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**SUBSTITUTE SENATE BILL 6701**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kline, Kohl-Welles, Jacobsen, Keiser, Gordon, Tom, Fraser, and McAuliffe)

READ FIRST TIME 02/01/10.

1       AN ACT Relating to real property warranties; and adding new  
2 sections to chapter 64.50 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 64.50 RCW  
5 to read as follows:

6       (1) The legislature intends by this section to modify the common  
7 law implied warranty of habitability to provide that this warranty may  
8 not be contractually disclaimed, waived, modified, or limited. The  
9 legislature does not intend to modify any other aspect of the common  
10 law implied warranty of habitability as developed through case law.

11       (2) The common law implied warranty of habitability may not be  
12 disclaimed, waived, modified, or limited by contractual agreement. A  
13 provision of any contract for the purchase or sale of newly constructed  
14 residential property that purports to disclaim, waive, modify, or limit  
15 the implied warranty of habitability is void and unenforceable.

16       NEW SECTION. **Sec. 2.** A new section is added to chapter 64.50 RCW  
17 to read as follows:

18       (1) For the purposes of this section:

1 (a) "Builder vendor" means a person, natural or otherwise, engaged  
2 in the business of erecting or constructing a new home or who purchases  
3 a new home for purposes of resale in the course of its business.

4 (b) "Construction professional" means an architect, builder,  
5 builder vendor, contractor, subcontractor, engineer, or inspector,  
6 performing or furnishing the design, supervision, inspection,  
7 construction, or observation of the construction, of any improvement to  
8 residential real property, whether operating as a sole proprietor,  
9 partnership, corporation, or other business entity.

10 (c) "Inspector" means a person licensed under chapter 18.280 RCW.

11 (d) "Residential real property" means a single-family home, a  
12 duplex, a triplex, or a quadraplex and does not include a manufactured  
13 or mobile home as defined in RCW 65.20.020.

14 (e) "Substantial completion of construction" means the state of  
15 completion reached when an improvement upon real property may be used  
16 or occupied for its intended use.

17 (2) A construction professional involved in the construction of new  
18 residential real property, or the substantial remodel of existing  
19 residential real property, warrants that the work, and any part  
20 thereof, will be suitable for the ordinary uses of real property of its  
21 type and that the work will be:

22 (a) Free from defective materials;

23 (b) Constructed in accordance with sound engineering and  
24 construction standards;

25 (c) Constructed in a work-like manner; and

26 (d) Constructed in compliance with all laws then applicable to the  
27 improvements.

28 (3) If a construction professional breaches a warranty arising  
29 under this section and the breach results in damage to any portion of  
30 the residential real property, the current owner of the residential  
31 real property may bring a cause of action for damages against the  
32 construction professional. Absence of privity of contract between the  
33 owner and the construction professional is not a defense to the  
34 enforcement of a warranty arising under this section.

35 (4) In a judicial proceeding for breach of a warranty arising under  
36 this section, the plaintiff must show that the alleged breach has  
37 adversely affected or will adversely affect the performance of that  
38 portion of the property alleged to be in breach. To establish an

1 adverse effect, the person alleging the breach is not required to prove  
2 that the breach renders the property unfit for occupancy. As used in  
3 this subsection, "adverse effect" must be more than technical and must  
4 be significant to a reasonable person.

5 (5) Proof of breach of a warranty arising under this section is not  
6 proof of damages. Damages awarded for a breach of a warranty arising  
7 under this section are the cost of repairs. However, if it is  
8 established that the cost of repairs is clearly disproportionate to the  
9 loss in market value caused by the breach, damages are limited to the  
10 loss in market value.

11 (6)(a) A judicial proceeding for breach of a warranty arising under  
12 this section must be commenced within four years after the cause of  
13 action accrues. This period may not be reduced by either oral or  
14 written agreement, or through the use of contractual claims or notice  
15 procedures that require the filing or service of any claim or notice  
16 prior to the expiration of the period specified in this section.

17 (b) Except as provided under (c) of this subsection, a cause of  
18 action for breach of a warranty arising under this section accrues,  
19 regardless of the owner's lack of knowledge of the breach:

20 (i) In the case of the purchase of newly constructed residential  
21 real property, on the date the initial owner enters into possession of  
22 the property; or

23 (ii) In the case of the substantial remodel of existing residential  
24 real property, on the date of substantial completion of construction or  
25 termination of the construction project, whichever is later.

26 (c)(i) A cause of action for breach of a warranty arising under  
27 this section that is based on a latent structural defect or a latent  
28 water penetration defect accrues when the claimant discovers or  
29 reasonably should have discovered the latent structural defect or  
30 latent water penetration defect.

31 (ii) An action for breach of warranty under this subsection (6)(c)  
32 must be commenced, in the case of a newly constructed home, no later  
33 than ten years from the date the initial owner enters into possession  
34 of the property; or, in the case of a substantial remodel, no later  
35 than ten years from the date of substantial completion of construction  
36 or termination of the project, whichever is later.

37 (iii) Chapter 4.16 RCW does not apply to a cause of action under  
38 this subsection (6)(c).

1 (7) If a written notice of claim is served under RCW 64.50.020  
2 within the time prescribed for the filing of an action under this  
3 section, the statute of limitations in this section and any applicable  
4 statute of repose for construction-related claims are tolled until  
5 sixty days after the period of time during which the filing of an  
6 action is barred under RCW 64.50.020.

7 (8) The warranties provided under this section are in addition to  
8 any other rights or remedies available under statutory law or common  
9 law or provided for under contract. The warranties provided under this  
10 section may not be waived, disclaimed, modified, or limited.

11 (9) In a judicial proceeding under this section, the court may  
12 award reasonable attorneys' fees and costs to the prevailing party.

13 (10) This section is not intended to create an independent right to  
14 maintain a class action against any construction professional.

15 (11) This section does not apply to condominiums subject to chapter  
16 64.34 RCW.

17 (12) This section does not affect the application of the notice and  
18 opportunity to cure requirements and procedures imposed under RCW  
19 64.50.010 through 64.50.050.

20 (13) An action for breach of a warranty created under this section  
21 is subject to any requirements for mandatory arbitration imposed under  
22 chapter 7.06 RCW or state or local court rules.

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