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**SUBSTITUTE HOUSE BILL 2039**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**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)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to construction liability; and adding a new section  
2 to chapter 4.16 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

16 (b) To the extent it is caused by a homeowner's unreasonable  
17 failure to minimize or prevent those damages in a timely manner,  
18 including the failure of the homeowner to allow reasonable and timely  
19 access for inspections and repairs under this section. This includes

1 the failure to give timely notice to the builder after discovery of a  
2 violation, but does not include damages due to the untimely or  
3 inadequate response of a builder to the homeowner's claim;

4 (c) To the extent it is caused by the homeowner or his or her  
5 agent, employee, subcontractor, independent contractor, or consultant  
6 by virtue of their failure to follow the builder's or manufacturer's  
7 maintenance recommendations, or commonly accepted homeowner maintenance  
8 obligations. In order to rely upon this defense as it relates to a  
9 builder's recommended maintenance schedule, the builder shall show that  
10 the homeowner had written notice of the schedule, the schedule was  
11 reasonable at the time it was issued, and the homeowner failed to  
12 substantially comply with the written schedule;

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

17 (e) As to a particular violation for which the builder has obtained  
18 a valid release;

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

21 (g) To the extent that a cause of action does not accrue within the  
22 statute of repose pursuant to RCW 4.16.310 or that an actionable cause  
23 as set forth in RCW 4.16.300 is not filed within the applicable statute  
24 of limitations. In contract actions the applicable contract statute of  
25 limitations expires, regardless of discovery, six years after  
26 substantial completion of construction, or during the period within six  
27 years after the termination of the services enumerated in RCW 4.16.300,  
28 whichever is later;

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

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

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