

**Representative Calvin R. Musselman** proposes the following substitute bill:

**STATUTES OF REPOSE AND LIMITATIONS AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: Kirk A. Cullimore

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**LONG TITLE**

**General Description:**

This bill amends the time limitation for actions regarding improvements on real property.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of an action and a provider for actions related to improvements in real property;
- ▶ clarifies certain time limitations for actions regarding improvements on real property;
- ▶ provides a two-year statute of limitations for certain contract or warranty actions involving improvements on real property that occur beyond the six-year statute of repose for contract and warranty actions; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **78B-2-225**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **78B-2-225** is amended to read:

31 **78B-2-225. Actions related to improvements in real property.**

32 (1) As used in this section:

33 (a) "Abandonment" means that there has been no design or construction activity on  
34 ~~the~~ an improvement for a continuous period of at least one year.

35 (b) "Action" means any claim for judicial, arbitral, or administrative relief for acts,  
36 errors, omissions, or breach of duty arising out of or related to the design, construction, or  
37 installation of an improvement, ~~whether~~ regardless of whether that action is based in tort,  
38 contract, warranty, strict liability, product liability, indemnity, contribution, or other source of  
39 law.

40 (c) "Completion ~~[of improvement]~~" means the date of substantial completion of an  
41 improvement to real property as established by the earliest of:

- 42 (i) a Certificate of Substantial Completion;
- 43 (ii) a Certificate of Occupancy issued by a governing agency; or
- 44 (iii) the date of first use or possession of the improvement.

45 (d) "Improvement" means any building, structure, infrastructure, road, utility, or other  
46 similar man-made change, addition, modification, or alteration to real property.

47 (e) "Person" means an individual, corporation, limited liability company, partnership,  
48 joint venture, association, proprietorship, or any other legal or governmental entity.

49 (f) "Provider" means any person:

50 (i) contributing to, providing, or performing:

51 (A) studies, plans, specifications, drawings, designs, value engineering, cost or quantity  
52 estimates, surveys, staking, construction, ~~and~~ installation, or labor to an improvement; or

53 (B) the review, observation, administration, management, supervision, inspections, and  
54 tests of construction for or in relation to an improvement[.]; or

55 (ii) providing or contributing materials, products, or equipment that is incorporated  
56 into an improvement.

57 (2) The Legislature finds that:

58 (a) exposing a provider to suits and liability for acts, errors, omissions, or breach of  
59 duty after the possibility of injury or damage has become highly remote and unexpectedly  
60 creates costs and hardships to the provider and the citizens of the state;

61 (b) these costs and hardships include liability insurance costs, records storage costs,  
62 undue and unlimited liability risks during the life of both a provider and an improvement, and  
63 difficulties in defending against claims many years after completion of an improvement;

64 (c) these costs and hardships constitute clear social and economic evils;

65 (d) the possibility of injury and damage becomes highly remote and unexpected seven  
66 years following completion or abandonment; and

67 (e) except as provided in Subsection (7), it is in the best interests of the citizens of the  
68 state to impose the periods of limitation and repose provided in this chapter upon all causes of  
69 action by or against a provider arising out of or related to the design, construction, or  
70 installation of an improvement.

71 ~~[(3)(a) An action by or against a provider based in contract or warranty shall be  
72 commenced within six years of the date of completion of the improvement or abandonment of  
73 construction. Where an express contract or warranty establishes a different period of  
74 limitations, the action shall be initiated within that limitations period.]~~

75 (3) (a) Except as provided in Subsections (3)(b) and (c), an action by or against a  
76 provider based in contract or warranty shall be commenced within six years after the date of  
77 completion or abandonment of an improvement.

78 (b) If a provider is required by an express term of a contract or warranty to perform an  
79 obligation later than the six-year period described in Subsection (3)(a), and the provider fails to  
80 perform the obligation as required, an action for that breach of the contract or warranty shall be  
81 commenced within two years after the day on which the breach is discovered or should have  
82 been discovered.

83 (c) If a contract or warranty expressly establishes a different period of limitations than  
84 this section, the action shall be commenced within that limitations period.

85 ~~[(b)]~~ (4) (a) All other actions by or against a provider shall be commenced within two  
86 years from the earlier of the date of discovery of a cause of action or the date upon which a  
87 cause of action should have been discovered through reasonable diligence.

88 (b) If the cause of action is discovered or discoverable before completion [~~of the~~  
89 ~~improvement~~] or abandonment of [~~construction~~] an improvement, the two-year period begins  
90 to run upon completion or abandonment.

91 [~~(4)~~] (c) Notwithstanding Subsection [~~(3)(b)~~] (4)(a), and except as provided in  
92 Subsection (4)(d), an action under this Subsection (4) may not be commenced against a  
93 provider more than nine years after completion [~~of the improvement~~] or abandonment of  
94 [~~construction~~] an improvement. [~~In the event the cause of action~~]

95 (d) If an action under Subsection (4)(a) is discovered or discoverable in the eighth or  
96 ninth year of the nine-year period, [~~the injured person~~] a claimant shall have two [~~additional~~]  
97 years from [~~that~~] the date of discovery to commence an action.

98 (5) Subsection (4) does not apply to an action against a provider:

99 (a) who has fraudulently concealed [~~his~~] the provider's act, error, omission, or breach  
100 of duty, or the injury, damage, or other loss caused by [~~his~~] the provider's act, error, omission,  
101 or breach of duty; or

102 (b) for a willful or intentional act, error, omission, or breach of duty.

103 (6) If [~~a person~~] an individual otherwise entitled to bring an action did not commence  
104 the action within the periods prescribed by Subsections (3) and (4) solely because that [~~person~~]  
105 individual was a minor or mentally incompetent and without a legal guardian, that [~~person~~]  
106 individual shall have two years from the date the disability is removed to commence the action.

107 (7) This section shall not apply to an action for the death of or bodily injury to an  
108 individual while engaged in the design, installation, or construction of an improvement.

109 (8) [~~The time limitation imposed by this~~] This section does not apply to any action  
110 against any person in actual possession or control of the improvement as owner, tenant, or  
111 otherwise, at the time any defective or unsafe condition of the improvement proximately causes  
112 the injury for which the action is brought.

113 (9) This section does not extend the period of limitation or repose otherwise prescribed  
114 by law or a valid and enforceable contract.

115 (10) This section does not create or modify any claim or cause of action.

116 (11) This section applies to all causes of action that accrue after May 3, 2003,  
117 notwithstanding that the improvement was completed or abandoned before May 3, 2004.