

HOUSE BILL NO. 160 am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GREEN, Phillips, Larson, Hudson, Porter, Bunde, Vezey, Mulder, Kott, James

**Amended: 5/10/93
Introduced: 2/17/93**

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

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

1 claims made 10 or more years after substantial completion of an improvement are primarily
2 the result of inadequate maintenance by the owner of the facility and not as a result of
3 inadequate service by the original design professionals;

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

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

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

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

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

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

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

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

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

2 **Sec. 09.10.055. CERTAIN ACTIONS THAT MUST BE BROUGHT IN 15**
3 **YEARS.** (a) Notwithstanding AS 09.10.140, a person may not bring an action for
4 personal injury, death, or property damage, if the action is based on a defect in the
5 design, planning, supervision, construction, or inspection or observation of construction
6 of an improvement to real property unless the action is brought within 15 years of the
7 date of substantial completion of the improvement.

8 (b) Notwithstanding (a) of this section, if personal injury, death, or property
9 damage occurs in the 15th year after substantial completion of the improvement, a
10 person may bring a negligence action to recover damages if the negligence action is
11 brought within one year after the date on which the personal injury, death, or property
12 damage occurs.

13 (c) This section does not apply

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

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

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

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

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

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