

HB0223S01 compared with HB0223

~~text~~ shows text that was in HB0223 but was deleted in HB0223S01.

text shows text that was not in HB0223 but was inserted into HB0223S01.

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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: _____

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;
- ▶ ~~provides a three-year statute of~~ clarifies certain time limitations for ~~certain contract or warranty~~ actions ~~involving~~ regarding improvements on real property ~~within the six-year statute of repose for contract and warranty actions~~;
- ▶ 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

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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:

AMENDS:

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

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

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

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

(1) As used in this section:

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

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

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

(i) a Certificate of Substantial Completion;

(ii) a Certificate of Occupancy issued by a governing agency; or

(iii) the date of first use or possession of the improvement.

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

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

(f) "Provider" means any person;

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(i) contributing to, providing, or performing:

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

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

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

(2) The Legislature finds that:

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

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

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

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

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

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

(3) (a) ~~{An action by or against a provider based in contract or warranty shall be commenced within three years after day on which the breach of the contract or warranty is discovered or should have been discovered through reasonable diligence.~~

~~———— (b) Notwithstanding Subsection (3)(a), and except~~ Except as provided in ~~{Subsection}~~ Subsections (3)(b) and (c), an action by or against a provider based in contract or warranty ~~{may not}~~ shall be commenced ~~{more than}~~ within six years after the date of

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completion or abandonment of an improvement.

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

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

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

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

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

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

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

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

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

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

(7) This section shall not apply to an action for the death of or bodily injury to an

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individual while engaged in the design, installation, or construction of an improvement.

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

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

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

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