

The Statute of Repose is a statutory way to cut off legal rights if they are not acted on by a certain deadline. In Texas, the Statute of Repose requires a person to file suit against a contractor for a construction defect during the first 10 years after substantial completion of the project. During this 10-year period, contractors are liable for damages, injury or death which arise from a deficiency in the construction or repair of an improvement to property.

While it is important that there be a finite time limit during which a claim for a construction defect can be brought against a contractor, 10 years is a long time to have potential liability issues hanging over the construction team. The odds are low that a true defect in construction will arise after 5 years. After 5 years, the line between defect and wear and tear gets very blurry. Improper or lack of maintenance to a building also presents a complicating factor. Importantly, documents and witnesses tend to be less available and harder to produce as time goes by. Also, on projects covered by a consolidated insurance program, the state only requires coverage for completed operations (the type of insurance that may provide coverage for after construction claims) for up to 3 years. Thus, contractors on these projects most often have no insurance for the years 4-10 that the consolidated insurance program does not cover.

Furthermore, to combat the lawsuits that are manufactured by consultants in the 9th year of a 10-year statute of repose, a shorter statute period will increase the odds of a defendant being able to produce documents and witnesses with first-hand knowledge of the construction. A shorter time frame will lessen the likelihood that the case is a “shakedown” of construction companies’ insurance and instead be a true case on whether there is a true construction defect. **HB 1053** will reduce the Statute of Repose in Texas from 10 years to 5 years.