

SENATE CS FOR HOUSE BILL NO. 160(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/7/93
Referred: RULES

Sponsor(s): REPRESENTATIVES GREEN, Phillips, Larson, Hudson, Porter, Bunde, Vezey, Mulder, Kott, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the time for filing certain civil actions based on a defect
2 in an improvement to real property; to apportionment of damages in a civil
3 action; and providing for an effective date."

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

5 * Section 1. FINDINGS. The legislature finds that

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

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

1 percent within eight years, and 96.8 percent within 10 years; the study also indicates that
2 claims made 10 or more years after substantial completion of an improvement are primarily
3 the result of inadequate maintenance by the owner of the facility and not as a result of
4 inadequate service by the original design professionals;

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

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

15 (5) this Act is in the public interest and in the interest of providing the due
16 process rights to potential litigants in the area of design and construction of an improvement
17 to real property in an equitable manner; this Act also adjusts the standard of care so that those
18 attempting to bring an action under a general standard of care against a person involved in the
19 design or construction of an improvement to real property may bring the action only within
20 10 years following substantial completion of the construction, unless the claimed deficiency
21 can be shown to have been the result of gross negligence, fraud, fraudulent concealment,
22 fraudulent misrepresentation, breach of an expressed warranty or guaranty, or intentional
23 misconduct in the design or construction of the improvement.

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

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

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

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

30 (3) for taking, detaining, or injuring personal property, including an
31 action for its specific recovery [, EXCEPT THOSE MENTIONED IN AS 09.10.055;

1 UNLESS COMMENCED WITHIN SIX YEARS].

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

3 Sec. 09.10.055. CERTAIN ACTIONS THAT MUST BE BROUGHT IN 10
4 YEARS. (a) Notwithstanding AS 09.10.140, a person may not bring an action for
5 personal injury, death, or property damage, if the action is based on a defect in the
6 design, planning, supervision, construction, or inspection or observation of construction
7 of an improvement to real property unless the action is brought within 10 years of the
8 date of substantial completion of the improvement.

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

14 (c) This section does not apply

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

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

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

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

27 * Sec. 4. AS 09.17.080(a) is amended to read:

28 (a) In all actions involving fault of more than one party to the action, including
29 third-party defendants and persons who have been released under AS 09.16.040 or
30 determined by law to be immune, the court, unless otherwise agreed by all parties,
31 shall instruct the jury to answer special interrogatories or, if there is no jury, shall

1 make findings, indicating

2 (1) the amount of damages each claimant would be entitled to recover
3 if contributory fault and immunity are [IS] disregarded; and

4 (2) the percentage of the total fault of all of the parties to each claim
5 that is allocated to each claimant, defendant, third-party defendant, and person who has
6 been released from liability under AS 09.16.040 or determined by law to be immune.

7 * Sec. 5. AS 09.17.080(c) is amended to read:

8 (c) The court shall determine the award of damages to each claimant in
9 accordance with the findings, subject to a reduction under AS 09.16.040, and enter
10 judgment against each party liable. The court also shall determine and state in the
11 judgment each party's equitable share of the obligation to each claimant in accordance
12 with the respective percentages of fault, and (e) of this section if applicable.

13 * Sec. 6. AS 09.17.080(d) is amended to read:

14 (d) Except as provided under (e) of this section, the [THE] court shall enter
15 judgment against each party liable on the basis of several liability in accordance with
16 that party's percentage of fault.

17 * Sec. 7. AS 09.17.080 is amended by adding a new subsection to read:

18 (e) In an action in which the amount of damages determined under (a)(1) of
19 this section includes an allocation to a party that is immune by law, the court may not
20 enter judgment against the immune party but shall add the damages allocated to the
21 immune party to each other party's liability in proportion to the relative percentages
22 of fault of the other parties and enter judgment accordingly.

23 * Sec. 8. APPLICABILITY. This Act applies to all causes of action accruing on or after
24 the effective date of this Act.

25 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).