

SENATE BILL REPORT

SB 5916

As Reported By Senate Committee On:
Judiciary, March 5, 2003

Title: An act relating to construction liability.

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

Sponsors: Senators Esser, Hargrove, Finkbeiner, Haugen, Prentice, Kastama, Reardon, Brandland and McCaslin.

Brief History:

Committee Activity: Judiciary: 3/5/03 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5916 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Johnson, Kline and Roach.

Staff: Aldo Melchiori (786-7439)

Background: An injured party may bring a cause of action or claim arising from the construction, alteration, repair, design, planning, survey, or administration of any improvement on real property. The basis for the cause or claim must occur within six years after substantial completion of construction or termination of construction, whichever is later.

Summary of Substitute Bill: Eight new affirmative defenses are created in regard to actions or claims arising from the construction, alteration, repair, design, planning, survey, or administration of any improvement on real property: (1) to the extent damage is caused by an unforeseen act of nature that caused, prevented, or precluded the activities; (2) to the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner; (3) to the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by their failure to follow the builder's or manufacturer's maintenance recommendations, or commonly accepted homeowner maintenance; (4) to the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose; (5) to the extent that a cause of action does not accrue within the statute of repose or is not filed within the applicable statute of limitations and, regardless of discovery in contract cases, within six years after substantial completion of construction, or during the period within six years after the termination of the services, whichever is later; (6) to the extent that the improvement was done in conformity with all applicable state, county and municipal building and construction codes; (7) as to a particular violation for which the builder has obtained a valid release; and (8) to the extent that the builder's repair corrected the alleged violation or defect.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This merely codifies defenses that are already available and used in current litigation. The goal is to provide greater certainty in the insurance market.

Testimony Against: The act of God provision includes mere rain storms or other small events. Subsection (b) creates a right of entry for builders. The change to the discovery rule is onerous on inexperienced homeowners.

Testified: PRO: Duke Schaub, Association of General Contractors; Trent Matson, BIAW;
CON: David Merchant, Washington Homeowner's Coalition.