

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 907

Short Title: Certain Limitations/Suits by State.

(Public)

Sponsors: Representatives Eddins; Capps, McMahan, Pate, and Aldridge.

Referred to: Judiciary II.

April 12, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE STATE AND ITS POLITICAL SUBDIVISIONS TO
2 BE SUBJECT TO STATUTES OF LIMITATION AND REPOSE FOR CERTAIN
3 CIVIL ACTIONS AND TO PROVIDE A TEN-YEAR STATUTE OF LIMITATION
4 FOR THOSE SAME ACTIONS BROUGHT BY THE STATE OR A POLITICAL
5 SUBDIVISION OF THE STATE WHEN THE FUNCTION AT ISSUE IS
6 GOVERNMENTAL.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 1-50 reads as rewritten:

10 "**§ 1-50. Six years.**

11 (a) ~~Within~~ Subject to the provisions of subsection (b) of this section, within six
12 years an action –

- 13 (1) Upon the official bond of a public officer.
14 (2) Against an executor, administrator, collector, or guardian on his official
15 bond, within six years after the auditing of his final account by the
16 proper officer, and the filing of the audited account as required by law.
17 (3) For injury to any incorporeal hereditament.
18 (4) Against a corporation, or the holder of a certificate or duplicate
19 certificate of stock in the corporation, on account of any dividend, either
20 a cash or stock dividend, paid or allotted by the corporation to the

1 holder of the certificate or duplicate certificate of stock in the
2 corporation.

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

8 b. For purposes of this subdivision, an action based upon or arising
9 out of the defective or unsafe condition of an improvement to
10 real property includes:

- 11 1. Actions to recover damages for breach of a contract to
12 construct or repair an improvement to real property;
- 13 2. Actions to recover damages for the negligent construction
14 or repair of an improvement to real property;
- 15 3. Actions to recover damages for personal injury, death or
16 damage to property;
- 17 4. Actions to recover damages for economic or monetary
18 loss;
- 19 5. Actions in contract or in tort or otherwise;
- 20 6. Actions for contribution indemnification for damages
21 sustained on account of an action described in this
22 subdivision;
- 23 7. Actions against a surety or guarantor of a defendant
24 described in this subdivision;
- 25 8. Actions brought against any current or prior owner of the
26 real property or improvement, or against any other person
27 having a current or prior interest therein;
- 28 9. Actions against any person furnishing materials, or against
29 any person who develops real property or who performs or
30 furnishes the design, plans, specifications, surveying,
31 supervision, testing or observation of construction, or
32 construction of an improvement to real property, or a
33 repair to an improvement to real property.

34 c. For purposes of this subdivision, 'substantial completion' means
35 that degree of completion of a project, improvement or specified
36 area or portion thereof (in accordance with the contract, as
37 modified by any change orders agreed to by the parties) upon
38 attainment of which the owner can use the same for the purpose
39 for which it was intended. The date of substantial completion
40 may be established by written agreement.

41 d. The limitation prescribed by this subdivision shall not be asserted
42 as a defense by any person in actual possession or control, as
43 owner, tenant or otherwise, of the improvement at the time the

1 defective or unsafe condition constitutes the proximate cause of
2 the injury or death for which it is proposed to bring an action, in
3 the event such person in actual possession or control either knew,
4 or ought reasonably to have known, of the defective or unsafe
5 condition.

6 e. The limitation prescribed by this subdivision shall not be asserted
7 as a defense by any person who shall have been guilty of fraud,
8 or willful or wanton negligence in furnishing materials, in
9 developing real property, in performing or furnishing the design,
10 plans, specifications, surveying, supervision, testing or
11 observation of construction, or construction of an improvement
12 to real property, or a repair to an improvement to real property,
13 or to a surety or guarantor of any of the foregoing persons, or to
14 any person who shall wrongfully conceal any such fraud, or
15 willful or wanton negligence.

16 f. This subdivision prescribes an outside limitation of six years
17 from the later of the specific last act or omission or substantial
18 completion, within which the limitations prescribed by G.S. 1-52
19 and 1-53 continue to run. For purposes of the three-year
20 limitation prescribed by G.S. 1-52, a cause of action based upon
21 or arising out of the defective or unsafe condition of an
22 improvement to real property shall not accrue until the injury,
23 loss, defect or damage becomes apparent or ought reasonably to
24 have become apparent to the claimant. However, as provided in
25 this subdivision, no action may be brought more than six years
26 from the later of the specific last act or omission or substantial
27 completion.

28 g. The limitation prescribed by this subdivision shall apply to the
29 exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

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

34 (7) a. No action against any registered land surveyor as defined in G.S.
35 89C-3(9) or any person acting under his supervision and control for
36 physical damage or for economic or monetary loss due to negligence or
37 a deficiency in the performance of surveying or platting shall be brought
38 more than 10 years from the last act or omission giving rise to the cause
39 of action.

40 b. For purposes of this subdivision, 'surveying and platting' means
41 boundary surveys, topographical surveys, surveys of property
42 lines, and any other measurement or surveying of real property
43 and the consequent graphic representation thereof.

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

3 (b) This section applies to actions brought by a private party. This section applies
4 to actions brought by the State or a political subdivision of the State when the function at
5 issue is proprietary. G.S. 1-47 applies to actions brought by the State or a political
6 subdivision of the State when the function at issue is governmental and the action is
7 subject to the provisions of this section when brought by a private party."

8 Sec. 2. G.S. 1-47 is amended by adding a new subdivision to read:

9 "(6) Brought by the State or a political subdivision of the State when the
10 function at issue is governmental and the action is subject to the
11 provisions of G.S. 1-50 when brought by a private party."

12 Sec. 3. This act repeals the common law doctrine of nullum tempus occurrit
13 regi for civil actions brought by the State or a political subdivision of the State when the
14 action is subject to G.S. 1-50, as amended by Section 1 of this act, when brought by a
15 private party.

16 Sec. 4. This act becomes effective October 1, 1995, and applies to civil actions
17 commenced on or after that date.