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**SUBSTITUTE HOUSE BILL 2004**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Flannigan, Campbell, Ormsby, Hankins, Pettigrew, Darneille, Moeller, O'Brien, Hasegawa, Hudgins and Simpson)

READ FIRST TIME 03/03/05.

1            AN ACT Relating to accrual and limitations of actions or claims  
2 arising from construction; and amending RCW 4.16.310 and 4.16.326.

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

4            **Sec. 1.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read  
5 as follows:

6            (1) Except as provided in subsection (3) of this section, all  
7 claims or causes of action as set forth in RCW 4.16.300 shall accrue,  
8 and the applicable statute of limitation shall begin to run only during  
9 the period within six years after substantial completion of  
10 construction, or during the period within six years after the  
11 termination of the services enumerated in RCW 4.16.300, whichever is  
12 later. The phrase "substantial completion of construction" shall mean  
13 the state of completion reached when an improvement upon real property  
14 may be used or occupied for its intended use. Any cause of action  
15 which has not accrued within six years after such substantial  
16 completion of construction, or within six years after such termination  
17 of services, whichever is later, shall be barred: PROVIDED, That this  
18 limitation shall not be asserted as a defense by any owner, tenant or  
19 other person in possession and control of the improvement at the time

1 such cause of action accrues. The limitations prescribed in this  
2 section apply to all claims or causes of action as set forth in RCW  
3 4.16.300 brought in the name or for the benefit of the state which are  
4 made or commenced after June 11, 1986.

5 (2) If a written notice is filed under RCW 64.50.020 within the  
6 time prescribed for the filing of an action under this chapter, the  
7 period of time during which the filing of an action is barred under RCW  
8 64.50.020 plus sixty days shall not be a part of the period limited for  
9 the commencement of an action, nor for the application of this section.

10 (3) Subsection (1) of this section does not apply to actions that  
11 involve residential construction and are based on willful misconduct or  
12 fraudulent concealment.

13 **Sec. 2.** RCW 4.16.326 and 2003 c 80 s 1 are each amended to read as  
14 follows:

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

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

25 (b) To the extent it is caused by a homeowner's unreasonable  
26 failure to minimize or prevent those damages in a timely manner,  
27 including the failure of the homeowner to allow reasonable and timely  
28 access for inspections and repairs under this section. This includes  
29 the failure to give timely notice to the builder after discovery of a  
30 violation, but does not include damages due to the untimely or  
31 inadequate response of a builder to the homeowner's claim;

32 (c) To the extent it is caused by the homeowner or his or her  
33 agent, employee, subcontractor, independent contractor, or consultant  
34 by virtue of their failure to follow the builder's or manufacturer's  
35 maintenance recommendations, or commonly accepted homeowner maintenance  
36 obligations. In order to rely upon this defense as it relates to a  
37 builder's recommended maintenance schedule, the builder shall show that

1 the homeowner had written notice of the schedule, the schedule was  
2 reasonable at the time it was issued, and the homeowner failed to  
3 substantially comply with the written schedule;

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

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

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

12 (g) To the extent that a cause of action does not accrue within the  
13 statute of repose pursuant to RCW 4.16.310 or that an actionable cause  
14 as set forth in RCW 4.16.300 is not filed within the applicable statute  
15 of limitations. Except as provided in RCW 4.16.310(3), in contract  
16 actions the applicable contract statute of limitations expires,  
17 regardless of discovery, six years after substantial completion of  
18 construction, or during the period within six years after the  
19 termination of the services enumerated in RCW 4.16.300, whichever is  
20 later;

21 (h) As to any causes of action to which this section does not  
22 apply, all applicable affirmative defenses are preserved.

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

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