
SUBSTITUTE SENATE BILL 5916

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Esser, Hargrove, Finkbeiner, Haugen, Prentice, Kastama, Reardon, Brandland and McCaslin)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to construction liability; and adding a new section
2 to chapter 4.16 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.16 RCW
5 to read as follows:

6 (1) Persons engaged in any activity defined in RCW 4.16.300 may be
7 excused, in whole or in part, from any obligation, damage, loss, or
8 liability for those defined activities under the principles of
9 comparative fault for the following affirmative defenses:

10 (a) To the extent it is caused by an unforeseen act of nature that
11 caused, prevented, or precluded the activities defined in RCW 4.16.300
12 from meeting the applicable building codes, regulations, and ordinances
13 in effect at the commencement of construction. For purposes of this
14 section an "unforeseen act of nature" means any weather condition,
15 earthquake, or manmade event such as war, terrorism, or vandalism;

16 (b) To the extent it is caused by a homeowner's unreasonable
17 failure to minimize or prevent those damages in a timely manner,
18 including the failure of the homeowner to allow reasonable and timely
19 access for inspections and repairs under this section. This includes

1 the failure to give timely notice to the builder after discovery of a
2 violation, but does not include damages due to the untimely or
3 inadequate response of a builder to the homeowner's claim;

4 (c) To the extent it is caused by the homeowner or his or her
5 agent, employee, subcontractor, independent contractor, or consultant
6 by virtue of their failure to follow the builder's or manufacturer's
7 maintenance recommendations, or commonly accepted homeowner maintenance
8 obligations. In order to rely upon this defense as it relates to a
9 builder's recommended maintenance schedule, the builder shall show that
10 the homeowner had written notice of the schedule, the schedule was
11 reasonable at the time it was issued, and the homeowner failed to
12 substantially comply with the written schedule;

13 (d) To the extent it is caused by the homeowner or his or her
14 agent's or an independent third party's alterations, ordinary wear and
15 tear, misuse, abuse, or neglect, or by the structure's use for
16 something other than its intended purpose;

17 (e) As to a particular violation for which the builder has obtained
18 a valid release;

19 (f) To the extent that the builder's repair corrected the alleged
20 violation or defect;

21 (g) To the extent that a cause of action does not accrue within the
22 statute of repose pursuant to RCW 4.16.310 or that an actionable cause
23 as set forth in RCW 4.16.300 is not filed within the applicable statute
24 of limitations. In contract actions the applicable contract statute of
25 limitations expires, regardless of discovery, six years after
26 substantial completion of construction, or during the period within six
27 years after the termination of the services enumerated in RCW 4.16.300,
28 whichever is later;

29 (h) To the extent that the builder making the improvement did so in
30 conformity with all applicable state, county, and municipal building
31 and construction codes;

32 (i) As to any causes of action to which this section does not
33 apply, all applicable affirmative defenses are preserved.

34 (2) This section does not apply to any civil action in tort
35 alleging personal injury or wrongful death to a person or persons
36 resulting from a construction defect.

--- END ---