 improvement or use the improvement in the manner for which it was intended.

18 * **Sec. 4. APPLICABILITY.** This Act applies to all causes of action accruing on or after the effective
19 date of this Act.

20 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).