

HOUSE BILL REPORT

SSB 6600

As Passed House:

March 3, 2004

Title: An act relating to construction liability.

Brief Description: Revising construction liability provisions.

Sponsors: By Senate Committee on Judiciary (originally sponsored by Senators Brandland, T. Sheldon, Hale, Stevens and Murray).

Brief History:

Committee Activity:

Judiciary: 2/24/04, 2/27/04 [DP].

Floor Activity:

Passed House: 3/3/04, 83-13.

Brief Summary of Substitute Bill

- Specifically applies the six year construction statute of repose to specified registered and licensed persons.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Lovick and Newhouse.

Minority Report: Do not pass. Signed by 1 member: Representative Kirby.

Staff: Bill Perry (786-7123).

Background:

Washington has a "statute of repose" relating to the construction of buildings and other improvements to real property. A statute of repose is similar to a statute of limitations in some respects. The statute prevents lawsuits from being brought beyond some point following the completion of a construction project. A suit against parties protected by the statute is barred unless the right to bring the action accrues within six years after

substantial completion of construction, or after termination of specified construction-related services, whichever is later.

One provision in the statute of repose identifies whom the statute protects. The statute applies to all claims involving the construction, alteration, or repair of any improvement upon real property, or performing or furnishing design, planning, surveying, architectural, construction, or engineering services. It also applies to the supervision of construction, or administration of construction contracts, for any construction, alteration or repair of any improvement upon real property. The provision states that it is intended to benefit only those persons referenced in it, and that it does apply to claims against "manufacturers."

The language excluding "manufacturers" from the statute's protection was added by a 1986 amendment. Before this 1986 amendment, the statute of repose was construed as applying to parties "who work on structural aspects of a building, but not manufacturers of heavy equipment or nonintegral systems within the building." *Condit v. Lewis Refrigeration Co.*

After the 1986 amendments excluding "manufacturers," there have been several lawsuits in which plaintiffs have successfully argued that construction contractors are also "manufacturers" and, therefore, not protected by the statute of repose. For example, *Washburn v. Beatt Equipment Co.*

As noted above, the statute of repose is similar to a statute of limitations in preventing lawsuits after a certain time. However, while the statute of repose provides a time period during which a right of action must accrue, the statute of limitations provides a time period during which legal action must be commenced after the right of action has accrued. The statute of limitations time periods vary according to the nature of the legal action.

In tort actions, Washington follows the discovery rule. This rule means that the three-year limitations period applicable generally to tort cases accrues at the later of the time of the tortious conduct or of the time the injured party discovers it or should have discovered it. See: RCW 4.16.080; and, for example, *Gazija v. Nicholas Jerns Co.*

One effect of the statute of repose is to provide a time limit on the discovery rule that applies to the statute of limitations in tort cases. The statute of repose does not necessarily bar all lawsuits outside its six-year period; rather it bars lawsuits where the cause of action accrues outside the six-year period. For example, the statute of repose might operate in either of two ways in the case of a building destroyed by fire as a result of the negligent installation of wiring, the existence of which was reasonably discovered only after the fire. If the negligent installation was reasonably discovered in the sixth year following the installation, the building owner would have three years after the discovery to sue the contractor. The statute of repose would not bar the suit because the action accrued within the six years after installation. If, however, the negligent

installation was reasonably discovered in the seventh year following installation, then the statute of repose would bar the suit.

Summary of Bill:

Language in the statute of repose excluding "manufacturers" from the statute's protection is deleted. The coverage of the statute of repose is intended specifically to cover persons licensed or registered as contractors, architects, engineers, land surveyors, landscape architects, and electricians.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill restores the original legislative intent of the statute of repose. It clarifies what was meant by excluding manufacturers from the protection of the statute. The current law invites the court to ask in every case whether or not a construction worker is really a manufacturer. A separate scheme for dealing with manufacturing exists in other laws.

Testimony Against: The bill does not restore legislative intent. It shifts the analysis away from what people actually do, to what kind of license they have. The bill will give statute of repose protection to on-site manufacturing. It will shift the costs of some on-the-job injuries to innocent employers.

Persons Testifying: (In support) Senator Brandland, prime sponsor; Rick Slunaker and Douglas Roach, Associated General Contractors of Washington; Cliff Webster, Associated Builders and Contractors; Larry Stevens, National Electrical Contractors Association and Mechanical Contractors Association; and Mike Brown

(Opposed) Larry Shannon, Washington State Trial Lawyers Association.

Persons Signed In To Testify But Not Testifying: None.