
Judiciary Committee

HB 2039

Title: An act relating to construction liability.

Brief Description: Providing affirmative defenses for activities defined under RCW 4.16.300.

Sponsors: Representatives Fromhold, Carrell, Pettigrew, Cairnes, Lantz, Moeller, Newhouse, Armstrong, Grant, Quall, Woods, Roach, Hankins, Morris, Ericksen, Crouse, Condotta, Talcott, Holmquist, McMahan, Clements, Bailey, Clibborn, Kessler, Campbell, Hunter, Chandler, Gombosky, Schoesler, Ruderman, Miloscia, Kirby, Hinkle and Kenney.

Brief Summary of Bill

- Identifies affirmative defenses that a builder may use in defending a law suit brought for construction defects.

Hearing Date: 3/3/03

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.

Any claim arising out of these activities must "accrue" within six years of the "substantial

completion of construction." 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 does accrue within the six year period, then the applicable statute of limitations begins to run from that point. (The statute of limitations on a written contract, for instance, is six years.) If the cause of action does not accrue within six years, the suit is barred.

(For purposes of this summary, "builder" should be taken to include persons engaged in any of the construction-related activities listed above.)

Summary of Bill:

Seven affirmative defenses are identified that builders may assert in an action based on any of the activities covered by the construction claims statute of repose. Successful assertion of any of these defenses may excuse, in whole or in part, a builder from any obligation, damage, loss, or liability. Three of the defenses are limited to claims by homeowners and four of the defenses apply to a claim by anyone regarding the activities listed in the statute of repose.

The defenses excuse an obligation, damage, loss or liability:

- To the extent it is caused by an unforeseen act of nature that prevented compliance with codes, regulations or ordinances. "Acts of nature" include weather, earthquake, war, terrorism, or vandalism.
- To the extent it is caused by a homeowner's unreasonable failure to minimize damages.
- To the extent it is caused by the homeowner's failure to follow maintenance recommendations.
- To the extent it is caused by the homeowner's alteration, use, misuse, abuse, or neglect.
- To the extent barred by the construction statute or repose or applicable statute of limitations. The statute of limitations in a claim based on a contract begins, regardless of discovery, at the later of: (1) within six years after substantial completion of construction or (2) during the period within six years after termination of the activities identified in the statute of repose.
- With respect to a violation for which the builder has obtained a release.
- To the extent that the builder has repaired the violation or defect.

Appropriation: None.

Fiscal Note: Not requested.

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