

# HOUSE BILL REPORT

## HB 2039

---

---

**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to construction liability.

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

**Sponsors:** 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.

**Brief History:**

**Committee Activity:**

Judiciary: 3/3/03, 3/4/03 [DPS].

**Brief Summary of Substitute Bill**

- Identifies affirmative defenses that a builder may use in defending a lawsuit brought for construction defects.
- Prevents use of the discovery rule in construction defect claims based on breach of contract.

---

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Bill Perry (786-7123).

**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.

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. 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 does accrue within the six-year period, then the applicable statute of limitations begins to run from that point. (The statute of limitations on a written contract, for instance, is six years.) If the cause of action does not accrue within six years, 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.

*(For purposes of this summary, "builder" should be taken to include persons engaged in any of the construction-related activities listed above.)*

---

### **Summary of Substitute Bill:**

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.

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.

**Substitute Bill Compared to Original Bill:**

The substitute requires a builder to show that a homeowner *substantially* failed to comply with the builder's *written* schedule of maintenance when the builder is asserting the defense that the owner failed to follow the builder's recommendations.

The substitute excludes tort actions for personal injury or wrongful death from the provisions of the bill.

---

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The bill has broad support. It helps create greater certainty for insurers, thereby allowing more affordable premiums. Many small businesses are being forced out of business by the high cost of liability insurance. Those who remain in business are forced to pass the increased cost on to consumers. The bill is a step in the right direction.

**Testimony Against:** None.

**Testified:** Representative Fromhold, prime sponsor; Trent Matson and Gary Cronce, Building Industry Association of Washington; Duke Schaub, Associated General Contractors of Washington; and Michael Temple, Washington State Trial Lawyers Association.