

## Proposed MA Bill No. 1746 to Amend Statute of Repose in Massachusetts to Not Include Latent Diseases Caused by Asbestos

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Under the current Massachusetts statute of repose, Section 2B of Chapter 260 of the General Laws, an individual making a tort claim for damages arising out of deficiency or neglect in the design, planning, construction or general administration of an improvement to real property must commence their case within three years of the alleged action, but not more than six years after either the opening of the improvement to use, or substantial completion of the improvement and the owner taking possession for occupancy, whichever occurs first. See Mass. Ann. Laws ch. 260, § 2B (LexisNexis, Lexis Advance through Chapter 14 of the 2023 Legislative Session of the 193rd General Court).

In 2018, in *Stearns v. Metropolitan Life Insurance Co.*, the deceased plaintiff's estate filed a negligence action against a manufacturer of turbine generators, because of the deceased plaintiff's alleged asbestos exposure from these turbines. See *Stearns v. Metro. Life Ins. Co.*, 379 F. Supp. 3d 102, 104 (D. Mass. 2019). In 2018, the District Court of Massachusetts held that the statute of repose did not apply to asbestos claims. See id. The District Court then certified the following question to the Supreme Judicial Court of Massachusetts:

[W]hether or not the Massachusetts statute of repose...can be applied to bar personal injury claims arising from diseases with extended latency periods, such as those associated with asbestos exposure, where defendants had knowing control of the instrumentality of injury at the time of exposure.

See id. In 2019, the SJC held that the statute of repose "eliminates all tort claims" arising under the Statute, including claims involving latent diseases. See id.

On January 4, 2023, Representative Jeffrey N. Roy of Franklin, Massachusetts, sponsored the adoption of House bill No. 1746. See H.R. 1746, 193, Gen. Assemb., Reg. Sess. (Mass. 2023). This bill proposes adding language into the statute of repose stating that, effective for all causes of action beginning before, on, or after, the date this proposed bill is enacted, the statute of repose will not apply to tort actions for damages for latent diseases caused by toxic substances, including asbestos. See id. This bill will also apply to all pending actions. See id. In February of 2023, Senate agreed to amendments made to the proposed bill. For this bill to be adopted, both chambers must vote on the enactment of the bill, and Massachusetts Governor Maura Healy must sign the bill. A joint hearing was held on June 27, 2023. We do not yet know the outcome of this hearing. The proposed bill likely has been referred to the joint judiciary committee.