
SUBSTITUTE SENATE BILL 5550

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kohl-Welles, Murray, Kauffman, Kastama, Tom, Rockefeller, Pridemore, Spanel, Marr, Haugen, Eide, McAuliffe, Hargrove, Hatfield, Fraser, Kilmer, Jacobsen, Brown, Keiser, Shin, Franklin, McCaslin, Poulsen, Oemig, Kline and Regala)

READ FIRST TIME 02/16/07.

1 AN ACT Relating to real property; adding a new chapter to Title 64
2 RCW; creating a new section; providing an effective date; and providing
3 an expiration date.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Appliances, fixtures, and items of equipment" means furnaces,
8 boilers, oil tanks and fittings, air purifiers, air handling equipment,
9 ventilating fans, ceiling fans, air conditioning equipment, water
10 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage
11 disposals, compactors, dishwashers, automatic door openers, washers and
12 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting
13 fixtures, lighting control and energy management systems, security
14 systems, circuit breakers, and other similar items.

15 (2) "Builder" means any person, corporation, general contractor, or
16 other legal entity that:

17 (a) Is engaged in the business of erecting or otherwise
18 constructing a new home; or

1 (b) Purchases a completed new home for resale in the course of its
2 business.

3 (3) "Defect" means any violation or nonconformity with applicable
4 building codes, regulations, or permits that has an adverse effect or
5 will have an adverse effect on the new home or component of the new
6 home alleged to be in violation of the new home warranty. As used in
7 this subsection, an "adverse effect" must be more than technical and
8 must be significant to a reasonable person. To establish an adverse
9 effect, the person alleging the breach is not required to prove that
10 the breach renders the unit or common element uninhabitable or unfit
11 for its intended purpose.

12 (4) "Electrical systems" means all wiring, electrical boxes,
13 switches, outlets, and connections to the public utility system.

14 (5) "Heating, cooling, and ventilating systems" means all duct
15 work, gas, steam, water and refrigerant lines, registers, convectors,
16 solar panels, radiation elements, and dampers.

17 (6) "Load-bearing portions of the home" means the load-bearing
18 portions of the:

- 19 (a) Foundation system and footings;
- 20 (b) Beams;
- 21 (c) Girders;
- 22 (d) Lintels;
- 23 (e) Columns;
- 24 (f) Walls and partitions;
- 25 (g) Floor systems; and
- 26 (h) Roof framing systems.

27 (7)(a) "New home" means every newly constructed private dwelling
28 unit in the state and the appliances, fixtures, and items of equipment
29 and structure that are made a part of a newly constructed private
30 dwelling unit at the time of construction. Newly constructed private
31 dwelling units include substantial remodels. "Substantial remodel"
32 means a remodel of a residence, for which the total cost exceeds one-
33 half of the assessed value of the improvements for property tax
34 purposes at the time the contract for remodel was made.

35 (b) "New home" does not include:

- 36 (i) A condominium, as defined in RCW 64.34.020, used for
37 residential purposes, as defined in RCW 64.34.020;
- 38 (ii) A residential timeshare as defined in RCW 64.36.010;

1 (iii) A manufactured home or mobile home as defined in RCW
2 65.20.020;

3 (iv) Outbuildings, including detached garages and carports, except
4 outbuildings that contain plumbing, electrical, heating, cooling, or
5 ventilation systems serving the new home, and then only to the extent
6 that defects to the outbuildings could affect these systems;

7 (v) Driveways;

8 (vi) Walkways;

9 (vii) Boundary walls;

10 (viii) Retaining walls not necessary for the structural stability
11 of the new home;

12 (ix) Landscaping;

13 (x) Sprinkler or irrigation systems;

14 (xi) Fences;

15 (xii) Off-site improvements;

16 (xiii) Appurtenant recreational facilities; and

17 (xiv) Other similar items as determined by the director of the
18 department of labor and industries by rule.

19 (8) "New home warranty" means the warranty created in section 2 of
20 this act.

21 (9) "Nonprofit or public affordable homeownership program" means a
22 program operated by: A public entity, such as a housing authority,
23 public development authority, or community action agency; or a
24 nonprofit charitable organization exempt from taxation under section
25 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
26 501(c)(3)), as having a purpose related to the development or
27 production of housing affordable to persons of low or moderate-income
28 or special needs populations, and that is developing, building,
29 constructing, rehabilitating, substantially remodeling, or otherwise
30 providing housing primarily for persons that could not otherwise afford
31 to own a home. These programs often include a sweat equity provision
32 where the persons obtaining a home through the program provide a
33 portion of the labor to build or rehabilitate the home in return for
34 purchasing the home at a lower price. Examples of these programs in
35 Washington state include, but are not limited to, programs operating
36 under the United States department of agriculture self-help housing
37 grant program, the department of housing and urban development's self-

1 help housing opportunity program, local chapters of habitat for
2 humanity, community land trusts, homesight, and the low income housing
3 institute.

4 (10) "Owner" means the purchaser of a new home or any subsequent
5 owner of a home to which the warranty created in section 2 of this act
6 applies.

7 (11) "Plumbing systems" means:
8 (a) Gas supply lines and fittings;
9 (b) Water supply, waste, and vent pipes and their fittings;
10 (c) Septic tanks and their drain fields; and
11 (d) Water, gas, and sewer service piping and their extensions to
12 the tie-in of a public utility connection, or on-site wells and sewage
13 disposal systems.

14 (12)(a) "Structural defect" means any defect in the load-bearing
15 portions of a new home that adversely affects its load-bearing function
16 to the extent that the home becomes or is in danger of becoming unsafe,
17 unsanitary, or otherwise not reasonably safely inhabitable.

18 (b) "Structural defect" also includes damage due to subsidence,
19 expansion, or lateral movement of soil that has been disturbed or
20 relocated by the builder.

21 (c) "Structural defect" does not include damage caused by movement
22 of the soil:

- 23 (i) Resulting from a flood or earthquake; or
- 24 (ii) For which compensation has been provided.

25 (13) "Warranty date" means the first day on which the owner
26 occupies the new home, closes on the new home, makes the final contract
27 payment on the new home, or obtains an occupancy permit for the new
28 home if the home is built on the owner's property, whichever is
29 earlier.

30 NEW SECTION. **Sec. 2.** (1)(a) Except as excluded under (b) of this
31 subsection, every contract for the construction or sale of a new home
32 includes, as a matter of law, a warranty from the residential builder
33 that shall warrant at a minimum that:

34 (i) For two years, beginning on the warranty date, the new home is
35 free from any defects in materials and workmanship;

36 (ii) For three years, beginning on the warranty date, the new home
37 is free from any defects in the electrical, plumbing, heating, cooling,

1 and ventilating systems, except that in the case of appliances,
2 fixtures, and items of equipment, the warranty need not exceed the
3 length and scope of the warranty offered by the manufacturer, and the
4 warranty of merchantability, fitness, and all other implied warranties
5 with respect to appliances, fixtures, and items of equipment shall be
6 governed by the Washington uniform commercial code;

7 (iii) For five years, beginning on the warranty date, the new home
8 is free from any defects that permit or, without repair, will lead to
9 water penetration; and

10 (iv) For ten years, beginning on the warranty date, the new home is
11 free from any structural defects.

12 (b) The new home warranty excludes the following:

13 (i) Damage to real property that is not part of the home covered by
14 the warranty or that is not included in the purchase price of the home;

15 (ii) Bodily injury or damage to personal property;

16 (iii) Any defect in materials supplied or work performed by anyone
17 other than the builder or the builder's employees, agents, or
18 subcontractors;

19 (iv) Any damage that the owner knew or had reason to know existed
20 but has not taken reasonable action to mitigate;

21 (v) Normal wear and tear or expiration of normal useful life;

22 (vi) Insect damage, except where the builder has failed to use
23 proper materials or construction methods designed to prevent insect
24 infestation;

25 (vii) Any loss or damage that arises while the home is being used
26 primarily for nonresidential purposes;

27 (viii) Any damage to the extent it is caused or made worse by
28 negligence, improper maintenance, or improper operations by anyone
29 other than the builder or its employees, agents, or subcontractors;

30 (ix) Any damage to the extent it is caused or made worse by changes
31 of the grading of the ground by anyone other than the builder, its
32 employees, agents, or subcontractors; and

33 (x) Any loss or damage caused by acts of God.

34 (2) The warranty created by this section runs from the builder to
35 the owner. This warranty entitles the owner to recover from the
36 builder all costs associated with repairing the defects, including all
37 incidental and consequential damages. The liability of a builder under

1 the new home warranty shall be limited to the fair market value of the
2 home. Absence of privity of contract between the owner and the builder
3 is not a defense to the enforcement of this warranty.

4 (3) If the defect is the result of work performed by a
5 subcontractor, the builder has a right of contribution from that
6 subcontractor for amounts paid to the owner as a result of the new home
7 warranty.

8 (4) No action to enforce the new home warranty created by this
9 section may be commenced after six years have passed from the time the
10 defect is discovered or, with reasonable diligence, should have been
11 discovered. However, an action may not be brought under this section
12 more than ten years after the warranty date, and actions against a
13 nonprofit or public affordable housing program may not be brought more
14 than six years after the warranty date. Providing written notice and
15 a reasonable description of a defect to the builder has the effect of
16 tolling the limitation periods established by this subsection and
17 subsection (5) of this section. Tolling continues until the builder
18 completes the repair to the owner's satisfaction, or the builder gives
19 the owner written notice that the builder refuses to make the repair or
20 has completed as much of the repair as the builder intends to complete.

21 (5) Except as provided in subsection (4) of this section, no action
22 to enforce the new home warranty created by this section may be filed
23 later than the time periods described in subsection (1)(a) of this
24 section.

25 (6) The new home warranty is a cumulative remedy, and shall not
26 have the effect of diminishing or replacing any other remedy or
27 warranty created by law or equity or agreement between the parties.
28 The new home warranty is in addition to the warranties created under
29 chapter 64.34 RCW.

30 (7) The new home warranty does not expire on the subsequent sale of
31 a new home by the owner to a subsequent purchaser, but continues to
32 protect later purchasers until the warranties provided in subsection
33 (1)(a) of this section expire.

34 (8) The new home warranty created in this section may not be
35 omitted, waived, or disclaimed in any way.

36 (9) All new homes must include in the purchase and sale agreement
37 between the builder and the buyer the following statement: "This home
38 was built in compliance with all applicable building codes and is

1 governed by a statutory warranty set forth in chapter 64.-- RCW
2 (sections 1 and 2 of this act), which representation and warranty may
3 not be omitted, waived, or disclaimed in any way."

4 (10) This chapter is not intended to create an independent right to
5 maintain a class action against any builder.

6 NEW SECTION. **Sec. 3.** (1) A committee on residential construction
7 is created. The committee consists of the following members who have
8 experience and expertise in residential construction law or residential
9 construction:

10 (a) One member from each caucus of the senate, appointed by the
11 president of the senate;

12 (b) One member from each caucus of the house of representatives,
13 appointed by the speaker of the house of representatives;

14 (c) The following seven members jointly appointed by the speaker of
15 the house of representatives and the president of the senate:

16 (i) One builder of single-family homes;

17 (ii) One residential construction defense attorney with experience
18 representing builders in single-family construction defect actions;

19 (iii) One residential construction plaintiff attorney with
20 experience representing homeowners in single-family construction defect
21 actions;

22 (iv) One representative of the Washington homeowners coalition;

23 (v) One third-party private building inspector;

24 (vi) One architect; and

25 (vii) One expert in water penetration issues affecting residential
26 construction; and

27 (d) One person appointed by the governor to serve as chair of the
28 committee.

29 (2) The committee shall:

30 (a) Study the cause, extent, and type of construction defects
31 currently existing with single-family residential construction;

32 (b) Evaluate the existing remedies for homeowners in Washington for
33 single-family residential construction defects;

34 (c) Examine what contractors and their industry groups can do to
35 improve the quality of construction to minimize construction defects
36 and, as a result, reduce contractors' liability costs as well as reduce
37 problems for their customers;

1 (d) Examine the issue of contractor licensing including, but not
2 limited to, whether contractors should be licensed and what education
3 and training requirements should exist;

4 (e) Evaluate whether current surety bond requirements are
5 sufficient or if increased or additional bonding requirements are
6 necessary to protect both construction professionals and homebuyers;

7 (f) Determine whether there should be increased standards for city
8 and county building inspectors and examine if changes are needed to the
9 permit sign off process;

10 (g) Assess whether changes to the building code are necessary to
11 avoid water penetration problems; and

12 (h) Examine the costs and benefits of the statutory warranty
13 created in section 2 of this act, including availability of insurance,
14 efficient access to justice, and potential application of alternative
15 dispute resolution, and evaluate whether there is a more cost-effective
16 way to protect both the homeowners and the residential construction
17 industry in Washington state. Within this evaluation, the committee
18 shall examine other states that have implemented statutory home
19 warranties including, at a minimum, Maryland and California.

20 (3) Staff support for the committee must be provided by senate
21 committee services and the house of representatives office of program
22 research.

23 (4) Legislative members of the committee must be reimbursed for
24 travel expenses in accordance with RCW 44.04.120.

25 (5) By December 31, 2007, the committee shall deliver to the
26 consumer protection and housing committee of the senate and the
27 judiciary committee of the house of representatives a report of the
28 findings and conclusions of the committee and any proposed legislation.

29 (6) This section expires on January 1, 2008.

30 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
31 new chapter in Title 64 RCW.

32 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act take effect
33 July 1, 2008.

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