

HOUSE BILL REPORT

HB 2004

As Reported by House Committee On:
Judiciary

Title: An act relating to accrual and limitations of actions or claims arising from construction.

Brief Description: Addressing accrual and limitations of actions or claims arising from construction.

Sponsors: Representatives Flannigan, Campbell, Ormsby, Hankins, Pettigrew, Darneille, Moeller, O'Brien, Hasegawa, Hudgins and Simpson.

Brief History:

Committee Activity:

Judiciary: 2/22/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Removes some limitations on the time allowed for bringing a lawsuit in a residential construction dispute if the case involves willful misconduct or fraudulent concealment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Williams, Vice Chair; Campbell, Kirby, Springer and Wood.

Minority Report: Without recommendation. Signed by 3 members: Representatives Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; and Serben.

Staff: Bill Perry (786-7123).

Background:

A statute relating to claims of any kind against builders, or other construction-related professionals, sets out special rules regarding the time during which a suit may be filed. This statute covers claims arising from activities with respect to improvements to real property, including surveying, planning, designing, engineering, constructing, altering, or repairing. In this context, "builder" includes persons engaged in any of these construction-related activities.

Any claim arising out of these activities must "accrue" within six years of the later of substantial completion of construction or the termination of the construction-related service.

This six-year period is known as a statute of "repose." Accrual of a cause of action occurs when the plaintiff has the legal right and sufficient facts to bring suit. If a cause of action accrues within the six-year period of repose, then the applicable statute of limitations begins to run from the point of accrual. (The statute of limitations on a written contract, for instance, is six years.) If the cause of action does not accrue within the six-year period of repose, the suit is barred.

Courts have applied the "discovery rule" to the statute of repose. This rule means that the cause of action accrues when the plaintiff knows or reasonably should have known of the defect. In 2003, the Legislature statutorily abrogated the discovery rule in construction contract cases. Without the discovery rule, a plaintiff's cause of action generally accrues when sufficient facts exist for a lawsuit to be brought, whether or not the plaintiff knows or reasonably could know of the facts. The statutory elimination of the discovery rule means that in most cases the plaintiff's cause of action under a construction contract will accrue upon substantial completion of the project, and the six-year statute of limitation and the six-year statute of repose will run concurrently.

Summary of Substitute Bill:

In residential construction cases involving willful misconduct or fraudulent concealment by a construction professional, the six-year statute of repose and the statutory abrogation of the discovery rule do not apply.

Substitute Bill Compared to Original Bill:

The original bill would have extended the statute of repose from six to 15 years and reinstated the discovery rule, but only for residential construction disputes involving an intentional breach, or knowing concealment of a breach, that results in substantial damage to structural integrity.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) The current law allows a builder to escape responsibility for serious defects in construction just because the defects cannot be discovered until more than six years after construction. For instance, a builder who did not put required rebar in the foundation and built a house on uncompacted fill could not be held responsible for extensive damage to the house because the damage was not discovered until seven years after construction. The statute of repose was intended to help builders, but it can work to harm

homeowners who are stuck with a house they cannot sell, cannot afford to fix, and cannot get insurance for, while the builder who caused the problem has no responsibility.

Testimony Against: (Original bill) There is an insurance crisis, and the increasing costs of insurance just get passed onto homeowners. The bill is a step backward from the progress the Legislature has made in liability reform. The bill will extend a builder's period of exposure to possible liability to 21 years after completion of construction. It will force builders to try to find insurance for this extended period of exposure and will hurt small businesses. The meaning of terms like "substantial damage to structural integrity" is unclear in the bill and will lead to more litigation.

Persons Testifying: (In support of original bill) Representative Flannigan, prime sponsor; and Diana Sanford.

(Opposed to original bill) Timothy Harris, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.