

# HOUSE BILL REPORT

## HB 2136

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to clarifying that the construction statute of repose's beneficiaries specifically include persons that must be registered under RCW 18.27.020 or licensed under RCW 19.28.120.

**Brief Description:** Clarifying the construction statute of repose's beneficiaries.

**Sponsors:** Representatives Sherstad, Sterk, Sheldon, Radcliff, Lisk and Scott.

### Brief History:

#### Committee Activity:

Law & Justice: 3/4/97, 3/5/97 [DP].

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Radcliff; Sherstad and Skinner.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

**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 extended

specifically to cover persons licensed or registered as contractors, architects, engineers, land surveyors, landscape architects, and electricians.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Buildings now last for a very long time. Court decisions have destroyed the Legislature's intended protection of contractors and design professionals.

**Testimony Against:** The bill is not just a return to prior law. It will have unintended consequences. It changes liability analysis from one of "activity" to one of "status."

**Testified:** Representative Sherstad, prime sponsor; Duke Schaub, Associated General Contractors of Washington (pro); Margo Easton, Associated General Contractors of Washington (pro); Dick Ducharme, Building Industry Association of Washington and Washington Building Contractors Association of Washington (pro); Cliff Webster, Architects and Engineers Legislative Council (pro); Larry Shannon, Washington State Trial Lawyers Association (con); and John Budlong, Washington State Trial Lawyers Association (con).