
HOUSE BILL 2039

State of Washington

58th Legislature

2003 Regular Session

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 02/20/2003. Referred to Committee on Judiciary.

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 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 (1) 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 (2) 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 (3) 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 these schedules and recommendations
11 and that the recommendations and schedules were reasonable at the time
12 they were issued;

13 (4) 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 (5) To the extent that a cause of action does not accrue within the
18 statute of repose pursuant to RCW 4.16.310 or that an actionable cause
19 as set forth in RCW 4.16.300 is not filed within the applicable statute
20 of limitations. In contract actions the applicable statute of
21 limitation commences, regardless of discovery, within six years after
22 substantial completion of construction, or during the period within six
23 years after the termination of the services enumerated in RCW 4.16.300,
24 whichever is later;

25 (6) As to a particular violation for which the builder has obtained
26 a valid release;

27 (7) To the extent that the builder's repair corrected the alleged
28 violation or defect;

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

--- END ---