

State-By-State Summary of

Liability Laws Affecting the Practice of Engineering

Revised 2019

INCLUDING:

Statutes of Repose

Sole Source Workers
Compensation Statutes

Anti-Indemnity Statutes
and Limitation of Liability

Certificate of Merit
Statutes

Joint & Several Liabilities
Laws and Statutes

Prepared by the National Society of Professional Engineers'
Professional Liability Committee

In Cooperation with Victor O. Schinnerer & Company Inc.

This document was compiled and written by Arthur E. Schwartz CAE, NSPE Deputy Executive Director & General Counsel and Mary Ann Cannon, NSPE Executive Office Manager (legal@nspe.org).

Vision: NSPE is a member-centric, nimble, future-focused and responsive organization, serving as the recognized voice and advocate of licensed Professional Engineers.

Mission: NSPE, in partnership with the State Societies, is the organization of licensed Professional Engineers (PEs) and Engineering Interns (EIs).

NSPE, in partnership with the State Societies,

- Serves as the recognized and authoritative expert in licensure, ethics and professional practice;
- Promotes licensure and assists individuals in becoming licensed; and
- Protects and enhances the value of licensure and the opportunities for the licensed engineer.

Goals: Through education, licensure advocacy, leadership training, multidisciplinary networking, and outreach, NSPE enhances the image of its members and their ability to ethically and professionally practice engineering. See more at www.nspe.org.

INTRODUCTION

State liability statutes and laws have a profound impact upon the practice of engineering. Among those liability laws having the most significant impact upon engineering practice include:

- *Statutes of Repose*
- *Sole Source Workers' Compensation Statutes*
- *Certificate of Merit Statutes*
- *Joint & Several Liability Laws and Statutes*
- *Anti-Indemnity Statutes and Limitation of Liability*

Included in this summary are (1) a brief description of each of these provisions (*pages 2-4*); (2) a one-page "snapshot" of state engineering tort reform coverage (*page 5*); (3) a state-by-state summary of state engineering liability law provisions including anti-indemnity statutes and limitation of liability (*pages 6-40*); and (4) NSPE Model Law language for statutes of repose, sole source workers' compensation statutes, and certificate of merit statutes (*pages 41-45*).

The information contained in this summary is intended to provide a description and summary of important liability provisions in an effort to assist individuals and state engineering organizations interested in promoting laws that protect engineers from nonmeritorious claims filed in court.

NOTE:

This document is intended only as a summary of state liability laws affecting the practice of engineering. Consultation with the precise language of state statutes, applicable judicial rulings, and competent legal counsel is strongly advised.

STATUTES OF REPOSE

Professional engineers face a substantial degree of liability exposure for property damage, economic damages, bodily injury, and wrongful death resulting from their alleged negligence in the design of improvements to real property that has long since been completed and for which the engineer should not reasonably be held responsible due to reasons outside their realm of control. Once insulated from liability exposure by the concept of "privity" (derivative rights and responsibilities are based on contract), a 1957 decision by a New York appeals court, *Inman v. Binghampton Housing Authority* (3 N.Y. 2d 137, 143 N.E. 2d 895), stripped design professionals of this protection. In *Inman*, the court found a design professional liable to parties to which they were not in privity.

As a consequence of *Inman*, suits against design professionals proliferated. Designers found themselves owing a duty of care to a variety of parties to whom no duty had been previously owed, nor ever contemplated. Eventually, the state legislatures responded to this perilous situation by adopting laws known as statutes of repose.

Statutes of repose bar actions against design professionals after a certain period of time following the completion of services or the substantial completion of construction. Statutes of repose do not totally absolve the design professional of any liability, merely prevent them from having to defend an action brought many years after they have completed the project, for which the design professional cannot reasonably be held responsible.

The statutes are based on the general legal principle that a potential defendant in a lawsuit should not be required to defend him/herself against "stale" claims that could easily be based upon faded memories, lost evidence, or witnesses who have since disappeared. Stale claims are a particular possibility in the construction industry, where the real property for which services have been provided may last several decades and over which the designer has no effective control.

Statutes of repose differ from statutes of limitations in terms of the point of time from which the limitation is measured. Statutes of limitation begin at the date of injury or discovery of the deficiency. Since the discovery of an injury or a deficiency could occur at any time, the exposure to a claim could theoretically run indefinitely. Statutes of repose, on the other hand, begin at a period of time following the completion of services or the substantial completion of construction. These statutes, therefore, limit the total period of time during which the design professional is exposed to liability, and thus statutes of repose are favorable to statutes of limitation.

SOLE SOURCE WORKERS' COMPENSATION STATUTES

State legislatures enacted workers' compensation laws in the early 1900s in response to the industrial revolution and the resulting increase in industrial accidents. Prior to the adoption of such laws, injured employees could sue their employers for damages resulting from the employer's negligence, but accepted common law defenses usually defeated the employee's claim. In exchange for the employer's assumption of the cost of an employee's occupational disabilities without the need of the employee to prove fault or negligence on the part of the employer, the workers' compensation laws prohibit employees from suing

their employer for damages. Among the benefits of the laws is that a single remedy is established, reducing the delays and costs involved in litigation and appeal. The laws of many states, however, do not prohibit the employee from suing a third party who may have been responsible for or contributed to the employee's injury for compensation beyond that provided in the workers' compensation law.

The workers' compensation laws were crafted with the notion that the workplace has a single employer. In the construction arena, however, projects usually involve multiple employers, including the owner, design professionals, design subconsultants, contractors, and subcontractors. Because employees are not barred from suing third parties for additional compensation, an injured employee can sue employers on the project other than his or her own. Design professionals, whom most presume to have malpractice insurance, are likely targets for such additional compensation. Injured employees may allege that the design professional's negligence in preparing the plans and specifications or in observing the construction to determine that it complied with the plans and specifications was the proximate cause of the injury or death. These liability claims are a source of considerable cost to design professionals in terms of both direct expenses and lost productive time.

Recognizing a need to extend the immunity provided to employers under the workers' compensation laws immunity to design professionals when they are one of numerous parties on the construction site, some states have amended their workers' compensation statutes to provide immunity to design professionals on construction projects when they are not responsible under contract for the means, methods, techniques, sequences, and procedures of construction or for employee safety.

CERTIFICATE OF MERIT STATUTES

Professional engineers face a substantial degree of liability exposure for breach of contract, property damage, personal injury, and wrongful death resulting from alleged negligence or malpractice in the course of their duties. Design professionals, whom most presume to have malpractice insurance, are also likely targets of suits from injured parties who seek relief from anyone that may be even remotely involved in the alleged death, injury, or damage. Many malpractice and negligence claims brought against design professionals may have no material basis or justification in fact or in law. Nevertheless, these groundless suits are a source of considerable cost to design professionals in terms of direct expenses, increased insurance premiums, lost productive time, and tarnished professional reputation.

Several states are successfully curbing the number of baseless claims brought against design professionals by placing the onus of responsibility for screening out groundless suits on the plaintiff. A few states have adopted "certificate of merit" laws, which require the plaintiff to consult with a third party design professional to review the facts of the claim before moving it forward. The plaintiff must then file with the court a certificate from the third party design professional declaring that, based upon their review of the allegations, the third party design professional believes that there is a reasonable basis for commencement of the action.

JOINT & SEVERAL LIABILITY LAWS

The American concept of tort liability recognizes that fault is based on negligent action or inaction and that each party should be responsible for the costs, losses, or damages caused by that party's negligence. In some situations it is difficult to determine the exact responsibility for a tort. All parties whose conduct is found to be a proximate cause of harm may be considered jointly and severally liable for that conduct; the injured party may sue one, some, or all of them and obtain judgments for the full amount of damages from any of the parties. Thus the injured party can collect a judgment from one or any combination of the parties held responsible even if one of the parties only has vicarious liability for the harm. Generally, a defendant held liable can seek contribution from another party for a proportionate share of the judgment if the other party can be found to have been liable, the share of harm can be established, and the party is not bankrupt or otherwise unable to pay its share.

Modifying the application of joint and several liability means that an engineer who is only partly at fault for a cost, loss, damage, or injury is only responsible for the harm created by the engineer's negligence or the negligence of another party such as a subconsultant for whom the engineer is liable. If the harm is not fully rectified by the action against the engineer, the plaintiff has no further recourse against the engineer for the other harm experienced by the plaintiff.

ANTI-INDEMNITY STATUTES AND LIMITATION OF LIABILITY

More and more engineers are attempting by contract to share all or at least part of the liability risks of a project with the project owner. Engineers point out that the project owner receives the principal reward and the long-term benefits from the project and is in the better position to assume and spread the costs of the liability risks over the life of the completed project. The engineer, on the other hand, may be exposed to substantial risk but receive a one-time fee which is a small percentage of the value of the project to the owner.

One solution to this risk-reward discrepancy is to have the owner agree to limit the engineer's liability exposure to a degree which bears a reasonable relationship to the reward received by the engineer.

In recent years, there have been a series of state and federal court decisions on the legal enforceability of limitation of liability provisions in engineering contracts. While many courts have upheld such provisions, some have determined that such provisions are unenforceable. Among the reasons cited by such courts include conflicts with state anti-indemnity statutes, lack of proper notice to owner, and public policy grounds.

**TABLE OF CONTENTS AND
SNAPSHOT OF STATE ENGINEERING TORT REFORM COVERAGE**

April 2019

STATE	PAGE(S)	STATUTE OF REPOSE	SOLE SOURCE WORKERS' COMP	CERTIFICATE OF MERIT	JOINT & SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES AND LIMITATION OF LIABILITY
ALABAMA	6					
ALASKA	6					
ARIZONA	7					
ARKANSAS	7					
CALIFORNIA	7-8					
COLORADO	8-9					
CONNECTICUT	9					
DELAWARE	9					
D.C.	10					
FLORIDA	10-11					
GEORGIA	11-12					
HAWAII	12					
IDAHO	12					
ILLINOIS	12-13					
INDIANA	14					
IOWA	14-15					
KANSAS	15					
KENTUCKY	15					
LOUISIANA	16					
MAINE	16-17					
MARYLAND	17					
MASSACHUSETTS	17					
MICHIGAN	18-19					
MINNESOTA	19-20					
MISSISSIPPI	20-21					
MISSOURI	21					
MONTANA	22					
NEBRASKA	22					
NEVADA	22-23					
NEW HAMPSHIRE	23					
NEW JERSEY	23-25					
NEW MEXICO	25					
NEW YORK	25-26					
NORTH CAROLINA	26					
NORTH DAKOTA	26-27					
OHIO	27					
OKLAHOMA	27-28					
OREGON	28					
PENNSYLVANIA	29-30					
PUERTO RICO	30					
RHODE ISLAND	31					
SOUTH CAROLINA	31					
SOUTH DAKOTA	32					
TENNESSEE	32					
TEXAS	33-34					
UTAH	34-35					
VERMONT	35					
VIRGINIA	35-36					
WASHINGTON	36-37					
WEST VIRGINIA	37					
WISCONSIN	37-39					
WYOMING	39-40					

= In place /
 = Not in place

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
ALABAMA	<p>AL Code § 6-5-218 (1994). Statutory period is 13 years. Replaces 7-year period held unconstitutional in <u>Jerome T. Jackson v. Mannesmann Demag Corp.</u>, 436 So.2d 735 (AL 1983). <u>Baugher v. Beaver Constr. Co.</u>, 791 So.2d 932 (Ala. 2001)(statute of repose for improvements to real property did not violate open courts provision of state constitution).</p>			<p>Courts have never applied the doctrine of j/s liability</p>	<p>AL Code § 34-11-9(a)(3) (2009)</p> <p><u>Saia Foods Distributors, Inc. v. SecurityLink from Ameritech</u>, 902 So.2d 46 (Ala. 2004); <u>Industrial Tile, Inc. v. Stewart</u>, 388 So.2d 171, 176 (Ala. 1980)</p>
ALASKA	<p>AK Stat. § 09.10.155 (1994). Statutory period is 10 years. Replaces previous 6-year statute held unconstitutional in <u>Turner Construction Co., Inc. v. Scales</u>, 752 P.2d 467 (AK 1988).</p>	<p>AK Stat. § 23.30.017. A person entitled to compensation under the workers' compensation statute as a result of injury occurring at the job site of a construction project may not bring a civil action to recover damages for that injury against a design professional (licensed engineer, architect, or land surveyor) or his/her employee. This section does not apply to a person receiving compensation under the statute who is injured at a job site at which the design professional or his/her employee (1) specifically assumed responsibility for job site safety practices under a contract; (2) actually exercises control over the premises where the injury occurred; (3) prepared design plans or specifications, the plans or specifications contributed to the injury, and the plans or specifications were prepared negligently, recklessly, or with intentional misconduct.</p>		<p>AK Stat. § 09.17.080 -- Several</p>	<p>AK Stat. § 45.45.900 (1986)</p> <p><u>City of Dillingham v. CH2M Hill Northwest, Inc.</u>, 873 P.2d 1271 (Alaska 1994)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
ARIZONA	<p>AZ Stat. § 12-552. Approved June 12, 1989. Statutory period is 8 years. Limited to property damage. <u>Albano v. Shea Homes</u>, L.P. 254, P.3d 360 (2011). AZ Supreme Court holds that 8-year statute of repose is not tolled for the filing of class actions.</p>		<p>AZ Rev. Stat. §§ 12-2602(B)(1)-(4)(2004). The expert opinion affidavit must include the expert's qualifications, the factual basis of the claim, and a statement regarding how the defendant violated the applicable standard of care resulting in liability and causing damages to the plaintiff. Ariz. Rev. Stat. §§ 12-2602(B)(1)-(4)(2004). Held constitutional in <u>Bertleson v. Sacks Tierney, P.A.</u>, 60 P.3d 703 (2002).</p>	<p>AZ Stat. § 12-2506 -- Several, exception for hazardous waste. Upheld in <u>Church v. Ransom</u>, No. 1 CA-CV 90-0357, 10/1/92.</p>	<p>AZ Rev. Stat. Ann. § 32-1159</p> <p><u>1800 Ocotillo, LLC v. WLB Group, Inc.</u>, 219 Ariz. 200 (Az. Banc 2008)</p>
ARKANSAS	<p>AR Stat. Ann. § 37-237. Approved February 7, 1967. Statutory period is 5 years for property damage actions based on contract and 4 years for personal injury actions based on tort or contract. Held constitutional in <u>Carter v. Hartenstein</u>, 455 S.W.2d 918 (AR 1970); app. dismissed for want of substantial federal question, 401 U.S. 901 (1971).</p>			<p>AR Stat. Ann. § 16-61-201 -- Joint</p>	<p><u>W. William Graham, Inc. v. City of Cave City</u>, 709 S.W.2d 94 (Ark. 1986)</p>
CALIFORNIA	<p>CA Civ. Proc. Code. Approved August 23, 1967. Statutory period is 4 years for patent defects (§ 337.1) and 10 years for latent defects (§ 337.15)(b). Held constitutional in <u>Regents of the University of California v. Hartford Accident &</u></p>		<p>CA Civ. Proc. Code § 411.35 (West, 1982) Requires a certificate of merit be sent contemporaneous with or before the service of plaintiff's lawsuit on the defendant. It should be noted that this statute applies to claims against a design professional based</p>	<p>CA Civ. Procedure Code § 1431.2 -- Joint for economic damages only</p>	<p>CA Civ. Code § 2782.5</p> <p><u>Markborough Cal., Inc. v. Superior Court</u>, 227 Cal. App. 3d 705 (Cal. App. 1991); see, also, <u>Greenwood v. Murphy</u> (2008 WL 4946224) (finding there was not an arms-length transaction)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p><u>Indemnity Co.</u>, 131 Cal.Rptr.112 (Cal.App.1976). Ten-year latent defect provision held applicable to property but not to personal injury suits in <u>Martinez v. Traubner</u>, 653 P.2d 1046 (Cal.1982). Patent defect provision upheld in <u>Wagner v. State of California</u>, 150 Cal.Rptr.489 (Cal.App.1978). For discussion of distinction between patent and latent, see <u>Barnes v. Innis-Tennebaum, Architects</u>, 271 Cal.Rptr.92 (Cal.App.1990). CA Supreme Court refused to review, but ordered decision "depublished" on 10/11/90). Ten-year latent defects provision applied in <u>Chevron USA, Inc. v. Superior Court (De Salvo Trucking Company)</u>, 36 Cal.Rptr.2d 783 (Cal.App.1994).</p>		<p>upon equitable indemnity. Requires certificate from an attorney verifying consultation with a licensed member of the defendant's profession. Engineers, architects, and land surveyors are covered. Grounds for dismissal; additional sanctions may be imposed for noncompliance. Only one certificate needed even if multiple defendants and claims.</p> <p>Suit dismissed with prejudice because certificate of merit not filed with complaint. <u>Curtis Engineering v. Superior Court</u>, 16 Cal.App.5th 542 (California 2017)</p>		
COLORADO	<p>CO Rev. Stat. § 13-80-104. Enacted 1986. Statutory period is 6 years. Predecessor statute held constitutional in <u>Yarbo v. Hilton Hotels Corp.</u>, 655 P.2d 822 (Colo.1982), and 1986 revised statute held constitutional in <u>Anderson v. M.W. Kellogg Company</u>, 766 P.2d 637 (Colo.1988).</p>		<p>CO Rev. Stat. § 13-20-601-602 (1996). Requires a plaintiff to file a "certificate of review" within 60 days after service of the lawsuit on the defendant. (2003). Requires certificate from an attorney verifying consultation with a person with expertise in the area. All licensed professionals and their employers are</p>	<p>CO Rev. Stat. § 13-21-111.5 -- Several, exception for persons consciously conspiring to commit a tortious act</p>	<p><u>Coors Brewing Co. v. Jacobs Eng'g Group, Inc.</u>, No. 08-cv-009885-RPM, 2008 WL 6565441 (D. Colo. Oct. 8, 2008)</p> <p><u>U.S. Fire Ins. Co. v. Sonitrol Management Corp.</u>, 192 P.3d 543 (Colo. App. 2008)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>HB 1166 "Construction Defect Action Reform Act" – Prohibits damages arising from improvements to residential property provided construction complies with the applicable building code or industry standards. A claim for relief must be brought within 90 days of discovering physical manifestations of a defect in the improvement which ultimately causes injury.</p>		<p>covered (even where a licensed professional is not named as party in such action). ('98). Automatic dismissal for noncompliance.</p>		
CONNECTICUT	<p>CT Gen. Stat. 52-584a. Approved 1969. Statutory period is as long as 7 years. Held constitutional in <u>Zapata v. Burns</u>, 542 A.2d 700 (Conn.1988).</p>	<p>CT Gen. Stat. § 31-293(c). No construction design professional (licensed architect, licensed engineer, or a corporation authorized to perform architectural or engineering services) or his/her employee who is retained to perform professional services on a construction project shall be liable for any injury on the construction project for which compensation is payable under workers' compensation statute unless responsibility for safety practices is specifically assumed by contract. The immunity shall not apply to the negligent preparation of design plans or specifications.</p>		<p>CT Gen. Stat. § 52-572o(d) -- Joint</p>	<p><u>B&D Assoc., Inc. v. Russell</u>, 807 A.2d 1001 (Con. App. 2002); <u>Sotomayer v. New Haven Parking Auth.</u>, 2000 WL 1023212 (Conn. Super. Ct. 2000)</p>
DELAWARE	<p>DE Code § 8127. Effective June 18, 1970. Statutory period is 6 years. Held constitutional in <u>Cheswold Vol. Fire Co. v. Lambertson Constr. Co.</u>, 489 A.2d 413 (Del.1984).</p>			<p>DE Code Tit. 10, § 6301 -- Joint</p>	<p><u>J.A. Jones Constr. Co. v. City of Dover</u>, 372 A.2d 540 (Del. Super. 1977)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
D.C.	D.C. Code § 12-310. Approved October 27, 1972. Statutory period is 10 years. Held constitutional in <u>Britt v. Schindler Elevator Corp.</u> , 637 F.Supp.734 (D.D.C.1986); <u>Sandoe v. Lefta Associates</u> , 559 A.2d 732 (D.C.App.1988).	See <u>Presley v. Commercial Moving & Rigging</u> , 25 A.3d 873 (2011). A consultant performing construction monitoring services on behalf of landowner was held not to owe a duty to an injured worker even though the consultant did not undertake to observe and report violations of safety requirements to the contractor.		Not codified	
FLORIDA	Fla. Stat. §95.11(3)(c). Generally, the statute of limitations is four (4) years from completion of the project for patent defects or four (4) years from when a latent defect was or should have been discovered. The statute of repose is ten (10) years. This section was amended in 2006 to provide a 10 year statute of repose instead of 15 years. The legislature's intent in reducing the statute of repose was to better align Florida with other states and also limit the cost of liability for architects, engineers, and contractors.	Fla. Stat. §440.09(6). Except as provided in this chapter, a construction design professional who is retained to perform professional services on a construction project, or an employee of a construction design professional in the performance of professional services on the site of the construction project, is not liable for any injuries resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter, unless responsibility for safety practices is specifically assumed by contracts. The immunity provided by this subsection to a construction design professional does not apply to the negligent preparation of design plans or specifications. See <u>Reyes v. Parsons Brinckerhoff Const. Services</u> , 784 So. 2d 514 (Fla. 3d DCA 2001).	Fla. Stat. § 558. Florida does not have a certificate of merit requirement, however Florida does have a mandatory presuit notice and opportunity to cure procedure for alleged construction or design defects. See Fla. Stat. § 558. At least 60 days before bringing any legal action regarding construction defects a claimant must serve the other party written notice of the claim that refers to Fla. Stat. § 558. The claim must include sufficient detail of each alleged defect and any resulting damages. Within 30 days of being served, the contractor has the right to inspect and test the property. Within 10 days of notice, the contractor may serve all subcontractors etc. with a notice of the claim and the subcontractor has 15 days to respond. Within 45 days of service of notice of claim, the recipient	Fla. Stat. §768.81(3). Florida abolished the doctrine of joint and several liability effective April 26, 2006, and adopted instead a system of apportioning fault between multiple tortfeasors. Fault may also be allocated to nonparties if pled and proven by a preponderance of evidence.	Fla. Stat. Ann. § 492.111(4); Fla. Stat. 725.06 <u>Fla. Power & Light Co. v. Mid-Valley, Inc.</u> , 763 F.2d 1316 (11 th Cir. 1985), <u>Witt v. La Gorce Country Club, Inc.</u> , 35 So.3d 1033 (Fla. Ct. App. 1990)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
			must serve a written response to the claimant. The time periods for responses are longer if the claimant is an association representing more than 20 parcels. Any lawsuit filed that does not comply with this section may be stayed pending compliance.		
GEORGIA	<p>GA Code § 9-3-51. Approved March 8, 1968. Statutory period is 8 years. Held constitutional in <u>Mullis v. Southern Co. Services</u>, 296 So.2d 579 (Ga.1982).</p> <p><u>Nelms v. Georgian Manor Condo. Ass'n, Inc.</u>, 321 S.E.2d 330 (Ga. 1984)(statute of repose for improvements to real property did not violate access to courts provision of state constitution).</p>	<p>GA Code § 34-9-11(a) An immunity is granted to a construction design professional (licensed architect, professional engineer, geologist, land surveyor, landscape architect, or a corporation lawfully providing design professional services) or his/her employee who is retained to perform professional services on or in conjunction with a construction project on which the employee was working when injured, unless the construction design professional specifically assumed by written contract the safety practice for the project. The immunity shall not apply to the negligent preparation of design plans and specifications, nor shall it apply to the tortuous activities of the construction design professional or his/her employees where those activities are the proximate cause of the injury to the employee or to any professional surveys specifically set forth in the contract or any intentional misconduct committed by the construction design professional or his/employees. The immunity shall apply and extend to the businesses</p>	<p>GA Code § 9-11-1.1 (1998) Requires affidavit from a competent expert. Grounds for dismissal only if noncompliance raised by defendant and noncompliance is not cured within 30 days or within time extension granted by court. Held unconstitutional in <u>Lutz v. Foran</u>, 427 S.E.2d 248, 251-52 (1993). All licensed professionals are covered. This statute had originally been thought to cover medical professionals, but has since been interpreted by the Georgia courts to apply to professional engineers and other professions. A 1997 amendment specifically refers to the statute's application to Georgia's 24 licensed professions. In a recent appellate decision, a Georgia court held that a plaintiff's failure to file the requisite affidavit would properly result in the trial court's dismissal of the action with prejudice. <u>Stamps v. Johnson</u>, 535 S.E.2d 1, 2-3 (Ga. Ct. App. 2000); <u>Dockens v. Runkle Consulting, Inc.</u>,</p>	<p>GA Code § 51-12-30 -- Several only if plaintiff is assessed some degree of fault.</p>	<p>O.C.G.A. 13-8-2(b)</p> <p><u>Lanier at McEver, L.P. v. Planners and Engineers Collaborative, Inc.</u>, 663 S.E.2d 240 (Ga. 2008); but, see, <u>Precision Planning, Inc. v. Richmark Communities, Inc.</u>, 679 S.E.2d 43 (Ga. Ct. App. 2009)</p> <p><u>US Nitrogen LLC v Weatherly</u>, 2018 U.S. Dist. Lexis 160449 (Ga, September 19, 2018). Limitation of liability provision in contract upheld.</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
		using the services of a temporary help contracting firm or an employee leasing firms.	648 S.E.2d 80 (2007), pro se plaintiff must comply with the certificate of merit statute.		
HAWAII	HI Rev. Stat. § 657-8. Statutory period is 10 years. Replaces previous 10-year statute held unconstitutional in <u>Shibuya v. Architects Hawaii Limited</u> , 647 P.2d 276 (Haw.1982) and <u>Fujioka v. Kam</u> , 514 P.2d 568 (Haw.1973).	HI Rev. Stat. § 386-8.5(b) No construction design professional or his/her employee who is retained to perform professional services on a construction project shall be liable for any injury on the construction project resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers' compensation statute unless responsibility for compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or his/her employee. This limitation of liability shall not apply to the negligent preparation of design plans or specifications.	HI Rev. Stat. § 672-2.5 (1993) Requires certificate from an attorney verifying consultation with a licensed member of the defendant's profession. Engineers, architects, surveyors, and landscape architects are covered. Sanctions for failing to cooperate with panel for noncompliance. Costs of the panel are shared equally.	HI Rev. Stat. § 663-10.9 -- Several except for: <ul style="list-style-type: none"> Economic damages in cases involving injury or death to persons Case of intentional torts, environmental pollution, toxic and asbestos-related suits, strict and product liability, and motor vehicle accidents (unless tortfeasor is less than 25% at fault in motor vehicle accident, then several for noneconomic damages). 	<u>Leis Family Ltd. Partnership v. Silversword Engineering</u> , 273 P.3d 1218 (Hi. Ct. App. 2012); <u>City Express, Inc. v. Express Partners</u> , 959 P.2d 836 (Hi. 1998)
IDAHO	ID Code § 5-241. Approved March 8, 1965. Statutory period is 6 years. Held constitutional in <u>Twin Falls Clinic & Hospital Bldg. Corp. v. Hamill</u> , 644 P.2d 341 (Ida.1982).			ID Code § 6-803(7) -- Several, except in cases of: <ul style="list-style-type: none"> intentional torts hazardous wastes medical or pharmaceutical products 	<u>Idaho State Univ. v. Mitchell</u> , 552 P.2d 776 (Idaho 1976)
ILLINOIS	IL Code Civ. Proc. § 13-214(a) and (b). Adopted 1983, amended 1987. Statute of limitations is 4 years from date of discovery, and there is a 10-year statute of repose. Statute of limitations portion held			IL Code Civ. Proc. § 735 5/2-117(b) -- Several except for medical malpractice. Held unconstitutional in <u>Best v. Taylor</u> (1997).	<u>Milliken v. Lewis</u> , 615 N.E.2d 25 (4 th Dist. 1993); <u>Scott & Fetzer v. Montgomery Ward & Co.</u> , 493 N.E.2d 1022 (Ill. 1986)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>constitutional in <u>Skinner v. Hellmuth, Obata & Kassabaum, Inc.</u>, 500 N.E.2d 34 (Ill.1986), distinguishing earlier holding that 4-year statute of repose was unconstitutional in <u>Skinner v. Anderson</u>, 231 N.E.2d 588 (Ill.1967). In <u>Continental Insurance Co. v. Walsh Construction Co.</u>, 524 N.E.2d 1131 (Ill.App.1988), upholding 4-year statute of limitations for design professionals, the court declined to pass on the constitutionality of the present 10-year statute of repose. In subsequent cases, without passing on the constitutional question, the court held that the 10-year statute of repose runs from the date designs are completed, <u>Zielinski v. A. Epstein & Sons International, Inc.</u>, 534 N.E.2d 644 (Ill.App. 1 Dist. 1989), and <u>Grimmig v. St. Clair County</u>, 548 N.E.2d 92 (Ill.App. 5 Dist. 1989). <u>Adcock v. Montgomery Elev. Co.</u>, 654 N.E.2d 631 (Ill. App.)(statute of repose for improvements to real property did not violate open courts provision of state constitution), appeal denied, 660 N.E.2d 1265 (Ill. 1995).</p>				

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
INDIANA	<p>IN Code § 34-4-20-2. Approved March 4, 1967. Statutory period is 10 years. <u>Beecher v. White</u>, 447 N.E.2d 622 (Ind. App. 1983)(statute of repose for improvements to real property did not violate equal protection, privileges and immunities, special laws, or open courts provisions to state constitution or due process provision of U.S. Constitution).</p>			<p>IN Code § 34-4-33-7 -- Several</p>	<p><u>General Bargain Center v. American Alarm Co., Inc.</u>, 430 N.E.2d 407, 411 (Ind. Ct. App 1982)</p> <p><u>Sams Hotel Group, LLC v. Environs, Inc.</u>, 716 F.3d 432 (7th Cir.). A limitation of liability clause in a design agreement as enforceable under Indiana law even though the clause did not specifically refer to the architects negligence. Such a clause is not analogous to either an indemnify or exculpation provision in terms specific requirements to enforceability.</p>
IOWA	<p>IA Code § 614.1. Adopted 1986. Statutory period is 15 years for unsafe or defective condition of improvement of real property from date of act or omission as cause of injury. <u>Krull v. Thermogas Co. of Northwood, Iowa, a Div. of Mapco Gas Prods., Inc.</u>, 522 N.W.2d 607 (Iowa 1994)(statute of repose for improvements to real property did not violate equal protection provisions of state constitution or U.S. Constitution).</p> <p>Changed from 15 years to 10 years for residential properties and 8 years for other properties. Statute begins to run from</p>			<p>IA Code § 668.4 -- Several liability for defendant's assesses less than 50% of total fault</p>	<p><u>Advance Elevator Co., Inc. v. Four State Supply Co.</u>, 572 N.W.2d 186 (Ia. Ct. App. 1997)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	the date the act or omission occurred that caused the injury. (2018)				
KANSAS	<p>KS Stat. Ann. § 60-513(b)(1976). Approved 1963. General tort statute, 2 years after substantial injury is suffered, 10 years for latent injuries or defects. For non-A/E case, see <u>Tomlinson v. Celotex Corp.</u>, 770 P.2d 825 (Kan. 1989), upholding constitutionality of statute.</p>	<p>KS Stat. Ann. § 44-501(f). No construction design professional or his/her employee who is retained to perform professional services on a construction project shall be liable for any injury resulting from the employer's failure to comply with construction safety standards for which workers' compensation is recoverable, unless safety practices responsibility is specifically assumed by contract. The immunity shall not apply to the negligent preparation of design plans or specifications. Statutory immunity for design professionals sued by injured workers does not extend to accidents caused by an alleged defective design directive. <u>Edwards v. Anderson Engineering, Inc.</u>, 251 P.3d 660 (2011). A wrongful death action against an engineer is dismissed for lack of proximate causation.</p>	<p>KS Stat. Ann. §§ 60-3501 - 60-3509 Requires filing a memorandum requesting panel with the court. All licensed professionals (but not health care providers) are covered. No consequences for noncompliance. Costs of the panel are paid by the winning party. Split if there is no decision.</p>	<p>KS Stat. Ann. § 60-258a(d) -- Several</p>	<p><u>Santana v. Olguin</u>, 208 P.3d 328 (Kan. App. 2009)</p>
KENTUCKY	<p>KY RS § 198b. No statute of repose. Previous statute for 5 years held unconstitutional in <u>Perkins v. Northeastern Log Homes</u>, 808 S.W.2d 809 (Ky.1991). Present statute for 5 years provides rebuttable presumption building was not defective in design, construction or materials.</p>			<p>KY RS § 411.182 -- Several</p>	<p><u>Cumberland Valley Contractors, Inc. v. Bell Country Coal Corp.</u>, 238 S.W.3d 644 (Ky. 2007); <u>Hargis v. Baize</u>, 168 S.W.3d 36 (Ky. 2005)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
LOUISIANA	<p>LA Rev. Stat. Ann. § 9:5607. Approved 2006. Statutory period is 5 years. Held constitutional in <u>Burmester v. Gravity Drainage Dist. #2</u>, 366 So.2d 1381 (La.1978). Statute does not apply to claims involving deliberate fraud. <u>Academy Park Improvement Assn. v. City of New Orleans</u>, 469 So.2d 2 (La.App. 1985). Contra: <u>KSLA-TV, Inc. v. Radio Corporation of America</u>, 732 F.2d 441 (5th Cir. 1984). Statute held not to apply to action based on failure to warn. <u>Bunge Corp. v. GATX Corp.</u>, 557 So.2d 1376 (La.1990), but Act 712, 1990 legislative session, applies statute to claims alleging failure to warn, except for fraud.</p>			<p>LA Rev. Stat. Ann., Civil Code § 2324 -- Several unless intentional or willful act</p>	<p>LA Rev. Stat. Ann. § 9:2780.1 (2010)</p> <p>LA Civ. Code Ann. Art. 2004</p> <p><u>Houston Exploration Co. v. Halliburton Energy Services, Inc.</u>, 269 F.3d 528 (5th Cir. 2001), on remand 2002 WL 1963313. <u>Soileau & Coreil v. Trans-Western Publishing</u>, 542 So.2d 198 (La. App. 3d Cir. 1989)</p>
MAINE	<p>ME Rev. Stat. Ann. § 752-A. Effective October 1, 1975. Statutory period is 10 years.</p>	<p>ME Rev. Stat. Ann. 39-A § 104. An architect, professional engineer, landscape architect, land surveyor, geologist, or soil scientist or employee acting within the course and scope of providing professional services during the construction, erection, or installation of any project is immune from liability for any personal injury or death occurring at or adjacent to the site if compensation is paid under the workers' compensation act and the design professional has no duty under a written contract to assume responsibility for</p>		<p>ME Rev. Stat. Ann. § 14.156 -- Joint</p>	<p><u>Lloyd v. Sugarloaf Mountain Corp.</u>, 833 A.2d 1 (Maine 2003)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
		<p>construction site safety. The immunity shall not apply to the negligent preparation of design plans and technical specifications. Any waiver, oral, written, express, or implied of the immunity is void/unenforceable as a matter of law.</p>			
<p>MARYLAND</p>	<p>MD Code Ann. § 5-108. Effective July 1, 1980. Statutory period is 10 years. <u>Whiting-Turner Contracting Co. v. Coupard</u>, 499 A.2d 178 (Md. 1985)(statute of repose for improvements to real property did not violate protection under state constitution, did not constitute prohibited special legislation, and did not violate state constitution article which prohibits laws from embracing more than one subject). <u>Streeter v. SSOE Sys.</u>, 2011, U.S. App. LEXIS 19107 (4th CR, 2011). A court will evaluate multiple projects to determine whether the projects are distinct in determining accrual dates for the statute of repose.</p>		<p>MD Cts & Jud. Pro Code §§ 3-2C-01 and 02 (effective 10/05) requires a certificate of merit by a qualified expert to be filed in claims against licensed professionals. As a result of 2004 amendments, statute now includes claims filed in "United States District Court," and also against the "employer, partnership, or other entity through which the licensed professional performed professional services." <u>Heavenly Days Crematorium v. Harris, Smariga and Associates, Inc.</u> 202 Md.App. 252, 32 A.3d 155 (2011). NO 128 Sept. Term 2011, 2013 WL 4106 701 (2013), Maryland's certificate of merit statute does not necessarily apply to a suit against an engineering firm that was alleged to be liable for the negligence of a non-engineer employee, as the statute is limited to claims of malpractice by a licensed engineer.</p>	<p>MD Code Ann., Art. 50 §§ 16-24 -- Joint</p>	<p><u>Adloo v. H.T. Brown Real Estate, Inc.</u>, 344 Md. 254 (Md. Ct. App. 1996); <u>Wolf v. Ford</u>, 644 A.2d 522 (Md. 1994)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
MASSACHUSETTS	<p>MA Ann. Laws ch. 260 § 2B. Approved July 16, 1968. Statutory period is 6 years. Held constitutional in <u>Klein v. Catalano</u>, 437 N.E.2d 514 (Mass.1982). Does not apply to surveying not related to physical change in land. <u>Raffell v. Perley</u>, 437 N.E.2d 1082 (Mass.App. 1982), or to manufacturer of products incorporated into building. <u>Dighton v. Federal Pacific Electric Co.</u>, 506 N.E.2d (Mass.) (statute of repose for improvements to real property did not violate right to remedy provision of state constitution or due process or equal protection provisions of state constitution or U.S. Constitution), <i>cert. denied</i>, 484 U.S. 953 (1987).</p>			<p>MA Ann. Laws 231B, §§ 1-4 -- Joint</p>	<p><u>Rothstein Corp. v. KPMG, LLC</u>, 2007 WL 4416840</p>
MICHIGAN	<p>MI Stat. Ann. § 27A.583. Statutory period is 6 years. Held constitutional in <u>O'Brien v. Hazelet & Erdal</u>, 299 N.W.2d 336 (Mich. 1990). Statute amended in 1988 to apply to property damage as well as injury, but interpreted to the contrary in <u>Garden City Osteopathic Hospital v. HBE Corp.</u>, 55 F.3d 1126 (6th Cir. 1995). <u>Pendzsu v. Beazer East, Inc.</u>, 557</p>			<p>MI Stat. Ann. § 27A.6304 -- Several except for medical malpractice where plaintiff is not at fault.</p>	<p><u>Slater v. Hometeam Inspection Serv.</u>, 2005 WL 1842843; <u>Cudnit v. William Beaumont Hosp.</u>, 525 N.W.2d (Mich. App. 1994)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>N.W.2d 127 (Mich. App. 1996) (statute of repose for improvements to real property did not violate due process provisions of state constitution or U.S. Constitution), <i>appeal denied</i>, 586 N.W.2d 918 (Mich. 1998).</p>				
<p>MINNESOTA</p>	<p>MN Stat. Ann. §541.051 (2013) Repose period is ten years, however, once the defect is discovered within the 10 years, the repose period fades into the background, and the two year statute of limitations comes into play. If the defect is discovered in year six, the claimant has two years thereafter to sue or the claim is barred. If the defect is discovered in the ninth or tenth year, the claimant has two years from that date to sue, effectively extending the total period to a maximum of 12 years.</p> <p>A third party action for contribution or indemnity may be brought no more than two years after the cause of action for contribution or</p>		<p>MN Stat. Ann. §544.42, Subd. 2, 3 (2014) Requires any party making a claim against a professional (attorney, architect, CPA, engineer, land surveyor or landscape architect) alleging negligence or malpractice to serve with the pleadings an affidavit of expert review, drafted by the attorney, stating that the facts of the case have been reviewed with an expert whose qualifications provide a reasonable expectation that the expert's opinions could be admissible at trial and that, in the opinion of this expert, the defendant deviated from the applicable standard of care and by that action caused injury to the plaintiff.</p> <p>Up to 90 days additional time is allowed if the affidavit could not be obtained before the action was commenced because</p>	<p>MN Stat. Ann. §604.02, Subd. 1 (2003) Where two or more persons are severally liable, contributions to awards are according to their respective percentage of fault. Persons jointly and severally liable for the whole award are (1) a person whose fault is greater than 50%; (2) two or more persons who act in a common scheme or plan that results in injury; (3) a person who commits an intentional tort; or (4) a person whose liability arises under certain environmental laws (enumerated).</p> <p>Subd. 2. An uncollectible share may be reallocated among the remaining parties at fault, according to their respective percentage of fault.</p> <p>But see, <i>Staab v. Diocese of St. Cloud</i>, 853 N.W.2d 713 (Minn. 2014). Holding a party that is severally liable under Minn. Stat. §604.02 cannot be ordered to contribute</p>	<p>MN Stat. Ann. §604.21 (2014) Indemnity agreement in a design professional services contract are void and unenforceable to the extent it attempts to require an indemnity or to indemnify, hold harmless, or to defend an indemnitee from or against liability for loss or damage resulting from negligence or fault of anyone other than the indemnitor or others for whom the indemnitor is legally liable. This section does not apply to the extent the obligation to indemnify, hold harmless or defend, is able to be covered by insurance.</p> <p>A "design professional services contract" is a contract</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>indemnity accrued, but in no event may an action for contribution or indemnity be brought more than 14 years after substantial completion of construction.</p> <p>Minnesota state court actions are commenced upon service, not filing. Minn. R. Civ. P. 3.01.</p>		<p>of the applicable statute of limitations.</p> <p>An affidavit of expert disclosure must be served upon the opponent within 180 days of commencement of discovery under Minn. R. Civ. P. 26.04(a), which permits discovery to start after the parties have conferred and prepared a discovery plan as required under Rule 26.01 (c).</p>	<p>more than that party's equitable share of the total damages award under the reallocation provision.</p>	<p>under which a portion of the work or services is to be performed or supervised by a person licensed under MN Stat. Ann. §326.02 (includes engineer, geoscientist), and is furnished in connection with any actual or proposed maintenance of improvement to real property, highways, roads, or bridges.</p>
MISSISSIPPI	<p>MS Code Ann. § 15-1-41. Approved June 15, 1966. Statutory period is 6 years. Held constitutional in <u>Anderson v. Fred Wagner & Roy Anderson, Jr., Inc.</u>, 402 So.2d 320 (Miss.1982) and <u>Reich v. Jesco, Inc.</u>, 526 So.2d 550 (Miss.1988). Statute applied to heat exchanger as improvement of real property. <u>Smith v. Fluor Corp.</u> <u>Smith v. Fluor Corp.</u>, 514 So.2d 1227 (Miss.1987). <u>Phipps v. Irby Constr. Co.</u>, 636 So.2d 353 (Miss. 1994) (statute of repose for improvements to real property did not violate equal protection provisions of state constitution or U.S. Constitution). Statute of repose does not apply to manufacturer of off-the-shelf windows, even if the manufacturer provided instructions</p>			<p>MS Code Ann. § 85-5-5 -- Joint to the extent necessary to allow plaintiff to obtain 50% or recoverable damages, except when defendants are acting in concert</p>	<p>Miss. Code Ann. 31-5-41 <u>Thrash Commercial Contractors, Inc. v. Terracon Consultants, Inc.</u>, 2012 WL 240 7551 (S.D. Miss. 2012); <u>Turnbough v. Ladner</u>, 754 So.2d 467 (Miss. 1999)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	as to how the windows were to be installed, <u>Winkel v. Windsor Windows and Doors</u> , 983 So.2d 1055 (Miss. 2008).				
MISSOURI	<p>MO Stat. Ann. § 516.097. Effective August 13, 1976. Statutory period is 10 years. Bars tort claims for personal injury, property damage, "economic loss" (2002 amendment), or wrongful death against architects, engineers, or builders of defective improvements to real property brought more than 10 (ten) years after completion of the improvement. Sale assembly, and installation of a prefabricated product does not constitute substantial on-site construction within meaning of section. <u>Lay v. P & G Health Care, Inc.</u>, 37 S.W.3d 310 (2000). <u>Blaske v. Smith & Entzeroth, Inc.</u>, 821 S.W.2d 822 (Mo. 1992)(statute of repose for improvements to real property did not violate equal protection or due process provisions of state constitution or U.S. Constitution, did not constitute prohibited special legislation, and did not violate open courts provision of state constitution).</p>	<p>MO Stat. Ann. § 287.150(5) No construction design professional or his/her employee retained to perform professional services on a construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans and specifications.</p>		MO Stat. Ann. Tit. 37, 537.067 -- Joint	<u>Purcell Tire & Rubber Company, Inc. v. Executive Beechcraft, Inc.</u> , 59 S.W.3d 505 (Mo. 2001)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
MONTANA	MT Code Ann. § 27-2-208. Approved February 27, 1971. Statutory period is 10 years. Held constitutional in <u>Reeves v. Ille Electric Co.</u> , 551 P.2d 647 (Mont.1976).			MT Code Ann. § 27-1-703 – Joint	Mont. Code Ann. 28-2-702, 28-2-2111, 30-2-719 <u>Zirkelbach Construction LLC v. DOWL, LLC</u> , 389 Mont.8 (Montana 2017), \$50,000 limitation of liability enforced.
NEBRASKA	NE Rev. Stat. § 25-222 & 25-223. Effective July 6, 1972. Statutory period is 10 years. Held constitutional in <u>Williams v. Kingery Construction Co.</u> , 404 N.W.2d 32 (Neb.1987).	NE Rev. Stat. § 25-21, 187(2). No professional architect, professional engineer, profession land surveyor, or his/her employees retained to perform professional services on a construction project shall be liable in tort for any case of personal injury or death of any employee working on a construction project arising out of and in the course of employment on the construction project occurring as a result of a violation of a safety practice by any third party unless the responsibility for supervision of safety practices has been assumed by contract or by other conduct.		NE Rev. Stat. § 25-21, 185-10 -- Joint for economic damages, several for noneconomic damages unless defendants acted in concert	<u>Ray Tucker & Sons, Inc. v. GTE Directories Sales Corp.</u> , 571 N.W.2d 64 (Neb. 1997)
NEVADA	NRS 11.203-11.205. Statutory periods are 10 years for known deficiencies about which owner design professional or contractor should have known, 8 years for latent deficiencies, and 6 years for patent deficiencies. No limit on actions resulting from willful misconduct or fraudulent concealment. All after substantial		NRS 40.6884 and NRS 11.258. Requires a plaintiff who commences an action against “a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional	NRS 17.225	<u>Obstetrics & Gynecologists v. Pepper</u> , 693 P.2d 1259 (Nev. 1985)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>completion of the improvement. <u>Wise v. Bechtel Corp.</u>, 766 P.2d 1317 (Nev. 1988)(statute of repose for improvements to real property did not violate single subject provision of state constitution).</p>		<p>negligence," to file an affidavit contemporaneously with service of the complaint.</p> <p><u>In Re CityCenter Construction v. Lien Master Litigation</u>, 310 P.3d 574 (2013), Nevada affidavit of merit statute applicable to non-residential construction, extends to subcontractor's negligent inspection claims against engineer.</p>		
NEW HAMPSHIRE	<p>NH Rev. Stat. Ann. § 508.4-b. Effective June 26, 1990. Statutory period is 8 years. Replaces 1965 statute held unconstitutional in <u>Henderson Clay Products, Inc. v. Edgar Wood & Associates</u>, 451 A.2d 174 (N.H.1982). <u>Winnisquam Reg'l School Dist. v. Levine</u>, 880 A.2d 369 (N.H. 2005) (statute of repose for improvements to real property did not violate equal protection provision of state constitution).</p>			<p>NH Rev. Stat. Ann. § 507:7-e -- Several unless defendant is 50% or more at fault.</p>	<p>N.H. Rev. Stat. Ann. 338-A:1</p> <p><u>McGrath v. SNH Development, Inc.</u>, 969 A.2d 392 (N.H. 2009)</p>
NEW JERSEY	<p>NJ Stat. Ann. § 2A:14-1.1. Effective May 18, 1967. Statutory period is 10 years. Held constitutional in <u>Rosenberg v. Town of North Bergen</u>, 293 A.2d 662 (NJ.1972). Statute held not to apply to state agencies. <u>N.J. Educational Facilities</u></p>	<p>New Jersey Statute Annotated 2A:29B-1. Liability for professional engineers, certain circumstances – the statute limits PEs' potential liability for injuries and deaths on construction sites. The law specifies that PEs will be liable for an injury on a construction site only if 1) they assume</p>	<p>NJ Stat. Ann. §§ 2A:53A-26 to 29 (1998). In a professional malpractice action against an architect or engineer, a plaintiff must file, within 60 days following the date of the defendant's filing of a responsive pleading, an "affidavit of an</p>	<p>NJ Stat. Ann. § 2A:15-5.3 -- Joint for defendants 60% or more at fault, exceptions for:</p> <ul style="list-style-type: none"> • "environmental tort actions" • hazardous or toxic substances 	<p>Marbro, Inc. v. Borough of Tinton Falls, <u>297 N.J. Super 411 (1996)</u></p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p><u>Authority v. The Conditioning Co.</u>, 567 A.2d 1013 (NJ Super A.D.1989). Statute applies only to designs that result in unsafe and defective conditions, held to apply to defective design of buildings not directly posing safety concerns. <u>Newark Beth Israel Medical Center v. Gruzen & Partners, et al.</u>, 590 A.2d 1171 (N.J. 1991). Does not apply to prefabricated pool manufacturers. (<u>Dziewiecki v. Fox Pools, Inc.</u> NJ Appellate Division, Affirmed by NJ Supreme Court, August 2004)</p>	<p>responsibility for safety standards or practice in their written contract, or 2) in a multi-prime project, the PE or firm represents the project owner and no contractor has been assigned responsibility for work site safety. PEs or firms could also be held liable if they were present at the portion of the project or site for which the engineer had provided services prior to or at the time of the accident; they had actual knowledge of the site conditions that are alleged to be a cause of the imminent danger; and they had the opportunity to notify the responsible contractor and worker of the danger and failed to do so within a reasonable time. The law does not interfere with the collection of workers' compensation benefits when the worker is entitled to those benefits. Further, the limitations of liability under the law would not apply in cases of willful misconduct or gross negligence. Affirmed in <u>Alves v. CME Associates</u> (Superior Court of NJ, Appellate Division, Docket No. A-6293-03T2)</p>	<p>appropriate licensed person" that must state, in pertinent part, that the defendant's alleged conduct "fell outside acceptable professional or occupational standards or treatment practices." Grounds for dismissal for noncompliance. Person signing affidavit must have been substantially practiced in that area for five (5) years. <u>Martin v. Perinni Corp.</u>, 1999 U.S. Dist. Lexis 1831, 1999 WL 101710 (2/10/99), held that statute applies to a party (either a plaintiff's claim or defendant's counter claim) who files an action for damages based upon an alleged act of malpractice or negligence; no application to a defendant who asserted as an affirmative defense to an action for the recovery of fees. <u>Manganaro Consulting v. Carneys Point</u>, 781 A.2d 1116 (2001). An architect who was sued for malpractice may assert a third party claim against an engineer without providing an affidavit of merit even though the engineer has not been sued by the owner. <u>Diocese of Metuchen v. Prisco & Edwards</u>, AIA 864 A.2d 1168 (2005). NJ</p>		

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
			affidavit of merit statute does not apply to construction managers or architect's inspection services performed as an agent of the construction manager, <u>Murphy v. New Road Construction</u> , 875 A.2d 955 (2005)		
NEW MEXICO	<p>NM Stat. Ann. § 37-1-27. Approved March 29, 1967. Statutory period is 10 years. Held constitutional in <u>Howell v. Burk</u>, 568 P.2d 214 (NM App.1977). Three-year supplemental period allowed for personal injuries. <u>Terry v. New Mexico State Highway Commission</u>, 645 P.2d 1375 (NM.1982). <u>Coleman v. United Eng'rs & Constructors, Inc.</u>, 878 P.2d 996 (N.M. 1994) (statute of repose for improvements to real property did not violate equal protection or due process provisions of state constitution).</p>			NM Stat. Ann. § 41-3A-1 -- Joint	<p>N.M.S.A. 1978 § 56-7-1</p> <p><u>Fort Knox Self Storage, Inc. v. Western Technologies, Inc.</u>, 142 P.3d 1 (N.M. Ct. App. 2006)</p>
NEW YORK	<p>Previous six-year cut-off of action against design professional for contract claims following substantial completion amended in 1996 to apply three-year statute of limitations for both contract and tort claims. Claims for personal injury/death accrue at time of injury. Claims for negligence</p>	<p>NY (McKinney's) Labor Law §§ 240(1) and 241(9)</p> <p>No liability for noncompliance with any of the provisions of this section shall be imposed on professional engineers, architects, or landscape architects who do not direct or control the work for activities other than planning and design. This exception shall not extinguish any liability of professional engineers,</p>		<p>NY (McKinney's) Civ. Proc. § 1601 -- Joint for defendants more than 50% at fault, joint applies to economic damages only for defendants 50% or less at fault.</p>	<p><u>Sommer v. Federal Signal Corp.</u>, 583 N.Y.S.2d 957 (Ct. App. 1992)</p> <p><u>Soja v. Keystone Trozze</u>, 106 A.D.3d 1168, 964 NYS.2d 731 (2013). A limitation of liability clause in a design contract on a residential project is enforced, absent evidence of gross</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	asserted more than 10 years following substantial completion subject to dismissal unless plaintiff fails to establish that professional negligence was proximate cause of plaintiff's injury.	architects, or landscape architects arising under common law or any other provision of law. See <u>Welch v. Grant Development Co.</u> , 466 N.Y.S.2d 112 (1983).			negligence by the architect. The architect's alleged failure to incorporate a flood map in its design constitutes ordinary negligence.
NORTH CAROLINA	<p>NC Gen. Stat. § 1-50-5. Approved 1963. Statutory period is 6 years. Held constitutional in <u>Lamb v. Wedgewood Corp.</u>, 302 S.E.2d 868 (N.C.1983). Shorter 4-year period under general professional malpractice statute did not apply to claim against A/E firm. <u>Trustees of Rowan Tech. College v. J. Hyatt Hammond Associates</u>, 328 S.E.2d 274 (N.C.1985). <u>Square D Co. v. C.J. Kern Contractors, Inc.</u>, 334 S.E.2d 63 (N.C. 1985) (statute of repose for improvements to real property did not violate open courts provision of state constitution and did not violate equal protection provisions of state constitution or U.S. Constitution).</p>			NC Gen. Stat. §§ 1B1 - 1B6 -- Joint	<p>NC Gen. Stat. Ann § 22B-1 (West 1993)</p> <p><u>Blaylock Grading Co., LLP v. Smith</u>, 659 S.E.2d 680 (N.C. Ct. App. 2008)</p>
NORTH DAKOTA	<p>ND Cent. Code § 28-01-44. Approved March 4, 1967. Statutory period is 10 years. <u>Bellemare v. Gateway Builders, Inc.</u>, 420 N.W.2d 733 (N.D. 1988) (statute of repose for improvements to real property did not</p>	<p>ND Cent.Code. § 43-03-23</p> <p>An architect shall not be liable for the safety of persons or property on or about the construction project site, or for the construction techniques, procedures, sequences and schedules, or for the conduct, action, errors, or omissions of any</p>		ND Cent. Code §§ 32-38-01 - 32-38-04 -- Joint	<p><u>Reed v. Univ. of N.D.</u>, 589 N.W.2d 880 (N.D. 1990)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	violate equal protection provision or prohibition against special legislation in state constitution).	construction contractor, subcontractor, or material supplier, their agents or employees, unless he assumes responsibility therefore by contract or by his actual conduct. Nothing shall be construed to relieve an architect from liability from his negligence, whether in his design work or otherwise.			
OHIO	Section 2305.13.1 (2005) requires causes of action arising out of defective and unsafe improvements to real property must generally be brought within 10 years of the date of the substantial completion of the performance of the services or the furnishing of the design, planning, supervision of construction, or construction of the improvement at issue. Previous version of 10-year statute (R.C. 2305.13.1) held unconstitutional in <u>Brennamen v. R.M.I. Company</u> , 639 N.E.2d 425 (Ohio 1994).			OH Rev. Stat. § 2307.31 -- Joint for economic damages only if defendant is more than 50% at fault. Several for noneconomic damages. Held unconstitutional, Ohio Academy of Trial Lawyers (8/99).	<u>Motorists Mut. Ins. Co. v. ADT Sec Systems</u> , 1995 WL 461316 (Oh. Ct. App. 1995)
OKLAHOMA	OK Stat. Ann. § 109. Effective October 1, 1978. Statutory period is 10 years. Held constitutional in <u>St. Paul Fire & Marine Ins. Co. v. Getty Oil Co.</u> , 782 P.2d 915 (Okla.1989). <u>Morin v. Coral Swimming Pool Supply Co.</u> , 867 P.2d 494 (Okla. App. 1993)	OK Stat. Ann. tit. 85 § 12(IV). Liability under the workers' compensation statute shall be exclusive and shall be in place of other liability of any architect, professional engineer, or land surveyor retained to perform professional services on a construction project at common law or otherwise for such injury, loss of		OK Stat. Ann. Tit. 12 § 832 -- Joint	15 Okl. St. Ann. 421 et seq <u>Elksen v. Network Multi-Family Sec. Corp.</u> , 838 P.2d 1007 (Ok. 1992)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	(statute of repose for improvements to real property did not violate due process or equal protection provisions of state constitution or U.S. Constitution, or state constitution's anti-abrogation prohibition).	services, or death to the employee or any other person. For the purpose of extending immunity under the state worker's compensation statute, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or in the site of a construction project, but this immunity shall not extend to the negligent preparation of the design plans and specifications.			
OREGON	OR Rev. Stat. § 12.135. Approved 1971. Statutory period is 10 years. Held constitutional in <u>Joseph v. Burns</u> , 491 P.2d 203 (Ore.1971).	OR Stat. § 30.785 A construction design professional (architect, landscape architect, professional engineer, or professional surveyor) or his/her employee who is retained to perform professional services on a construction project shall not be liable for any injury to a worker on the construction project that is compensable under the workers' compensation act and that results from the failure of the employer of the worker to comply with the safety standards on the construction project unless the construction design professional by contract specifically assumes responsibility for compliance with those safety standards. The immunity provided by this section to a construction design professional shall not apply to the negligent preparation of design plans and specifications.	OR Rev. Stat. Ann. § 31.300 (2003). Governs actions against "an architect, registered landscape architect, professional engineer, or professional land surveyor." In any action arising "out of the provision of services within the course and scope of the activities for which the person is licensed," the plaintiff's attorney must certify, in pertinent part, that he or she has consulted with a "licensed construction design professional" and this consultant "is available and willing to testify that" the defendant failed to meet the applicable standard of care under the facts alleged & such failure caused plaintiff's damages. Plaintiff's failure to comply with the certificate requirement will result in dismissal of lawsuit upon the defendant's motion.	OR Rev. Stat. § 18.485 -- Several liability. However, if one of defendants is insolvent within one year of final judgment, the plaintiff and other defendants reapportion the insolvent defendant's obligation between them. Defendant less than 20% at fault would be liable for no more than 2 times their original exposure.	<u>Estey v. MacKenzie Eng'g, Inc.</u>, 927 P.2d 86 (Or. 1996)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
PENNSYLVANIA	<p>42 PA C.S.A. § 5536. Approved December 22, 1965. Statutory period is 12 years. Held constitutional in <u>Freezer Storage, Inc. v. Armstrong Cork Co.</u>, 382 A.2d 715 (Pa. 1978). Did not bar action after statutory period had run on claim of negligent repair. <u>Cluett, Peabody & Co., Inc. v. Campbell, Rea, Hayes & Large</u>, 492 F.Supp. 67 (D.Pa.1981). <u>Columbia Gas of Pa., Inc. v. Carl E. Baker, Inc.</u>, 667 A.2d 404 (Pa. Super. 1995) (statute of repose for improvements to real property did not constitute prohibited special legislation and did not violate open courts provision of state constitution).</p>	<p>77 PA C.S.A. § 471 A construction design professional or his/employee who is retained to perform services on a construction project shall not be liable under this act for any injury or death of a worker not an employee of such design professional on the construction project for which workers' compensation is payable under the provisions of this act.</p>	<p>PA R.C.P. 1042.1-1042.8 "In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the plaintiff shall file with the complaint or within sixty days after the filing of the complaint a certificate of merit signed by the attorney or party that either (1) an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill, or knowledge exercised or exhibited in the treatment, practice, or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause of bringing about the harm; or (2) the claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard; or (3) expert testimony of an appropriate licensed professional is unnecessary for prosecution of this claim. Pennsylvania Superior Court Applied certificate of merit statute to claim against design professional for</p>	<p>42 PA C.S.A. § 7102 -- Joint</p>	<p>68 PA Ann. Stat. § 491 (West 2004), <u>Valhal Corp. v. Sullivan Assoc., Inc.</u>, 44 F.3d 195, 202 (3d Cir. 1995)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
			<p>ordinary negligence in failing to specify code compliant fire resistant materials. <u>Varner v. Classic Communities Corp.</u>, No 283 MDA 2005, 2006 WL 28037 (Pa. Super. January 6, 2006). An owner's claim that the water authority's project engineer directed a contractor to lay a pipeline outside the right of way and on the owner's property, constitutes a continuing trespass and does not require a certificate of merit. <u>Merlini ex rec. Merlini v. Gallitizin Water Authority</u>, 934 A.2d 100 (2007).</p>		
<p>PUERTO RICO</p>	<p>PR Civil Code, Art. 1809. Statutory period is 10 years under "plazo decenal" concept, imposing presumption of liability on the part of the design professional if damage occurs within 10 years of substantial completion, but absolute immunity after 10 years. Held constitutional in <u>Oliveras-Salas v. P.R. Hwy. Authority</u>, 884 F.2d 1582 (1st Cir.1989), citing in accord <u>In Re San Juan Dupont Plaza Hotel Fire Litigation</u>, 687 F.Supp. 716 (D.P.R.1988).</p>				

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
RHODE ISLAND	<p>RI G.L. § 9-1-29. Enacted 1975. Statutory period is 10 years. Held constitutional in <u>Walsh v. Gowing</u>, 494 A.2d 543 (R.I.1985). Claim that law was improper and should not be applied was retroactively denied. <u>Leleper v. Hillier Group Architects</u>, 543 A.2d 258 (R.I.1988). <u>Qualitex, Inc. v. Coventry Realty Corp.</u>, 557 A.2d 850 (R.I. 1989) (statute of repose for improvements to real property did not violate right to remedy provision of state constitution).</p>			<p>RI G.L. §§ 10-6-1 - 10-6-11 – Joint</p>	<p><u>Rhode Island Hospital Trust National Bank v. Dudley Service</u>, 605 A.2d 1325 (R.I. 1992); <u>Corrente v. Conforti & Eisele Co.</u>, 468 A.2d 920 (R.I. 1983)</p>
SOUTH CAROLINA	<p>SC Code Ann. § 15-3-640 (Cum. Supp. 1990). New statute enacted in 2005 for 8 years. (Earlier statute 13 years). Revised statute enacted in 2005 for 8 years. <u>Snively v. Perpetual Fed. Sav. Bank</u>, 412 S.E.2d 382 (S.C. 1991) (statute of repose for improvements to real property did not violate equal protection or due process provisions of state constitution or U.S. Constitution).</p>	<p>SC Code Ann. § 42-1-660 No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural, engineering, land surveying, or landscape architectural services retained to perform professional services on a construction project is liable for any injury resulting from the employer's failure to comply with the safety standards on a construction project for which compensation is recoverable under the workers' compensation statute unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.</p>	<p>SC Code Ann. § 15-36-100, subparts A, B, and G. Professional malpractice reform statute applies to licensed professionals, including professional engineers, land surveyors, and architects.</p> <p>In an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina, the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.</p>	<p>SC Code Ann. §§ 15-38-10 - 15-38-70 -- Joint</p>	<p><u>Georgetown Steel Corp. v. Union Carbide Corp.</u>, 806 F.Supp. 74 (D.S.C. 1992), reversed on other grounds by 7 F.3d 223 (4th Cir. 1993)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
SOUTH DAKOTA	<p>SD Compiled Laws § 15-2A-1 thru 15-2A-7. Revised statute enacted in 1985 for 10 years, following 1966 statute held unconstitutional in <u>Daugaard v. Baltic Cooperative Building Supply Assn.</u>, 349 N.W.2d 419 (S.D.1984). <u>Cleveland v. BDL Enter., Inc.</u>, 663 N.W.2d 212 (S.D. 2003) (statute of repose for improvements to real property does not violate open courts provision of state constitution).</p>	<p>SD Compiled Laws § 36-18-28.1. An architect or engineer shall not be liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences, and schedules, or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees, unless he assumes responsibility therefore by contract or by his actual conduct. Nothing shall be construed to relieve an architect or engineer from liability for his negligence where in his design work or otherwise.</p>		<p>SD Compiled Laws § 15-8-15.1 -- Defendant less than 50% at fault is not jointly liable for more than twice the fault allocated to the party.</p>	<p><u>Rozeboom v. Northwestern Bell Telephone Co.</u>, 358 N.W.2d 241 (S.D. 1984)</p>
TENNESSEE	<p>TN Code § 28-3-202. Approved 3/26/65. Statutory period is 4 years. Held constitutional in <u>Harmon v. Angus R. Jessup Associates, Inc.</u>, 619 S.W.2d 522 (TN 1981). <u>Pigg v. Barge, Waggoner, Sumner</u>, 1988 WL 92523 (Tenn. App. Sept. 9, 1988) (citing <u>Harmon v. Angus R. Jessup Assoc., Inc.</u>, 619 S.W.2d 522 (Tenn. 1981) (statute of repose for improvements to real property did not violate access to courts provision of state constitution or equal protection provisions of state constitution or U.S. Constitution).</p>			<p>TN Code §§ 29-11-101 - 19-22-106 -- Joint</p>	<p>T.C.A. § 62-6-123</p> <p><u>Houghland v. Security Alarms & Servs., Inc.</u>, 755 S.W.2d 769 (Tenn. 1988)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
<p>TEXAS</p>	<p>TX Civ. Prac. & Rem. Code § 16.009. Statutory period is 10 years. <u>Trinity River Auth. v. URS Consultants, Inc.—Texas</u>, 889 S.W.2d 259 (Tex. 1994) (statute of repose for improvements to real property did not violate open courts provision of state constitution, or due process or equal protection provisions of state constitution or U.S. Constitution, and did not constitute prohibited special legislation).</p>		<p>TX Civ. Prac. & Rem. Code Ann. §§ 150.001-002(a) (Vernon 2004). A plaintiff must file with its complaint “an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant. The affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim.” <u>Palladian Building Company v. Nortex</u> (2005), use of word “may” plainly gave the trial court the discretion to dismiss with or without prejudice. Does not apply to subcontractor’s complaint against design professional for tortious interference with contract. <u>Kniestedt v. SW Sound & Electric</u>, 2007 WL 1892220 (2007).</p> <p>Certificate of merit statute only applies to negligence-based claims, not to claims alleging breach of contract, breach of warranty, and deceptive trade practices. <u>Consolidated reinforcement, L.P. v. Carothers Executive Homes, Ltd., No 03-08-00294-CV</u>, 2008 WL</p>	<p>TX Civ. Prac. & Rem. Code § 33.013 -- Joint for defendant 50% or more at fault. Several for defendant less than 50% at fault (exception in toxic and hazardous materials torts if defendant is greater than 15% at fault).</p>	<p><u>CBI NA-CON, Inc. v. UOP Inc.</u>, 961 S.W.2d 336 (Tex. App. 1997)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
			<p><u>5100847 (Tex App. – Austin, 12/5/08).</u> A certificate of merit must be filed with the initial complaint, except for a limited circumstance in which the certificate is permitted to be filed within 30 days of the complaint as set forth in the statute <u>Sharp Engineering v. Sergio Luis</u>, 321 S.W.3d 748 (2010).</p> <p><u>S&P Consulting Engineers, PLLC v. Baker</u>, 334 S.W.3d 390 (2011). A certificate of merit is needed for claims of deceptive practices and fraud.</p> <p><u>Childress Engineering Services v. Nationwide Mutual Insurance Co.</u>, 456 S.W.3rd 725 (2015). A certificate of merit is not required in a builder's suit against an engineer seeking contractual indemnity, as the indemnity claim did not arise out of the provision of engineering services.</p> <p><u>Jacobs Engineering v. Willeford</u>, Texas Court of Appeals No 01-17-0551-CV Engineer affidavit in case against Exxon Mobil programmer unqualified.</p>		
UTAH	UT Code § 78-12-25.5. New statute approved 1991. Statutory period is 6 years for contract actions, 12 years for tort claims. Previous			UT Code § 78-27-40 -- Several	<u>Russ v. Woodside Homes, Inc.</u> , 905 P.2d 901 (Utah Ct. App. 1995)

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>statute held unconstitutional in <u>Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Sons, Inc.</u>, 782 P.2d 188 (Utah 1989) and <u>Horton v. Goldminer's Daughter</u>, 785 P.2d 1087 (Utah 1989), overturning previous decision upholding statute in <u>Good v. Christensen</u>, 527 P.2d 223 (Utah 1974). <u>Craftsman Builder's Supply, Inc. v. Butler Mfg. Co.</u>, 974 P.2d 1194 (Utah 1999) (statute of repose for improvements to real property did not violate open courts provision of state constitution).</p>				
VERMONT	<p>VT Stat. § 511. Approved 1959. Statutory period is 6 years. Previous interpretation that 6-year statute of limitations acted as statute of repose was reversed in <u>Congdon v. Taggart Brothers, Inc.</u>, 571 A.2d 656 (Vt.1989).</p>			<p>VT Stat. § 1036 -- Several</p>	<p>9A V.S.A. § 2-312 <u>Colgan v. Agway, Inc.</u>, 553 A.2d 143 (Vt. 1988)</p>
VIRGINIA	<p>VA Code § 8.01-250. Approved March 2, 1964. Held constitutional in <u>Smith v. Allen-Bradley Co.</u>, 371 F.Supp. 698 (W.D.Va.1974); see, accord, <u>Hess v. Snyder Hunt Corp.</u>, 392 S.E.2d 817 (Va. 1990) (statute of repose for improvements to real property did not</p>			<p>VA Code § 8.01-443 -- Joint</p>	<p>VA Code 54.1-411 <u>Dewberry & Davis, Inc. v. C3NS,k Inc.</u>, 81 Va. Cir. 122 (2010)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>violate due process or equal protection provisions of state constitution or U.S. Constitution). Applies only to claims arising out of tort; thus, does not apply to claims arising out of contract. <u>Fidelity & Deposit Co. of Maryland</u>, 722 F.2d 1160 (4th Cir. 1983); <u>Delon Hampton & Assoc.</u>, 943 F.2d 355 (4th Cir. 1991); <u>Jordan v. Sandwell, Inc.</u>, 189 F.Supp.2d 406 (W.D. Va. 2002); see also, <u>School Board of Norfolk v. United States Gypsum</u>, 234 Va. 32, 38 (1987)(dicta) and <u>Tycon Tower I Inv. Ltd. P'ship v. Glen Constr. Co.</u>, 1995 Va. Cir. LEXIS 1454 (1995).</p>				
WASHINGTON	<p>WA Rev. Code § 4.16.300. Approved March 21, 1967. Statutory period is 6 years. Held constitutional in <u>Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co.</u>, 503 P.2d 108 (Wash.1972). Statute did not apply to suit brought by school district. <u>Bellevue School District v. Brazier Constr. Co.</u>, 675 P.2d 232 (Wash.1984). <u>1519-1525 Lakeview Blvd. Condo. Ass'n v. Apartment Sales Corp.</u>, 29 P.3d 1249 (Wash. 2001) (statute of repose for improvements to real property did not violate access to courts provision of</p>	<p>WA Rev.Code § 51.24.035 - The injured worker of beneficiary may not seek damages against a design professional (architect, professional engineer, land surveyor, landscape architect who is licensed to practice, or a corporation authorized to practice one of the professions) or his/her employee who is a third party and who has been retained to perform professional services on a construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured. This immunity</p>		<p>WA Rev. Code § 4.22.070 -- Several, exceptions for:</p> <ul style="list-style-type: none"> • Parties acting in concert • If claimant is not at fault • Hazardous materials 	<p>WA Rev. Code Ann. § 4.24.115 (West 1986)</p> <p><u>Kelly v. Heron Ridge, Inc.</u>, 16 Fed. Appx. 695 (9th Cir. 2001)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	state constitution or equal protection provision of U.S. Constitution).	shall not apply to the negligent preparation of design plans and specifications. See <u>Michaels v. CH2M Hill</u> , 257 P.3d 532 (2011) Washington Supreme Court limits design professional immunity under worker's compensation law.			
WEST VIRGINIA	WV Code § 55-2-6a. Effective May 30, 1983. Statutory period is 10 years. <u>Gibson v. West Virginia Dept. of Highways</u> , 406 S.E.2d 440 (W.Va. 1991) (statute of repose for improvements to real property did not violate right to remedy provisions of state constitution or due process or equal protection provisions of state constitution or U.S. Constitution).			WV Code § 29-12A-7(d) -- Joint for defendant who is assigned 25% or more of negligence attributed to all defendants.	
WISCONSIN	WI Stat. §893.89. Ten years from the date of substantial completion of the improvement to real property. If a person sustains damages during the period beginning on the first day of the 8th year and ending on the last day of the 10th year after substantial completion, the time for commencing the action for damages is extended for 3 years after the date on which the damages occurred. WI Stat. §893.43 requires an action based on contract, express or implied, be commenced			WI Stat. §895.045. Joint liability if party is 51% or more at fault, or if 2 or more parties act in accordance with a common scheme or plan.	WI Stat. §895.447. Any provision to eliminate tort liability in an agreement relating to construction, alteration, repair or maintenance of a building is void. But the statute must be construed narrowly, placing the least possible restriction on the right to freely contract. See <i>Gerdman v. US. Fire Ins.</i> , 350 N.W.2d 730 (Wis. Ann. 1984).

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>within 6 years of the date the cause of action accrues.</p> <p>A cause of action for breach of contract accrues on the date of the breach, not the date of discovery. See <i>Kalahari Development, LLC v. Iconica, Inc.</i>, 811 N.W.2d 825 (Wis. App. 2012). If predominant purpose of contract is for a product, even though some architectural and engineering services may also be provided, the six year limitation on contracts applies, and plaintiff will be precluded from bringing a negligence action. <i>Id.</i> Some of Wisconsin's lower federal courts have held that Wisconsin's economic loss doctrine precluded tort recovery for economic losses where there was a contractual relationship between two sophisticated parties, regardless of whether the contract was for products or services. See, e.g., <i>Wausau Paper Mills Co. v. Chas. T. Main, Inc.</i>, 789 F.Supp. 968 (W.D.</p>				

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p>Wis. 1992) (granting summary judgment for defendant engineering firm on negligence & consequential damage claims and reserving breach of contract claim). But some lower state courts have taken the opposite position. The WI Supreme Court has reserved comment on the issue. <i>Daanen & Janssen, Inc. v. Cedarapids, Inc.</i>, 573 N.W.2d 842 (Wis. 1998).</p> <p>An action in Wisconsin state court is commenced upon filing. Wis. Stat. Ann. §631.83(a), §893.02.</p> <p>Changed from 10 to 7 years. Statute begins to run from the date of substantial completion of the improvement to real property. The period of repose is extended for three years from the date damages are sustained if occurring between the fifth and seventh year following substantial completion. (2018)</p>				
WYOMING	<p>WY Stat. § 1-3-111. Enacted in 1981. Statutory period is 10 years. Previous 1973 statute for 10 years held unconstitutional in <u>Phillips v. ABC</u></p>		<p>Wyo. Stat. §§ 9-2-1801 to 1812 (1997). Declared unconstitutional in <u>State ex rel. Wyoming Assn. of Constructing Engineers and Land</u></p>	<p>WY Stat. § 1-1-109 -- Several</p>	<p><u>Massengill v. S.M.A.R.T. Sports Med. Clinic</u>, 996 P.2d 1132 (Wyo. 2000)</p>

STATE	STATUTES OF REPOSE	SOLE SOURCE WORKERS' COMPENSATION STATUTES	CERTIFICATE OF MERIT STATUTE	JOINT AND SEVERAL LIABILITY	ANTI-INDEMNITY STATUTES & LIMITATION OF LIABILITY
	<p><u>Builders, Inc.</u>, 611 P.2d 821 (Wyo.1980). Limitation statutes did not apply to state or political subdivisions.</p> <p><u>Laramie County School District v. Muir</u>, 808 P.2d 797 (Wyo.1991).</p> <p><u>Bredthauer v. TSP</u>, 864 P.2d 442 (Wyo. 1993) (statute of repose for improvements to real property did not constitute prohibited special legislation and did not violate open courts provision of state constitution);</p> <p><u>Worden v. Village Homes</u>, 821 P.2d 1291 (Wyo. 1991) (same).</p>		<p><u>Surveyors et al. v. Sullivan</u>, 798 P.2d 826, 829 (1990).</p>		

(4/19)

NSPE Position Statement No. 07-170

Legislation to Address Professional Liability and Risk Management for Engineers

ADOPTED: April 2009
LATEST REVISION: July 2018
SUNSET DATE: September 2022
NSPE CONTACT: Committee on Policy and Advocacy
PROFESSIONAL POLICY SUPPORTED: 07-Government

It is the policy of the National Society of Professional Engineers (NSPE) to support efforts by state societies to promote legislation such as (1) statutes of repose, (2) certificate of merit, (3) sole-source workers compensation, and (4) Good Samaritan laws to provide a reasonable degree of protection for engineers in the performance of their professional services.

While engineers should be expected to assume reasonable duties and responsibilities in rendering professional services for which engineers have professional competence and expertise, legal and contractual authority, and for which the engineer has appropriate liability insurance and other protections, clients, contractors and other parties should understand the role of the engineer in the design and construction process and not seek to impose unjustifiable liability that undermine the engineer's responsibility as a licensed professional whose legal and ethical obligation is to protect the public health and safety.

The NSPE position is further expanded, along with model legislation, in NSPE Position Statement 10-1751.

NSPE Position Statement No. 10-1751

Statutes of Repose, Certificate of Merit, Sole Source Workers' Compensation, and Good Samaritan Laws

ADOPTED: 2009
LATEST REVISION: July 2018
NSPE CONTACT: Committee on Policy and Advocacy
PROFESSIONAL POLICY SUPPORTED: 10-Professional Practice

Statute of Repose

It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of statutes of repose for claims against professional engineers. Professional engineers face a substantial degree of liability exposure for property damage, economic damages, bodily injury, and wrongful death resulting from their alleged negligence in the design of improvements to real property that has long since been completed, and for which the engineer should not reasonably be held responsible due to reasons outside his or her realm of control. Most state legislatures have responded to this situation by adopting laws known as statutes of repose. Statutes of repose bar actions against design professionals after a certain period of time following the completion of services or the substantial completion of construction. Such statutes are based on the general legal principle that a potential defendant in a lawsuit should not be required to defend him/herself against "stale" claims that could easily be based upon faded memories, lost evidence, or witnesses who have since disappeared. For example, stale claims are a particular possibility in the construction industry, where the real property or facilities for which or to which services have been provided may last many decades, and during which time the engineer has had no control over operation and maintenance of the property or facility.

NSPE urges its state societies to seek the enactment of statutes of repose which bar actions against engineers after a certain period of time following the completion of services or the substantial completion of construction. Furthermore, NSPE urges the states to use the following model as a resource in supporting statutes of repose at the state level.

Model Statute of Repose

1. Except as otherwise provided in Section 2, no action to recover damages for injury to a person or for wrongful death or for damage to property, nor any act for contribution or indemnity for damages sustained on account of such injury or wrongful death or damage to property arising from any defect in the structure or improvement resulting from the design, planning, supervision of construction, or construction of an improvement to real property shall be brought against a professional engineer more than seven years after the completion of such improvement.
2. If by reason of such defect, an injury to the person, or an injury causing wrongful death or an injury to property occurs during the seventh year after completion, an action to recover damages for such injury or wrongful death or damage to property may be brought within one year after the date on which such injury occurred, but in no event may such action be brought more than eight years after the completion of the improvement.
3. The limitations prescribed by this section shall not be asserted by way of defense by any owner, tenant, or other person in actual possession or control of such an improvement where the improvement constitutes the proximate cause of the injury or death.

4. For purposes of this section an improvement shall be deemed to be “completed” when the construction is sufficiently complete so that an improvement may be utilized by its owners or lawful possessor for the purposes intended. In the case of a phased project with more than one substantial completion date, the seven-year period of limitations for actions involving systems designed to serve the entire project shall begin at the substantial completion of each phase.

Certificate of Merit

It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of certificate of merit laws to reduce baseless claims against professional engineers. Injured parties often seek relief from any party that may be even remotely involved in alleged wrongful death, personal injury, property damage, or breach of contract. Professional engineers are often targets of these suits. Many of these malpractice and negligence claims brought against professional engineers may have no material basis or justification in fact or in law. It is further the position of NSPE to urge its state societies to seek the enactment of certificate of merit laws using the following model as a resource in supporting such legislation at the state level.

Model Certificate of Merit Statute

1. In any action for damages alleging professional malpractice by a professional engineer, the plaintiff shall be required to file with the complaint an affidavit of a third-party professional engineer competent to testify, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer shall be licensed in this state and actively engaged in the practice of engineering.
2. The contemporaneous filing requirement of Section 1 shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party professional engineer could not be prepared. In such cases, the plaintiff shall have 45 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause extend such time as it shall determine justice requires.
3. If an affidavit is filed after the filing of a complaint, as allowed under Section 2, the defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.
4. This Act shall not be construed to extend any applicable period of limitation.

Workers’ Compensation Statute

It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of provisions in state workers’ compensation laws that provide professional engineers on the construction site immunity from third-party claims by injured workers, unless those professionals have specifically assumed the responsibility for safety practices or have been willfully or grossly negligent in the preparation of design plans or specifications.

Workers’ compensation laws require employers to assume the cost of an employee’s occupational disabilities without the need of the employee to prove fault or negligence on the part of the employer. In exchange, the laws prohibit employees from suing their employer for damages. Many workers’ compensation laws, however,

do not prohibit an injured employee from suing a third party who may have been responsible for or contributed to the employee's injury for compensation beyond that provided in the workers' compensation law. On construction sites, professional engineers are a likely third-party target for such additional compensation.

Some state legislatures have recognized the need to extend the immunity provided to employers under the workers' compensation law to professional engineers when they are one of numerous parties on a construction site. These states have amended their statutes to provide immunity to professional engineers on construction projects when they are not responsible under contract for the means, methods, techniques, sequences, and procedures of construction or for employee safety.

NSPE urges its state societies to seek the enactment of this liability immunity provision in state workers' compensation laws. Furthermore, NSPE urges the states to use the following model as a resource in supporting such legislation at the state level.

Model Sole Source Workers' Compensation Statute

Except as provided in the workers' compensation act, no professional engineer who is retained to perform professional services on a construction project, nor any employee of a professional engineer who is assisting or representing the professional engineer in the performance of professional services on the site of the construction project, shall be liable for any injury on the construction project for which compensation is recoverable under the workers' compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this section shall not apply to willful misconduct or gross negligence in the preparation of design plans or specifications.

Good Samaritan Act

It is the position of the National Society of Professional Engineers (NSPE) that professional engineers (obligated under the Code of Ethics to dedicate their service to the public health, safety, and welfare) who voluntarily assist their communities, states, and the nation in times of crisis when requested by the appropriate public official, be protected from liability exposure when performing such voluntary duties. In times of natural disasters or other catastrophic events, engineering expertise and skills are needed to provide structural, mechanical, electrical, or other engineering services and may be needed to determine the integrity of structures, buildings, piping, or other engineered systems. It is the further position of NSPE that its state societies be urged to advocate the enactment of state laws which provide immunity from liability for any personal injury, wrongful death, property damage, or other loss caused by a professional engineer's acts, errors, or omissions in the performance of voluntary engineering services in times of crisis. Furthermore, NSPE urges the states to use the following model as a resource in supporting such legislation at the state level.

Model Good Samaritan Act

1. As used in this Section:
 - a. "Professional Engineer" shall mean a person duly licensed under the state engineering licensure law as a professional engineer;
 - b. "Public Official" means any federal, state, or locally elected official with overall executive responsibility in the jurisdiction in which the emergency or event has occurred;
 - c. "Public Safety Official" means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate public safety in the jurisdiction in which the emergency or event has occurred;

- d. “Law Enforcement Official” means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred;
 - e. “Building Inspection Official” means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or event has occurred.
2. A professional engineer who voluntarily, without compensation, provides structural, electrical, mechanical, or other engineering services related to a declared national, state, or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or other similar disaster or catastrophic event at the request of or with the approval of a national, state, or local public official, law enforcement official, public safety official, or building inspection official acting in an official capacity shall not be liable for any personal injury, wrongful death, property damage, or other loss related to the professional engineer’s acts, errors, or omissions in the performance of any engineering services for any structure, building, piping, or other engineered system, either publicly or privately owned.
- a. The immunity provided in this Section shall apply only to a voluntary engineering service(s) that occurs during the emergency or within 90 days following the end of the period for an emergency, disaster, or catastrophic event, unless extended by an executive order issued by the Governor under the Governor’s emergency executive powers.
 - b. Nothing in this Section shall provide immunity for wanton, willful, or intentional misconduct.

*To order a copy of this publication, call 1-888-285-6773
NSPE Member Price: \$25/Non Member Price: \$50*



1420 King Street

Alexandria, VA 22314

703/684-2800, Fax: 703/519-3763

www.nspe.org

Publication #1918-F ■ ISBN #0-915409-30-5

Original Publication Date: September 1997, **Revised April 2019**

Copyright © 2019 National Society of Professional Engineers