

# **Statutes of Repose as a Shield: Defending Long-Tail Defect Claims in Tennessee, Arkansas, Kentucky and Mississippi**

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In the dynamic landscape of insurance defense, statutes of repose are crucial to curtailing liability in construction defect litigation. Where statutes of limitations commence upon discovery of injury, statutes of repose impose an absolute cutoff for liability, typically starting from substantial completion. These statutes extinguish claims regardless of when the defects manifest. Unlike many tort claims, construction defects are discovered long after a project is completed. Statutory limits on liability therefore play a critical role in providing contractors, architects, engineers, and insurers with predictability and finality.

Construction defect claims are projected to rise in 2025-2026, and defense attorneys are increasingly relying on repose statutes to resolve issues of long-tail exposure to liability. This reliance reflects a broader effort to impose temporal boundaries on liability in an environment where defect allegations are increasingly untethered from the date of construction and instead driven by changes within the construction industry itself. The COVID-19 pandemic complicated the dynamics of the construction industry, as global markets were disrupted, and interest rates sat at a historic low. Liquidity across the economy dramatically increased and cheap borrowing costs, coupled with unprecedented federal spending, fueled a surge in development activity. At the same time, COVID-19's havoc strangled supply chains and caused logistical delays that were not easy to overcome. Costs increased at remarkable rates, despite demand remaining steady. Despite these pressures, public and private investment continued, producing a construction boom whose downstream effects are now beginning to surface in the form of latent defect claims.

Understanding how these economic forces intersect with state-specific statutes of repose is essential for insurers and defense counsel navigating the anticipated surge in defect claims through 2025-2026. As projects completed during this accelerated and strained construction cycle age into the window in which they grow into claims, statutes of repose will increasingly serve as a decisive threshold issue, determining whether a claim proceeds at all.

## **State-Specific Repose Periods: A Comparative Overview**

Each Southeastern state tailors its statute of repose to balance plaintiffs' access to relief against the construction industry's need for finality.

In Tennessee, Tenn. Code Ann. § 28-3-202 establishes a four-year statute of repose, running from substantial completion of the project. Where an injury occurs in the fourth year of the repose period, plaintiffs have an additional year to bring a claim, capping exposure to liability at five years total. This statute has been the subject of scrutiny over recent years. Notably, a 2025 decision from the Tennessee Court of Appeals clarified that the statute does not extend to claims grounded in ongoing maintenance contracts, reinforcing the necessity of careful pleading.

Arkansas's Ark. Code Ann. § 16-56-112 establishes distinct repose periods based on the type of claim: property damage actions have a repose period of five years and a four-year repose period for personal injury or wrongful death actions. When personal injury occurs in the third year post completion, the repose period gains an additional year from the date of the injury, allowing an overall five-year time period to file suit. The Arkansas Court of Appeals reinforced the statute's strict operation in a 2025 student-housing construction defect decision, emphasizing that Arkansas's statute of repose functions as an absolute bar to liability once the repose period expires regardless of when the defect is discovered.

Mississippi's statute of repose provides an even longer repose period than Tennessee and Arkansas; however, it is more rigid. Miss. Code Ann. § 15-1-41 sets a six-year repose from the earlier of written acceptance, actual occupancy, or use of the improvement. Unlike its neighbors, Mississippi does not have a standard extension for injuries discovered late, and bars contribution and indemnity claims without a prior agreement. Mississippi's statute of repose also does not apply to wrongful death claims. It is construed narrowly as to who may invoke its protection. While architects, engineers, and contractors fall within the statute's scope, manufacturers and suppliers of installed equipment or component parts are excluded.

Kentucky's statute of repose provides a longer period than Tennessee, Mississippi, and Arkansas. Ky. Rev. Stat. Ann. § 413.135 gives claimants seven years from substantial completion to bring suit for deficiencies causing property damage or injury. A one-year extension period is permitted if the damage arises in the seventh year, allowing an overall period of eight years to file suit. In addition to its extended repose period, the Kentucky Notice and Opportunity to Repair Act found under Ky. Rev. Stat. Ann. § 411.250 to 411.266 imposes a mandatory pre-suit notice and right-to-cure requirements for residential construction defect claims. These provisions require claimants to provide builders with written notice of alleged defects and a reasonable opportunity to inspect and repair before litigation may proceed. This framework reflects a legislative policy choice to balance consumer protection with industry stability by encouraging early resolutions.

These variations demand jurisdiction-specific defense strategies. For multi-state construction projects, defense counsel must identify the governing substantive law at the earliest possible stage as statutes of repose operate as substantive bars rather than procedural limitations. Early choice-of-law analyses are critical to preventing strategic forum shopping.

### **Rising "Tail" Claims in 2025-2026: Contextual Challenges**

As the Southeastern United States enters a period of structural and demographical transformation fueled by renewable energy development, infrastructure improvements, and continued population growth, long-tail construction defect risk is evolving in parallel. Industry forecasts for 2025-2026 anticipate an increase in claims tied to pre-2020 projects, as latent defects begin to surface under the combined pressures of climate-related stressors, accelerated usage and shifting expectations.

Economic factors further amplify long-tail defect exposure. Persistent labor shortages have increased the risk of workmanship deficiencies, while the proliferation of new materials and

increasingly complex designs are the subject of more technical disputes. In Tennessee and Mississippi, favorable interpretations of “occurrence” under Commercial General Liability policies may broaden the threshold of coverage, but statutes of repose ultimately function to limit exposure to liability. By contrast, Arkansas and Kentucky are more rigid, as a non-accidental event aligns closely with repose defenses. Amid regional tort reforms reducing litigation funding transparency, defense attorneys can expect a more aggressive approach from plaintiffs.

### **Practical Guidance: Leveraging Repose in Motions to Dismiss**

To use statutes of repose effectively, defense attorneys should prioritize early motion practice. Defenses should be affirmatively pled in the answer and raised through a Rule 12(b)(6) motion or motion for summary judgment. It is important that these defenses are supported by evidence establishing the date of substantial completion. Substantial completion can be shown by contracts, punch lists, or owner correspondence. Fraud exceptions are to be argued narrowly, and the plaintiff bears the burden of proving concealment within the repose window.

Courts strictly enforce these statutes. For example, in Tennessee, discovery into the merits of the case becomes irrelevant once the repose period has run. Additionally, in Mississippi, repose periods are not extendable. Counsel should also pair repose defenses with Commercial General Liability coverage arguments including “no occurrence” theories for workmanship defects, to foreclose coverage. Success ultimately turns on documentation which necessitates advising the client to maintain project records from the outset.

### **Risk Management for Insurers Underwriting Southeastern Developments**

Insurers should integrate statutes of repose into both underwriting and claims-handling protocols. Underwriting guidelines should require insureds to document substantial completion milestones and should account for the need for long-tail coverage in jurisdictions with favorable repose periods, such as Tennessee. Claims teams should audit construction defect tenders promptly and, where the applicable repose period has expired, should issue early denials and set minimal reserves.

Proactiveness is key. Carriers should endorse policies with strong “your work” exclusions and enforce subcontractor risk-transfer and additional insured requirements. In light of recent loss projections for the 2025-2026 period, insurers should also emphasize contractual warranties and statutory pre-suit cure mechanisms, including Kentucky’s notice requirements, to mitigate exposure before litigation escalates. Finally, insurers should partner with defense firms possessing regional construction-defect expertise to ensure repose defenses are asserted at the earliest stage, thereby reducing defense costs and limiting exposure amid the continued rise of nuclear verdicts.

### **Conclusion**

As construction defect claims tied to pre-pandemic projects continue to surface, statutes of repose will increasingly define the outer limits of liability across the Southeastern United States. By mastering jurisdiction-specific nuances, anticipating trends, and deploying strategic motions

early on, practitioners can achieve efficient outcomes that preserve judicial resources and reduce unnecessary litigation. Vigilant application of these statutes not only defends against long-tail liability exposure but also promotes proactive risk mitigation, benefitting key players in the construction industry.