

# FINAL BILL REPORT

## SHB 2039

---

---

C 80 L 03

Synopsis as Enacted

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

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Fromhold, Carrell, Pettigrew, Cairnes, Lantz, Moeller, Newhouse, Armstrong, Grant, Quall, Woods, Roach, Hankins, Morris, Ericksen, Crouse, Condotta, Talcott, Holmquist, McMahan, Clements, Bailey, Clibborn, Kessler, Campbell, Hunter, Chandler, Gombosky, Schoesler, Ruderman, Miloscia, Kirby, Hinkle and Kenney).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **Background:**

A statute relating to claims of any kind against builders, or other construction-related professionals, sets out special rules regarding the time during which a suit may be filed. This statute covers claims arising from activities with respect to improvements to real property, including surveying, planning, designing, engineering, constructing, altering, or repairing. In this context, "builder" includes persons engaged in any of these construction-related activities.

Any claim arising out of these activities must "accrue" within six years of the later of substantial completion of construction or the termination of the construction-related service. This six-year period is known as a statute of repose.— Accrual of a cause of action occurs when the plaintiff has the legal right and sufficient facts to bring suit. If a cause of action accrues within the six-year period of repose, then the applicable statute of limitations begins to run from the point of accrual. (The statute of limitations on a written contract, for instance, is six years.) If the cause of action does not accrue within the six-year period of repose, the suit is barred.

Recent court of appeals decisions have applied the "discovery" rule to cases involving alleged breaches of construction contracts. That is, the cause of action does not necessarily accrue at the breach of the contract, but rather only when the breach is discovered or reasonably should have been discovered. The accrual, and therefore the discovery, must still occur within the six-year statute of repose, but:

- Without the discovery rule, the breach and therefore accrual would occur at the time of completion of construction; i.e., presumably nearer the beginning of the

statute of repose -- giving a builder a total period of exposure to liability that tends to be closer to six years.

- With the discovery rule, the discovery of the breach and therefore accrual might occur at the end of the statute of repose -- giving a total period of builder exposure to liability that tends to be closer to 12 years.

**Summary:**

Seven affirmative defenses are identified that builders may assert in an action based on any of the activities covered by the construction claims statute of repose. Successful assertion of any of these defenses may excuse, in whole or in part, a builder from any obligation, damage, loss, or liability. Three of the defenses are limited to claims by homeowners and four of the defenses apply to a claim by anyone regarding the activities listed in the statute of repose. One of the defenses eliminates the use of the discovery rule in cases involving construction contracts.

The defenses excuse an obligation, damage, loss or liability:

- to the extent it is caused by an unforeseen act of nature that prevented compliance with codes, regulations or ordinances. "Acts of nature" include weather, earthquake, war, terrorism, or vandalism.
- to the extent it is caused by a homeowner's unreasonable failure to minimize damages.
- to the extent it is caused by the homeowner's substantial failure to follow written maintenance recommendations.
- to the extent it is caused by the homeowner's alteration, use, misuse, abuse, or neglect.
- to the extent barred by the construction statute of repose or applicable statute of limitations. The statute of limitations in a claim based on a contract expires, regardless of discovery, at the later of: (1) six years after substantial completion of construction or (2) during the period within six years after termination of the activities identified in the statute of repose.
- with respect to a violation for which the builder has obtained a release.
- to the extent that the builder has repaired the violation or defect.

**Votes on Final Passage:**

House 96 0  
Senate 45 4

**Effective:** July 27, 2003