

SENATE BILL REPORT

SHB 2039

As Reported By Senate Committee On:
Judiciary, March 26, 2003

Title: An act relating to construction liability.

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

Sponsors: 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).

Brief History:

Committee Activity: Judiciary: 3/26/03 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: An injured party may bring a cause of action or claim arising from the construction, alteration, repair, design, planning, survey, or administration of any improvement on real property. The basis for the cause or claim must occur within six years after substantial completion of construction or termination of construction, whichever is later.

Summary of Bill: Seven affirmative defenses are created in regard to actions or claims arising from the construction, alteration, repair, design, planning, survey, or administration of any improvement on real property: (1) to the extent damage is caused by an unforeseen act of nature that caused, prevented, or precluded the activities; (2) to the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner; (3) to the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by their failure to follow the builder's or manufacturer's maintenance recommendations, or commonly accepted homeowner maintenance; (4) to the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose; (5) to the extent that a cause of action does not accrue within the statute of repose or is not filed within the applicable statute of limitations and, regardless of discovery in contract cases, within six years after substantial completion of construction, or during the period within six years after the termination of the services, whichever is later; (6) as to a particular violation for which

the builder has obtained a valid release; and (7) to the extent that the builder's repair corrected the alleged violation or defect.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill clarifies the responsibilities of builders and homeowners. Some technical issues not addressed in the bill will be addressed over the interim. **CONCERNS:** The "act of nature" provision is too broad, but can be addressed by clarification. The right of access given to builders should be clarified.

Testimony Against: None.

Testified: PRO: Representative Fromhold, prime sponsor; Duke Schaub, AGC - Washington; Trent Matson, BIAW; Todd Mielke, Associated Builders and Contractors; Cliff Webster, Architects and Engineers Legislative Council; Concerns: Ryan Spiller, Washington Homeowner's Coalition; Dave Merchant, Washington Homeowner's Association.