

Maddox
Miller
Fiegen

SSB-1024

Judiciary
Succeeded By
SF/HF 222

SENATE FILE
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MADDOX)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the statute of limitations in civil actions
2 arising out of the unsafe or defective condition of an
3 improvement to real property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 614.1, subsection 11, Code 2001, is
2 amended to read as follows:

3 11. IMPROVEMENTS TO REAL PROPERTY. In addition to
4 limitations contained elsewhere in this section, an action
5 arising out of the unsafe or defective condition of an
6 improvement to real property based on tort and implied
7 warranty and for contribution and indemnity, and founded on
8 injury to property, real or personal, or injury to the person
9 or wrongful death, shall not be brought more than fifteen six
10 years after the date on which occurred the act or omission of
11 the defendant alleged in the action to have been the cause of
12 the injury or death. However, this subsection does not bar an
13 action against a person solely in the person's capacity as an
14 owner, occupant, or operator of an improvement to real
15 property.

16 EXPLANATION

17 This bill amends Code section 614.1 relating to the statute
18 of limitations in certain civil actions.

19 The bill reduces the time in which civil actions arising
20 out of the unsafe or defective condition of an improvement to
21 real property based on tort and implied warranty may be
22 brought from 15 to six years.

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SENATE FILE 2222
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1024)

Passed Senate, Date ^(P. 460) 2/28/01 Passed House, Date ^(P. 1242) 4-17-01
Vote: Ayes 35 Nays 15 Vote: Ayes 52 Nays 46
Approved Vote May 3, 2001

A BILL FOR

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2 arising out of the unsafe or defective condition of an
3 improvement to real property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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3 11. IMPROVEMENTS TO REAL PROPERTY. In addition to
4 limitations contained elsewhere in this section, an action
5 arising out of the unsafe or defective condition of an
6 improvement to real property based on tort and implied
7 warranty and for contribution and indemnity, and founded on
8 injury to property, real or personal, or injury to the person
9 or wrongful death, shall not be brought more than ~~fifteen~~ ten
10 years after the date on which occurred the act or omission of
11 the defendant alleged in the action to have been the cause of
12 the injury or death. However, this subsection does not bar an
13 action against a person solely in the person's capacity as an
14 owner, occupant, or operator of an improvement to real
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20 out of the unsafe or defective condition of an improvement to
21 real property based on tort and implied warranty may be
22 brought from 15 to 10 years.

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SENATE FILE 222

S-3114

1 Amend Senate File 222 as follows:

2 1. Page 1, line 9, by striking the word "ten" and
3 inserting the following: "eight".

By JEFF ANGELO
TOM FLYNN

JEFF LAMBERTI
O. GENE MADDOX

S-3114 FILED FEBRUARY 27, 2001

Adapted
2/28/01 (P.460)
S-3116

SENATE FILE 222

1 Amend Senate File 222 as follows:

2 1. Page 1, line 3, by inserting after the word
3 "PROPERTY." the following: "a."

4 2. Page 1, by inserting after line 15 the
5 following:

6 "b. This subsection shall not apply to the
7 following:

8 (1) The intentional or reckless disregard of
9 design plans, specifications, or building codes,
10 including but not limited to the substitution of
11 specified materials without the knowledge of the
12 purchaser.

13 (2) Fraud or misrepresentation.

14 (3) Breach of express warranty or guarantee.

15 (4) Defective products.

16 (5) Waiver of the provisions of this subsection by
17 contract of the parties.

18 (6) Prolonged exposure to hazardous waste; removal
19 or encapsulation of asbestos; or application of
20 environmental remediation.

21 (7) Actions brought by the state or any
22 governmental subdivision, including but not limited to
23 any county, city, school district, or municipality.

24 (8) Willful misconduct, gross negligence, or
25 fraudulent concealment of defects.

26 (9) Improvements to real property made prior to
27 the effective date of this Act."

By THOMAS FIEGEN

S-3116 FILED FEBRUARY 27, 2001

LOST

(P.442) 2/27/01

1 Section 1. Section 614.1, subsection 11, Code 2001, is
2 amended to read as follows:

3 11. IMPROVEMENTS TO REAL PROPERTY. In addition to
4 limitations contained elsewhere in this section, an action
5 arising out of the unsafe or defective condition of an
6 improvement to real property based on tort and implied
7 warranty and for contribution and indemnity, and founded on
8 injury to property, real or personal, or injury to the person
9 or wrongful death, shall not be brought more than ~~fifteen~~
10 eight years after the date on which occurred the act or
11 omission of the defendant alleged in the action to have been
12 the cause of the injury or death. However, this subsection
13 does not bar an action against a person solely in the person's
14 capacity as an owner, occupant, or operator of an improvement
15 to real property.

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SENATE FILE 222

H-1510

1 Amend Senate File 222, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 3, by inserting after the word
4 "PROPERTY." the following: "a."

5 2. Page 1, line 12, by striking the word
6 "subsection" and inserting the following:
7 "paragraph".

8 3. Page 1, by inserting after line 15, the
9 following:

10 "b. An action arising out of the unsafe or
11 defective condition of an improvement to an
12 educational facility owned, leased, operated, or
13 administered by a school district, accredited
14 nonpublic school, area education agency, community
15 college, accredited private institution, or the state
16 board of regents, based upon tort and implied warranty
17 and for contribution and indemnity, and founded on
18 injury to property, real or personal, or injury to the
19 person or wrongful death, shall not be brought more
20 than fifteen years after the date on which occurred
21 the act or omission of the defendant alleged in the
22 action to have been the cause of the injury or death.
23 However, this paragraph does not bar an action against
24 a person solely in the person's capacity as an owner,
25 occupant, or operator of an improvement to an
26 educational facility owned, leased, operated, or
27 administered by a school district, accredited
28 nonpublic school, area education agency, community
29 college, accredited private institution, or the state
30 board of regents."

31 4. Title page, line 3, by inserting after the
32 word "property" the following: "and an educational
33 facility owned, leased, operated, or administered by a
34 school district, accredited nonpublic school, area
35 education agency, community college, accredited
36 private institution, or the state board of regents".

By MASCHER of Johnson.

H-1510 FILED APRIL 12, 2001

East 4-17-01 (p. 1239)

H-1477

1 Amend Senate File 222, as amended, passed, and
2 reprinted by the Senate, as follows:

A 3 1. Page 1, line 10, by striking the word "eight"
4 and inserting the following: "ten".

5 2. Page 1, by inserting after line 15, the
6 following:

7 "This subsection shall not apply to the following:

B 8 a. The intentional or reckless disregard of design
9 plans, specifications, or building codes, including
10 the substitution of specified materials without the
11 knowledge of the purchaser.

12 b. Fraud or misrepresentation.

13 c. Breach of express warranty or guaranty.

14 d. Defective products incorporated into the real
15 property.

16 e. Waiver of the provisions of this subsection by
17 contract of the parties.

18 f. Improvements to real property made prior to the
19 effective date of this Act."

By KREIMAN of Davis

H-1477 FILED APRIL 10, 2001

A - out of order 4-17-01 (p. 1240)

B - lost

SENATE FILE 222

H-1563

1 Amend Senate File 222, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Section 1. Section 614.1, subsection 2A,
6 paragraph b, subparagraph (2), Code 2001, is amended
7 to read as follows:

8 (2) As used in this paragraph, "harmful material"
9 means silicon gel breast implants, which were
10 implanted prior to July 12, 1992; and chemical
11 substances commonly known as asbestos, dioxins,
12 tobacco, or polychlorinated biphenyls, or any other
13 latent disease-causing or injury-causing substances,
14 whether alone or as part of any product; or any
15 substance which is determined to present an
16 unreasonable risk of injury to health or the
17 environment by the United States environmental
18 protection agency pursuant to the federal Toxic
19 Substance Control Act, 15 U.S.C. § 2601 et seq., or by
20 this state, if that risk is regulated by the United
21 States environmental protection agency or this state.

22 Sec. ____ . Section 614.1, subsection 9, paragraph
23 a, Code 2001, is amended to read as follows:

24 a. Except as provided in paragraph "b", those
25 founded on injuries to the person or wrongful death
26 against any physician and surgeon, osteopath,
27 osteopathic physician and surgeon, dentist, podiatric
28 physician, optometrist, pharmacist, chiropractor,
29 physician assistant, or nurse, licensed under chapter
30 147, or a hospital licensed under chapter 135B,
31 arising out of patient care, within two years after
32 the date on which the claimant knew, or through the
33 use of reasonable diligence should have known, or
34 received notice in writing of the existence of, the
35 injury or death for which damages are sought in the
36 action, whichever of the dates occurs first, but in no
37 event shall any action be brought more than six years
38 after the date on which occurred the act or omission
39 or occurrence alleged in the action to have been the
40 cause of the injury or death unless a foreign object
41 unintentionally left in the body, or other latent
42 disease-causing or injury-causing act, omission, or
43 occurrence caused the injury or death."

44 2. Page 1, line 15, by inserting after the word
45 "property." the following: "This subsection does not
46 apply to an action brought by a municipality, as
47 defined in section 670.1, or to a subrogation claim
48 brought on behalf of an insurance company."

49 3. Title page, by striking lines 2 and 3 and
50 inserting the following: "relating to products and

H-1563

-1-

H-1563

Page 2

- 1 improvements to real property."
- 2 4. By renumbering as necessary.

By TREMMEL of Wapello

H-1563 FILED APRIL 17, 2001

A - Lost 4-17-01 (p. 1238)
B - Not Surmane

SENATE FILE 222

H-1569

- 1 Amend Senate File 222, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 10, by striking the word "eight"
- 4 and inserting the following: "ten".

By SUKUP of Franklin

H-1569 FILED APRIL 17, 2001

Adopted (p. 1240)

HOUSE AMENDMENT TO
SENATE FILE 222

S-3380

- 1 Amend Senate File 222, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 10, by striking the word "eight"
- 4 and inserting the following: "ten".

RECEIVED FROM THE HOUSE

S-3380 FILED APRIL 18, 2001

CONCURRED (p. 1185)



OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
I.T. GOVERNOR

MAY 07 2001

THOMAS J. VILSACK
GOVERNOR

May 3, 2001

The Honorable Mary Kramer
President of the Senate
State Capitol Building
LOCAL

Dear President Kramer:

I hereby disapprove and transfer Senate File 222, an act establishing a 10 year statute of repose in civil actions arising out of the unsafe or defective condition of an improvement to real property.

In 1980, Governor Ray vetoed legislation to establish a statute of repose for building and construction cases, citing a delicate balance between protecting potential victims and business interests. In articulating the rationale for his veto, Governor Ray commented that "it is the potential and actual harm to an innocent victim which I must judge against the arguments of the professional persons who would like to be protected against law suits after a limited period of time."

I share Governor Ray's concerns for protecting potential victims and appreciate that our legal system must provide these individuals with a forum to seek legal relief, should they be injured. Whether it is a neighbor who uses his savings for a new roof for the family farmhouse that later crumbles due to defective materials or a child who is injured due to a faulty fire and sprinkler system at his or her school, citizens deserve an avenue through which they may seek relief for their injuries. Unfortunately, I do not believe that all such injuries occur neatly within a 10 year window. I again echo Governor Ray's sentiments from his veto message when he stated, "I must

think of those to whom circumstance has not yet brought loss of property, health or even life and who, if that loss occurs, would seek and yet find no avenue of recovery..."

Realizing the negative effect this bill may have on many of Iowa's consumers, homeowners, and businesses, I am unable to approve Senate File 222. A statute of repose stipulates the time period during which individuals may bring lawsuits for certain injuries or damages. Iowa law currently provides that an individual has 15 years to file suit for injuries or damages incurred due to unsafe or defective improvements to real property. Senate File 222 would reduce this time period from 15 to 10 years.

Our legal system, by its design, places the primary burden of proof on the party seeking relief for an injury or damages. To restrict further the time period during which individuals may pursue legal remedies for their damages would place many consumers and property owners at a heightened disadvantage in their efforts to seek redress. It should also be noted that the 10 year time period afforded individuals in Senate File 222 does not begin once they realize a construction defect or incur an injury. Rather, this time period begins from the date that the potential defendant commits the act or omission that later causes the injury or damages. This means that the clock begins to tick against the injured party even before the injured party may have realized a problem or suffered an injury.

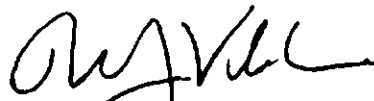
While proponents of this bill argue that 10 years should provide ample time to document any problem or design defect, this time period may not be adequate. Construction and building professionals today design structures to last for decades, if not centuries. While some defects may arise in the first years after construction, others may not surface within a 10 year period of time. During consideration of Senate File 222, legislators heard from large numbers of homeowners and businesses stating that a 10 year statute of repose was too restrictive. As business building owners, corporate entities such as Principal Financial Group, Meredith Corporation, and Wells Fargo all expressed concern over reducing the statute of repose in these situations.

Supporters of SF 222 have also asserted that the statute of repose should be shortened to 10 years in order to bring Iowa more in line with other states' legislation. While some states do provide shorter time periods, they have also created exceptions to the statute in order to maintain consumer protection.

Legislators here considered exceptions to Iowa's statute of repose via amendments to Senate File 222. These exceptions would have removed the time limitation for filing suit where there are allegations of a contractor's intentional disregard of building codes, breach of express warranties, fraud, willful misconduct, or use of defective materials. Unfortunately, the General Assembly chose not to include any exceptions to the statute of repose, thus further limiting the legal rights of consumers who may fall victim to the misdeeds of others.

For the above reasons, I hereby respectfully disapprove Senate File 222.

Sincerely,



Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of State
Chief Clerk of the House

action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

SENATE FILE 222

AN ACT

RELATING TO THE STATUTE OF LIMITATIONS IN CIVIL ACTIONS ARISING OUT OF THE UNSAFE OR DEFECTIVE CONDITION OF AN IMPROVEMENT TO REAL PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 614.1, subsection 11, Code 2001, is amended to read as follows:

11. IMPROVEMENTS TO REAL PROPERTY. In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen ten years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 222, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved *Michael Marshall* 5/3, 2001

THOMAS J. VILSACK
Governor

S. F. 222