



NEW YORK STATE SOCIETY OF
PROFESSIONAL ENGINEERS

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SUPPORT MEMO

April 16, 2025

A 4907 Assemblyman Pretlow / S 2146 Senator Cooney (2025)

Establishing a Statute of Repose for Design Liability Claims (Professional Engineers and Registered Architects)

On behalf of the **New York State Society of Professional Engineers** (NYSSPE) we are writing in **SUPPORT** to the above referenced bill. NYSSPE is a professional association representing the interests of its members, and more generally the interests of all professional engineers (totaling more than 30,000 licensees in New York State) practicing in all disciplines (civil, structural, mechanical, electrical, geological, environmental, etc.) and practicing in all practice settings (private sector consulting, industry, government, and education) in furtherance of public health, safety, and welfare.

In the United States every state, with the exception of New York and Vermont, has enacted legislation establishing a Statute of Repose applicable to design liability cases. These forty- eight (48) state laws strike a fair balance between parties injured while using a building, roadway, bridge or other structure and parties who may be held responsible for faulty design, construction, use and maintenance. Fundamentally, these laws provide that after a fixed period of time following completion of a project (typically 7-10 years) an action for malpractice against the original design professional is barred. Laws establishing a Statute of Repose are predicated on fundamental fairness. The ability of a design professional to defend a design malpractice claim is materially impaired due to the passage of time. Witnesses are often no longer available and the limits of memory become significantly strained. Records become lost or destroyed further prejudicing the design professional. Moreover, an analysis of design liability cases discloses that rarely is liability established against the original design profession in third party tort actions. In the vast preponderance of cases, once a building or other structure has proven itself over time, liability for failure rests with the parties other than the original design professional. In this setting, in forty-eight out of fifty states, those responsible for maintenance, repair and use (the building owner, management company, repair contractors and professionals responsible for subsequent design alterations) are uniquely responsible for tort liability.

It is most unfortunate that New York does not have a Statute of Repose. Consequently, design professionals practicing in our state remain liable for their work for decades well past retirement. Liability in these cases remains a threat even though the design professional has no authority to oversee the maintenance of the property or to pass upon alterations in its use. The design professional simply has no control over the property after construction is completed and occupancy commences. Moreover, professional liability insurance is not available once tail coverage is exhausted simply due to the passage of time. Tail coverage is generally limited to a post-retirement period of three years.

An unintended consequence of New York's failure to adopt a State of Repose is the creation of a significant disincentive for design professionals to choose New York as a place to locate, work and raise a family. New York's competitiveness will continue to be undermined by its failure to ensure that the civil justice system is fair and balanced.

A handwritten signature in black ink, appearing to read 'Mark C. Kriss', is centered on a light gray rectangular background.

Mark C. Kriss, Esq.
Legislative Counsel
New York State Society of
Professional Engineers

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