

SECOND REGULAR SESSION

# SENATE BILL NO. 840

91ST GENERAL ASSEMBLY

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INTRODUCED BY SENATORS GROSS AND RUSSELL.

Pre-filed December 18, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3397S.011

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## AN ACT

To repeal section 516.097, RSMo, relating to certain tort actions, and to enact in lieu thereof two new sections relating to the same subject.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 516.097, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 516.097 and 537.800, to read as follows:

516.097. 1. Any action to recover damages for **economic loss**, personal injury, property damage or wrongful death arising out of a defective or unsafe condition of any improvement to real property, including any action for contribution or indemnity for damages sustained on account of the defect or unsafe condition, shall be commenced within ten years of the date on which [any] such improvement is **substantially** completed.

2. This section shall only apply to actions against any person whose sole connection with the improvement is performing or furnishing, in whole or in part, the design, planning or construction, including architectural, engineering or construction services, of the improvement.

3. If any action is commenced against any person specified by subsection 2[ **any**] **of this section**, such person may, within one year of the date of the filing of such [an] action, notwithstanding the provisions of subsection 1 **of this section**, commence an action or a third party action for contribution or indemnity for damages sustained or claimed in any action because of **economic loss**, personal injury, property damage or wrongful death arising out of a defective or unsafe condition of any improvement to real property.

4. This section shall not apply [if]:

(1) **If** an action is barred by another provision of law;

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(2) **If** a person conceals any defect or deficiency in the design, planning or construction, including architectural, engineering or construction services, in an improvement for real property, if the defect or deficiency so concealed directly results in the defective or unsafe condition for which the action is brought;

(3) **[The] To limit any** action [is] brought against any owner or possessor of real estate or improvements [thereon] **on such real estate.**

5. The statute of limitation for buildings completed on August 13, 1976, shall begin to run on August 13, 1976, and shall be for the time specified [herein] **in this section.**

**6. For the purposes of this section, the term "substantially completed" means that construction has progressed to the point that the building, facility, structure or improvement can be put to the use for which it was intended, even though comparatively minor items remain to be furnished or performed in order to conform to the plans and specifications for the completed building, facility, structure or improvement, which minor items do not prevent occupancy or use of the building, facility, structure or improvement. Certificate of substantial completion issued by a design professional or a temporary certificate of occupancy by a public official shall be evidence of substantial completion.**

**537.800. 1. In any action against a licensed professional for damages or injuries due to the rendering of or failure to render professional services, the plaintiff or plaintiff's attorney shall file an affidavit with the court stating that the plaintiff or plaintiff's attorney has obtained the written opinion of a legally qualified like licensed professional which states that the defendant licensed professional failed to use such care as a reasonably prudent and careful licensed professional would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.**

**2. The affidavit shall state the qualifications of the like licensed professional to offer such opinion.**

**3. A separate affidavit shall be filed for each defendant named in the petition.**

**4. The affidavit shall be filed no later than ninety-five days after the filing of the petition unless the court, for good cause shown, orders that such time be extended.**

**5. If the plaintiff or his attorney fails to file the affidavit, the court may, upon motion of any party, dismiss the action against such moving party without prejudice.**

**6. For purposes of this act, the term "licensed professional" shall mean every licensed architect, professional engineer, land surveyor or any corporation authorized to render any of the aforementioned professional services. This section shall not apply to any "health care provider" as that term is defined in section 538.205, RSMo.**

**7. The provisions of this section shall not apply to actions filed in small claims court pursuant to chapter 482, RSMo.**

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