

SSB 6385 - H COMM AMD
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature by this act does not
4 intend to create a cause of action in tort for defects in the
5 construction of improvements upon real property intended for
6 residential use, nor does the legislature intend to overrule the
7 holding in *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist.*
8 *No. 1*, 124 Wn.2d 816, 881 P.2d 986 (1994) and other cases in which
9 the courts have held that the economic loss rule applies to
10 construction defect claims.

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

13 (1) A construction professional involved in the construction of
14 improvements upon residential real property or real property
15 intended for use as residential real property warrants that the
16 work, and any part thereof, will be suitable for the ordinary uses
17 of real property of its type and that the work will be:

18 (a) Free from defective materials;

19 (b) Constructed in accordance with sound engineering and
20 construction standards;

21 (c) Constructed in a workmanlike manner; and

22 (d) Constructed in compliance with all laws then applicable to
23 such improvements.

24 (2) If a construction professional breaches a warranty arising
25 under this section and the breach results in damage to any portion
26 of the residential real property, the current owner of the
27 residential real property may bring a cause of action for damages
28 against the construction professional. Absence of privity of

1 contract between the owner and the construction professional is not
2 a defense to the enforcement of a warranty arising under this
3 section.

4 (3) In a judicial proceeding for breach of a warranty arising
5 under this section, the plaintiff must show that the alleged breach
6 has adversely affected or will adversely affect the performance of
7 that portion of the property alleged to be in breach. As used in
8 this subsection, "adverse effect" must be more than technical and
9 must be significant to a reasonable person. To establish an
10 adverse effect, the person alleging the breach is not required to
11 prove that the breach renders the property unfit for occupancy.

12 (4) Proof of breach of a warranty arising under this section is
13 not proof of damages. Damages awarded for a breach of a warranty
14 arising under this section are the cost of repairs. However, if it
15 is established that the cost of repairs is clearly disproportionate
16 to the loss in market value caused by the breach, then damages
17 shall be limited to the loss in market value.

18 (5)(a) A judicial proceeding for breach of a warranty arising
19 under this section must be commenced within four years after the
20 cause of action accrues. This period may not be reduced by either
21 oral or written agreement, or through the use of contractual claims
22 or notice procedures that require the filing or service of any
23 claim or notice prior to the expiration of the period specified in
24 this section.

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

28 (i) In the case of the purchase of newly constructed
29 residential real property, on the date the initial owner enters
30 into possession of the property; or

31 (ii) In the case of existing residential real property upon
32 which the construction of improvements are made, on the date of
33 substantial completion of construction or termination of the
34 construction project, whichever is later.

35 (c) A cause of action for breach of a warranty under this
36 section based on a latent structural defect or a latent water
37 penetration defect accrues when the claimant discovers or
38 reasonably should have discovered the latent structural defect or
39 latent water penetration defect.

1 (d) An action for breach of a warranty under this section is
2 subject to the time limits provided in RCW 4.16.310.

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

9 (7) The warranties imposed by this section may not be waived,
10 disclaimed, or limited.

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

13 (9) This section does not apply to condominiums subject to
14 chapter 64.34 RCW or nonprofit housing developers.

15 (10) This section does not affect the application of the
16 requirements imposed under other provisions of this chapter.

17 (11) For the purposes of this section:

18 (a) "Nonprofit housing developer" means a nonprofit
19 organization or housing authority that has among its purposes the
20 provision of housing that is affordable to low-income households.

21 (b) "Residential real property" means a single-family house or
22 a duplex occupied by the owner as a residence.

23 (c) "Substantial completion of construction" means the state of
24 completion reached when an improvement upon real property may be
25 used or occupied for its intended use.

26 **Sec. 3.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to
27 read as follows:

28 Unless the context clearly requires otherwise, the definitions
29 in this section apply throughout this chapter.

30 (1) "Action" means any civil lawsuit or action in contract or
31 tort for damages or indemnity brought against a construction
32 professional to assert a claim, whether by complaint, counterclaim,
33 or cross-claim, for damage or the loss of use of real or personal
34 property caused by a defect in the construction of a residence or
35 in the substantial remodel of a residence. "Action" does not
36 include any civil action in tort alleging personal injury or
37 wrongful death to a person or persons resulting from a construction
38 defect.

1 (2) "Association" means an association, master association, or
2 subassociation as defined and provided for in RCW 64.34.020(4),
3 64.34.276, 64.34.278, and 64.38.010(1).

4 (3) "Claimant" means a homeowner or association who asserts a
5 claim against a construction professional concerning a defect in
6 the construction of a residence or in the substantial remodel of a
7 residence.

8 (4) "Construction professional" means an architect, builder,
9 builder vendor, contractor, subcontractor, engineer, or inspector,
10 including, but not limited to, a dealer as defined in RCW
11 64.34.020(12) and a declarant as defined in RCW 64.34.020(13),
12 performing or furnishing the design, supervision, inspection,
13 construction, or observation of the construction of any improvement
14 to real property, whether operating as a sole proprietor,
15 partnership, corporation, or other business entity. "Construction
16 professional" does not include an inspector who is an agent or
17 employee of a local government and acting in his or her official
18 capacity as an inspector.

19 (5) "Homeowner" means: (a) Any person, company, firm,
20 partnership, corporation, or association who contracts with a
21 construction professional for the construction, sale, or
22 construction and sale of a residence; and (b) an "association" as
23 defined in this section. "Homeowner" includes, but is not limited
24 to, a subsequent purchaser of a residence from any homeowner.

25 (6) "Residence" means a single-family house, duplex, triplex,
26 quadraplex, or a unit in a multiunit residential structure in which
27 title to each individual unit is transferred to the owner under a
28 condominium or cooperative system, and shall include common
29 elements as defined in RCW 64.34.020(6) and common areas as defined
30 in RCW 64.38.010(4).

31 (7) "Serve" or "service" means personal service or delivery by
32 certified mail to the last known address of the addressee.

33 (8) "Substantial remodel" means a remodel of a residence, for
34 which the total cost exceeds one-half of the assessed value of the
35 residence for property tax purposes at the time the contract for
36 the remodel work was made.

37 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2009."

Correct the title.

EFFECT: The negligence cause of action for construction defects is deleted and instead certain nonwaivable statutory warranties are created for the construction of improvements upon residential real property (single-family houses and owner-occupied duplexes). A construction professional making such improvements warrants that the work will be:

- Suitable for the ordinary uses of real estate of its type;
- Free from defective materials;
- Constructed in accordance with sound engineering and construction standards;
- Constructed in a workmanlike manner; and
- Constructed in compliance with applicable laws.

A current owner may bring an action against a construction professional for a breach of warranty. In order to recover damages, the owner must show an "adverse effect," which must be more than technical and must be significant to a reasonable person, but need not render the property unfit for occupancy. The damages that are awarded for a breach are the cost of repairs. However, if the cost of repairs is clearly disproportionate to the loss in market value, the damages are limited to loss in market value. The court may award costs and reasonable attorneys' fees to the prevailing party.

An action for breach of a warranty must be brought within four years of the date the cause of action accrues. The cause of action generally accrues: (1) In the case of newly constructed residential property, on the date the first owner takes possession; and (2) in the case of improvements on existing residential real property, upon substantial completion of construction or termination of the construction project, whichever is later. However, if the cause of action is for a breach of warranty that is based on a latent structural defect or latent water penetration defect, the discovery rule applies and the cause of action accrues when the claimant discovers or reasonably should have discovered the defect. A specific statement that the statute of repose applies is added.

Condominiums and nonprofit housing developers are exempt from the act.

The existing definition of "construction professional" in the "right to cure" statute, which is the definition that applies to this bill, is amended to exclude local government inspectors.

A delayed effective date of July 1, 2009, is provided.