

SHB 2039 - S AMD 300
By Senator Kline

NOT ADOPTED 04/09/2003

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

18 (b) To the extent it is caused by a homeowner's unreasonable
19 failure to minimize or prevent those damages in a timely manner,
20 including the failure of the homeowner to give timely notice to the
21 builder and to allow reasonable and timely access for inspections and
22 repairs as required by chapter 64.50 RCW;

23 (c) To the extent it is caused by the homeowner or his or her
24 agent, employee, subcontractor, independent contractor, or consultant
25 by virtue of their failure to follow the builder's or manufacturer's
26 maintenance recommendations, or commonly accepted homeowner maintenance
27 obligations. In order to rely upon this defense as it relates to a
28 builder's recommended maintenance schedule, the builder shall show that
29 the homeowner had written notice of the schedule, the schedule was

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

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

7 (e) As to a particular violation for which the builder has obtained
8 a valid release from the party making the claim;

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

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

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

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

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24 On page 1, line 1 of the title, after "liability;" strike the
25 remainder of the title and insert "and adding a new section to chapter
26 4.16 RCW."

EFFECT: Clarifies the required extent of unforeseen acts of

nature. Specifies that a builder has an affirmative defense unless given notice and reasonable and timely access to do repairs.

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