

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 108*

Judiciary II Committee Substitute Adopted 4/7/93

Short Title: Products Liability Repose.

(Public)

Sponsors:

Referred to:

February 10, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATUTE OF REPOSE FOR PRODUCTS LIABILITY
3 ACTIONS AND TO RECODIFY THE STATUTE OF REPOSE FOR ACTIONS
4 AGAINST REGISTERED LAND SURVEYORS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 1-47 reads as rewritten:

7 "§ 1-47. Ten years.

8 Within ten years an action –

9 (1) Upon a judgment or decree of any court of the United States, or of any
10 state or territory thereof, from the date of its rendition. No such action
11 may be brought more than once, or have the effect to continue the lien
12 of the original judgment.

13 (1.1) Upon a judgment rendered by a justice of the peace, from its date.

14 (2) Upon a sealed instrument against the principal thereto. Provided,
15 however, that if action on a sealed instrument is filed, the defendant or
16 defendants in such action may file a counterclaim arising out of the
17 same transaction or transactions as are the subject of plaintiff's claim,
18 although a shorter statute of limitations would otherwise apply to
19 defendant's counterclaim. Such counterclaim may be filed against
20 such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

21 (3) For the foreclosure of a mortgage, or deed in trust for creditors with a
22 power of sale, of real property, where the mortgagor or grantor has
23 been in possession of the property, within ten years after the forfeiture

1 of the mortgage, or after the power of sale became absolute, or within
2 ten years after the last payment on the same.

3 (4) For the redemption of a mortgage, where the mortgagee has been in
4 possession, or for a residuary interest under a deed in trust for
5 creditors, where the trustee or those holding under him has been in
6 possession, within ten years after the right of action accrued.

7 (5) Repealed by Session Laws 1959, c. 879, s. 2.

8 (6) No action for the recovery of damages for personal injury, death, or
9 damage to property based upon or arising out of any alleged defect or
10 any failure in relation to a product shall be brought more than ten years
11 after the date of initial purchase for use or consumption.

12 (7) a. No action against any registered land surveyor as defined in G.S. 89C-
13 3(9) or any person acting under his supervision and control for
14 physical damage or for economic or monetary loss due to negligence
15 or a deficiency in the performance of surveying or platting shall be
16 brought more than ten years from the last act or omission giving rise to
17 the cause of action.

18 b. For purposes of this subdivision, 'surveying and platting' means
19 boundary surveys, topographical surveys, surveys of property
20 lines, and any other measurement or surveying of real property
21 and the consequent graphic representation thereof.

22 c. The limitation prescribed by this subdivision shall apply to the
23 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

24 Sec. 2. G.S. 1-50 reads as rewritten:

25 "**§ 1-50. Six years.**

26 Within six years an action –

27 (1) Upon the official bond of a public officer.

28 (2) Against an executor, administrator, collector, or guardian on his
29 official bond, within six years after the auditing of his final account by
30 the proper officer, and the filing of the audited account as required by
31 law.

32 (3) For injury to any incorporeal hereditament.

33 (4) Against a corporation, or the holder of a certificate or duplicate
34 certificate of stock in the corporation, on account of any dividend,
35 either a cash or stock dividend, paid or allotted by the corporation to
36 the holder of the certificate or duplicate certificate of stock in the
37 corporation.

38 (5) a. No action to recover damages based upon or arising out of the
39 defective or unsafe condition of an improvement to real property shall
40 be brought more than six years from the later of the specific last act or
41 omission of the defendant giving rise to the cause of action or
42 substantial completion of the improvement.

- 1 b. For purposes of this subdivision, an action based upon or
2 arising out of the defective or unsafe condition of an
3 improvement to real property includes:
4 1. Actions to recover damages for breach of a contract to
5 construct or repair an improvement to real property;
6 2. Actions to recover damages for the negligent
7 construction or repair of an improvement to real
8 property;
9 3. Actions to recover damages for personal injury, death or
10 damage to property;
11 4. Actions to recover damages for economic or monetary
12 loss;
13 5. Actions in contract or in tort or otherwise;
14 6. Actions for contribution indemnification for damages
15 sustained on account of an action described in this
16 subdivision;
17 7. Actions against a surety or guarantor of a defendant
18 described in this subdivision;
19 8. Actions brought against any current or prior owner of the
20 real property or improvement, or against any other
21 person having a current or prior interest therein;
22 9. Actions against any person furnishing materials, or
23 against any person who develops real property or who
24 performs or furnishes the design, plans, specifications,
25 surveying, supervision, testing or observation of
26 construction, or construction of an improvement to real
27 property, or a repair to an improvement to real property.
28 c. For purposes of this subdivision, 'substantial completion' means
29 that degree of completion of a project, improvement or
30 specified area or portion thereof (in accordance with the
31 contract, as modified by any change orders agreed to by the
32 parties) upon attainment of which the owner can use the same
33 for the purpose for which it was intended. The date of
34 substantial completion may be established by written
35 agreement.
36 d. The limitation prescribed by this subdivision shall not be
37 asserted as a defense by any person in actual possession or
38 control, as owner, tenant or otherwise, of the improvement at
39 the time the defective or unsafe condition constitutes the
40 proximate cause of the injury or death for which it is proposed
41 to bring an action, in the event such person in actual possession
42 or control either knew, or ought reasonably to have known, of
43 the defective or unsafe condition.

- 1 e. The limitation prescribed by this subdivision shall not be
2 asserted as a defense by any person who shall have been guilty
3 of fraud, or willful or wanton negligence in furnishing
4 materials, in developing real property, in performing or
5 furnishing the design, plans, specifications, surveying,
6 supervision, testing or observation of construction, or
7 construction of an improvement to real property, or a repair to
8 an improvement to real property, or to a surety or guarantor of
9 any of the foregoing persons, or to any person who shall
10 wrongfully conceal any such fraud, or willful or wanton
11 negligence.
- 12 f. This subdivision prescribes an outside limitation of six years
13 from the later of the specific last act or omission or substantial
14 completion, within which the limitations prescribed by G.S. 1-
15 52 and 1-53 continue to run. For purposes of the three-year
16 limitation prescribed by G.S. 1-52, a cause of action based upon
17 or arising out of the defective or unsafe condition of an
18 improvement to real property shall not accrue until the injury,
19 loss, defect or damage becomes apparent or ought reasonably to
20 have become apparent to the claimant. However, as provided in
21 this subdivision, no action may be brought more than six years
22 from the later of the specific last act or omission or substantial
23 completion.
- 24 g. The limitation prescribed by this subdivision shall apply to the
25 exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).
- 26 ~~(6) No action for the recovery of damages for personal injury, death or~~
27 ~~damage to property based upon or arising out of any alleged defect or~~
28 ~~any failure in relation to a product shall be brought more than six years~~
29 ~~after the date of initial purchase for use or consumption.~~
- 30 ~~(7) a. No action against any registered land surveyor as defined in G.S.~~
31 ~~89C-3(9) or any person acting under his supervision and control for~~
32 ~~physical damage or for economic or monetary loss due to negligence~~
33 ~~or a deficiency in the performance of surveying or platting shall be~~
34 ~~brought more than 10 years from the last act or omission giving rise to~~
35 ~~the cause of action.~~
- 36 b. For purposes of this subdivision, 'surveying and platting' means
37 boundary surveys, topographical surveys, surveys of property
38 lines, and any other measurement or surveying of real property
39 and the consequent graphic representation thereof.
- 40 e. The limitation prescribed by this subdivision shall apply to the
41 exclusion of G.S. 1-15(e) and G.S. 1-52(16)."

42 Sec. 3. This act becomes effective October 1, 1993, and applies to causes of
43 action arising on or after that date; provided, however, this act shall not apply to a cause

- 1 of action involving a product initially purchased for use or consumption prior to
- 2 October 1, 1987.