
SENATE BILL 5923

State of Washington

56th Legislature

1999 Regular Session

By Senators Kohl-Welles and Snyder

Read first time 02/16/1999. Referred to Committee on Commerce, Trade, Housing & Financial Institutions.

1 AN ACT Relating to home warranties; amending RCW 4.16.300; adding
2 new chapters to Title 64 RCW; creating a new section; and prescribing
3 penalties.

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

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

8 (1) "Builder" means any person, corporation, partnership, general
9 contractor, or other legal entity:

10 (a) That is engaged in the business of erecting or otherwise
11 constructing a new home; or

12 (b) That purchases a completed new home for resale in the course of
13 its business.

14 (2)(a) "New home" means:

15 (i) Every newly constructed private dwelling unit in the state and
16 the fixtures and structure that are made a part of a newly constructed
17 private dwelling unit at the time of construction;

18 (ii) Real property consisting of, or improved by, one to four
19 dwelling units; and

1 (iii) A residential condominium as defined by RCW 64.34.020.

2 (b) "New home" does not mean:

3 (i) A residential timeshare, as defined in RCW 64.36.010;

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

8 (iii) Driveways;

9 (iv) Walkways;

10 (v) Patios and decks;

11 (vi) Boundary walls;

12 (vii) Retaining walls not necessary for the structural stability of
13 the new home;

14 (viii) Landscaping;

15 (ix) Sprinkler or irrigation systems;

16 (x) Fences;

17 (xi) Off-site improvements;

18 (xii) Appurtenant recreational facilities; and

19 (xiii) Other similar items as determined by rule by the director of
20 the department of labor and industries.

21 (3) "Owner" means any purchaser of a new home and includes the
22 initial purchaser and any subsequent purchaser.

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

27 NEW SECTION. **Sec. 2.** BUILDING CODE COMPLIANCE HOME WARRANTY. (1)
28 Every contract for the construction or sale of a new home shall
29 include, as a matter of law, a warranty that the new home has been
30 constructed in accordance with all applicable codes adopted under RCW
31 19.27.031, together with local variations, in force at the time the
32 building permit was issued.

33 (2) The warranty created by this section shall run from the builder
34 to the owner. This warranty shall entitle the owner to recover from
35 the builder all costs associated with bringing the structure into
36 compliance with the codes listed or referred to in subsection (1) of
37 this section, together with the cost of repair of damage proximately
38 caused by the code violation, including the cost of repairing

1 driveways, sidewalks, lawns, landscaping, or similar associated
2 facilities and fixtures necessarily damaged as a result of the required
3 repairs. Absence of privity of contract between the owner and the
4 builder is not a defense to the enforcement of this warranty. The
5 statutory warranty created in this section shall survive the passing of
6 legal or equitable title in the new home.

7 (3) If the code violation is the result of work performed by a
8 subcontractor, the builder shall have a right of contribution from that
9 subcontractor for amounts paid to the owner as a result of the warranty
10 created by this section.

11 (4) No action to enforce the warranty created by this section may
12 be commenced after one hundred eighty days from the time the defect is
13 discovered, or with reasonable diligence, should have been discovered.
14 Providing written notice and reasonable description of a defect to the
15 contractor, shall have the effect of tolling the limitation periods
16 established by this subsection and subsection (5) of this section.
17 Such tolling shall continue until the builder completes the repair to
18 the satisfaction of the owner, or the builder gives the owner written
19 notice that the builder refuses to make the repair or has completed as
20 much of the repair as the builder intends to complete.

21 (5) No action to enforce the warranty created by this section may
22 be filed later than ten years following the warranty date.

23 (6) The warranty created under this section is a cumulative remedy,
24 and shall not have the effect of diminishing or replacing any other
25 remedy or warranty created by law or equity or agreement between the
26 parties. The rights created by this section may not be waived or
27 contracted away.

28 (7) RCW 4.16.300 does not apply to the warranty created under this
29 section.

30 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
31 section apply throughout this chapter unless the context clearly
32 requires otherwise:

33 (1) "Appliances, fixtures, and items of equipment" means furnaces,
34 boilers, oil tanks and fittings, air purifiers, air handling equipment,
35 ventilating fans, ceiling fans, air conditioning equipment, water
36 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage
37 disposals, compactors, dishwashers, automatic door openers, washers and
38 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting

1 fixtures, lighting control and energy management systems, security
2 systems, circuit breakers, and other similar items.

3 (2) "Builder" means any person, corporation, partnership, general
4 contractor, or other legal entity:

5 (a) That is engaged in the business of erecting or otherwise
6 constructing a new home; or

7 (b) That purchases a completed new home for resale in the course of
8 its business.

9 (3) "Electrical systems" means all wiring, electrical boxes,
10 switches, outlets, and connections up to the public utility connection.

11 (4) "Heating, cooling, and ventilating systems" means all duct
12 work, gas, steam, water and refrigerant lines, registers, convectors,
13 solar panels, radiation elements, and dampers.

14 (5) "Load-bearing portions of the home" means the load-bearing
15 portions of the:

16 (a) Foundation system and footings;

17 (b) Beams;

18 (c) Girders;

19 (d) Lintels;

20 (e) Columns;

21 (f) Walls and partitions;

22 (g) Floor systems; and

23 (h) Roof framing systems.

24 (6) "Local jurisdiction" means any county and any municipal
25 corporation in the state of Washington.

26 (7)(a) "New home" means:

27 (i) Every newly constructed private dwelling unit in the state and
28 the fixtures and structure that are made a part of a newly constructed
29 private dwelling unit at the time of construction;

30 (ii) Real property consisting of, or improved by, one to four
31 dwelling units; and

32 (iii) A residential condominium as defined by RCW 64.34.020.

33 (b) "New home" does not mean:

34 (i) A residential timeshare, as defined in RCW 64.36.010;

35 (ii) Outbuildings, including detached garages and detached
36 carports, except outbuildings that contain plumbing, electrical,
37 heating, cooling, or ventilation systems serving the new home, and then
38 only to the extent that defects would affect these systems;

39 (iii) Driveways;

1 (iv) Walkways;
2 (v) Patios and decks;
3 (vi) Boundary walls;
4 (vii) Retaining walls not necessary for the structural stability of
5 the new home;
6 (viii) Landscaping;
7 (ix) Sprinkler or irrigation systems;
8 (x) Fences;
9 (xi) Off-site improvements;
10 (xii) Appurtenant recreational facilities; and
11 (xiii) Other similar items as determined by the director by rule.
12 (8) "New home warranty" means a series of written promises made by
13 a builder that meets the requirements of this chapter.
14 (9) "New home warranty security plan" means a plan that meets the
15 requirements of sections 6 and 8 of this act.
16 (10) "Owner" means the purchaser of a new home.
17 (11) "Plumbing systems" means:
18 (a) Gas supply lines and fittings;
19 (b) Water supply, waste, and vent pipes and their fittings;
20 (c) Septic tanks and their drain fields; and
21 (d) Water, gas, and sewer service piping and their extensions to
22 the tie-in of a public utility connection; or on-site wells and sewage
23 disposal systems.
24 (12) "Department" means the department of labor and industries.
25 (13) "Director" means the director of the department of labor and
26 industries.
27 (14) "Structural defect" means:
28 (a) Any defect in the load-bearing portions of a new home that
29 adversely affects its load-bearing function to the extent that the home
30 becomes or is in serious danger of becoming unsafe, unsanitary, or
31 otherwise not reasonably safely inhabitable.
32 (b) "Structural defect" includes damage due to subsidence,
33 expansion, or lateral movement of soil that has been disturbed or
34 relocated by the builder.
35 (c) "Structural defect" does not include damage caused by movement
36 of the soil:
37 (i) Resulting from a flood or earthquake; or
38 (ii) For which compensation has been provided.

1 (15) "Warranty date" means the first day that the owner occupies
2 the new home, closes on the new home, makes the final contract payment
3 on the new home, or obtains an occupancy permit for the new home if the
4 home is built on the owner's property, whichever is earlier.

5 NEW SECTION. **Sec. 4.** DISCLOSURE OF NEW HOME WARRANTY SECURITY
6 PLAN PARTICIPATION. (1) Prior to entering into a contract for sale or
7 construction of a new home, the builder shall disclose in writing on a
8 separate form to the owner whether:

9 (a) The builder participates in a new home warranty security plan
10 through which:

11 (i) The builder must provide the owner with a new home warranty; or

12 (ii) The builder may provide a new home warranty to the owner at
13 the owner's option; or

14 (b) The builder does not participate in a new home warranty
15 security plan.

16 (2) The disclosure must be made on a form approved by the director.

17 NEW SECTION. **Sec. 5.** HOMES NOT COVERED BY WARRANTY; DISCLOSURE BY
18 BUILDERS; ACKNOWLEDGMENT; RIGHT OF RESCISSION BY OWNER. (1) If the
19 builder does not participate in a new home warranty security plan:

20 (a) The builder must make a disclosure containing an explanation in
21 at least twelve-point type that:

22 "Without a new home warranty or other express warranties, the owner
23 may be afforded only certain limited implied warranties as are provided
24 by law."

25 (b) The owner shall acknowledge in writing that the owner
26 understands that the builder does not participate in a new home
27 warranty security plan and that the owner has read and understood the
28 disclosure required by (a) of this subsection.

29 (2) Any purchase or construction contract entered into which does
30 not contain the acknowledgment required by subsection (1)(b) of this
31 section is voidable by the owner.

32 (3)(a) An owner who has made the acknowledgment required in
33 subsection (1)(b) of this section may rescind the contract within one
34 hundred twenty hours from the time and date of the contract by
35 depositing a notice in the United States postal system or by any other
36 means which provides the builder or its agent with written notice of
37 the owner's rescission of the contract.

1 (b) Upon rescission, the owner is entitled to a refund of any money
2 paid to the builder for the new home.

3 NEW SECTION. **Sec. 6.** WARRANTY COVERAGE. (1)(a) Except for
4 coverage excluded under (b) of this subsection, a new home warranty
5 provided under a new home warranty security plan shall warrant at a
6 minimum that:

7 (i) For one year, beginning on the warranty date, the new home is
8 free from any defects in materials and workmanship;

9 (ii) For two years, beginning on the warranty date, the new home is
10 free from any defect in the electrical, plumbing, heating, cooling, and
11 ventilating systems, except that in the case of appliances, fixtures,
12 and items of equipment, the warranty need not exceed the length and
13 scope of the warranty offered by the manufacturer, and the warranty of
14 merchantability, fitness and all other implied warranties with respect
15 to appliances, fixtures, and items of equipment shall be governed by
16 the Washington uniform commercial code;

17 (iii) For five years, beginning on the warranty date, the new home
18 is free from defects resulting in water penetration; and

19 (iv) For ten years, beginning on the warranty date, the new home is
20 free from any structural defect.

21 (b) A new home warranty provided under a new home warranty security
22 plan may exclude the following:

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

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

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

29 (iv) Any damage that the owner has not taken timely action to
30 minimize or for which the owner has failed to provide timely notice to
31 the builder from the time upon which the owner should have reasonably
32 known of the damage;

33 (v) Normal wear and tear or normal deterioration;

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

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

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

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

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

8 (2) A builder who has disclosed that the builder participates in a
9 new home warranty security plan shall furnish to the owner at the time
10 of the purchase or construction contract:

11 (a) The name and telephone number of the builder's new home
12 warranty security plan;

13 (b) Details of the warranty coverage provided under the plan; and

14 (c) In a form to be approved by the director, evidence that:

15 (i) The builder currently is a participant in good standing with a
16 plan that satisfies the requirements of section 6 of this act; and

17 (ii) The new home is eligible for registration or has been
18 registered in the builder's new home warranty security plan.

19 (3) The builder shall provide the owner with a new home warranty if
20 the builder belongs to a new home warranty security plan that requires
21 the builder to register every new home that the builder builds, or the
22 plan does not require the builder to register every new home, but the
23 builder has decided to sell the new home with a new home warranty.

24 (4) If the builder belongs to a new home warranty security plan
25 that does not require the builder to register every new home and the
26 builder has not decided whether or not to sell the new home with a new
27 home warranty, the builder shall give the owner the option of
28 purchasing the new home warranty provided by the builder's new home
29 warranty security plan or waiving the right to warranty coverage by
30 making the affirmative waiver described in section 5 of this act.

31 (5)(a) If the purchase or construction contract provides that the
32 new home shall be covered by a new home warranty under a new home
33 warranty security plan it shall constitute a material breach of the
34 contract if either:

35 (i) The builder was not a participant in good standing on the date
36 of the contract with a new home warranty security plan that satisfies
37 the requirements of subsection (1)(a) of this section; or

38 (ii) The new home has not been registered in the plan on or before
39 the warranty date.

1 (b) If there has been a material breach of the contract, the owner
2 is entitled to whatever remedies are provided by law including, but not
3 limited to:

4 (i) Rescission of the contract; and

5 (ii) Except in the case of a construction contract for a new home
6 built on the owner's property, a refund of any money paid to the
7 builder for the new home.

8 (6)(a) The builder shall notify the new home warranty security plan
9 of each new home being constructed by the builder within forty-eight
10 hours of the date of the purchase or construction contract or the start
11 of construction of the new home, whichever is earlier.

12 (b) Upon receipt of notification by the builder as required in (a)
13 of this subsection, the new home shall be eligible for registration in
14 the builder's new home warranty security plan.

15 (7)(a) Upon registration of the new home in the new home warranty
16 security plan, warranty coverage that has not been waived by the owner
17 shall be provided beginning on the warranty date for the new home
18 constructed by the builder, provided that the builder was in good
19 standing with the new home warranty security plan at the time of the
20 contract.

21 (b) On the warranty date, the builder shall provide the owner with
22 evidence, in a form approved by the director, that the new home is
23 covered by a new home warranty that meets the requirements of this
24 chapter. Within sixty days from the warranty date, the builder's new
25 home warranty security plan shall provide the owner with validated new
26 home warranty documents.

27 (8) A new home warranty shall benefit any successor in title to the
28 owner.

29 NEW SECTION. **Sec. 7.** NOTICE TO PURCHASER OF HOME COVERED BY
30 WARRANTY. A builder who sells a new home with a new home warranty
31 pursuant to section 6(1)(a) of this act, which has not been waived by
32 the owner, shall provide the owner with a notice that shall be
33 incorporated in a conspicuous manner in the contract and that shall
34 include the following language in type at least as large as twelve-
35 point and with "Notice to Purchaser" set off in boldface type:

36 "Notice to Purchaser

1 Your new home will be covered by a new home warranty that meets the
2 minimum requirements established under chapter 64.-- RCW (sections
3 3 through 12 of this act). Before you sign this contract, your
4 builder is required to give you a copy of the warranty coverage you
5 will receive.

6 The name of the new home warranty security plan in which your
7 builder is currently a participant is You are
8 strongly encouraged to contact the new home warranty security plan
9 at to obtain written verification (1) that your builder
10 is in good standing with this company, and (2) that your new home
11 will be covered by a warranty from this company.

12 If the builder is not a participant in good standing with this
13 company on the date of this contract, or if the new home has not
14 been registered in the plan on or before the warranty date, it is
15 a material breach of the contract. You are entitled to whatever
16 remedies are provided by law, including, but not limited to,
17 rescission or cancellation of this contract and, except in the case
18 of a construction contract for a new home built on your own
19 property, a refund of any money paid to the builder for your new
20 home.

21 On the day that you first occupy the new home, close on the new
22 home, make the final payment to the builder on your new home, or
23 obtain an occupancy permit for a new home if the new home is built
24 on your own property, whichever is earlier, you will be provided
25 with evidence that a new home warranty exists for your new home and
26 that coverage begins on that date. That date is the warranty date.
27 You will be provided with a signed new home warranty within sixty
28 days from the date the coverage begins.

29 The terms used in this notice have the same meanings as provided in
30 chapter 64.-- RCW (sections 3 through 12 of this act)."

31 NEW SECTION. **Sec. 8.** DUTIES OF PLAN; REVOCATION OR SUSPENSION OF
32 APPROVAL. (1) A new home warranty security plan shall:

33 (a) Provide for the payment of claims against a builder for defects
34 warranted under this chapter;

35 (b) Be operated by a corporation, partnership, or other legal
36 entity authorized to do business in the state of Washington;

1 (c) Demonstrate to the director that the plan will maintain
2 financial security to cover the total number of claims that the plan
3 reasonably anticipates will be filed against participating builders;

4 (d) File with the department a surety bond or an irrevocable letter
5 of credit from a federally insured financial institution in an amount
6 set by the director, but not less than two hundred fifty thousand
7 dollars, for the benefit of owners injured by the failure of the new
8 home warranty security plan to pay claims as required under this
9 chapter;

10 (e) Provide within the new home warranty documents, the performance
11 standards that describe the builder's obligations for defects warranted
12 under this chapter;

13 (f) Provide for the mediation of disputes between an owner and a
14 builder before a claim will be paid by the builder's new home warranty
15 security plan; and

16 (g) Meet any other requirements determined by rule by the director
17 and be approved by the director.

18 (2)(a) The director may revoke or suspend approval for a new home
19 warranty security plan if the director determines that the plan:

20 (i) Is unable to meet its obligations under a new home warranty; or

21 (ii) Is administered in a manner that denies owners the warranty
22 coverage required under this chapter.

23 (b) Except for new homes that were registered in the new home
24 warranty security plan prior to the revocation or suspension and for
25 which a purchase or construction contract has been executed, during the
26 time period that approval for a new home warranty security plan is
27 revoked or suspended by the director, the new home warranty security
28 plan may not provide warranty coverage for any new homes built in the
29 state of Washington.

30 (3)(a) Unless the director determines that a shorter notice period
31 is needed to protect the interests of the builders and owners, the
32 director shall give a new home warranty security plan at least ninety
33 days' notice that the director's approval of the plan is being revoked
34 or suspended.

35 (b) A new home warranty security plan shall give to its
36 participating builders at least sixty days' notice of the plan's
37 revocation or suspension, or such shorter time as specified by the
38 director if the plan receives less than ninety days' notice.

1 NEW SECTION. **Sec. 9.** WAIVER BY OWNER. (1) In accordance with
2 section 5(1)(b) of this act, an owner, who does not wish to require
3 that the new home be covered by a new home warranty, shall make an
4 affirmative waiver of the coverage at the time of the purchase or
5 construction contract.

6 (2) Before an owner makes a waiver under this section, the owner
7 must be informed in writing by the builder of the cost, nature, and
8 extent of warranty coverage that would be provided under the builder's
9 new home warranty security plan if not waived by the owner.

10 (3) An owner who has made an affirmative waiver under this section
11 may rescind the waiver and request a new home warranty in accordance
12 with the provisions of this chapter within one hundred twenty hours
13 from the time and date of the contract by providing the builder with
14 written notice of the owner's rescission of the waiver in a manner as
15 described in section 5(3)(a) of this act.

16 (4) The waiver under this section shall be made on a form approved
17 by the director and shall contain a section in which an owner who has
18 made a waiver may rescind the waiver pursuant to subsection (3) of this
19 section.

20 (5) The form shall clearly and concisely explain in plain language
21 and in at least twelve-point boldface type on a separate piece of
22 paper:

23 (a) The cost, nature, and extent of warranty coverage that would be
24 provided under the builder's new home warranty security plan if not
25 waived by the owner;

26 (b) That the failure of the owner to make a waiver requires the
27 builder to provide a new home warranty;

28 (c) That a builder may not refuse to build a new home for the owner
29 because the owner refuses to waive warranty coverage;

30 (d) Without a new home warranty or other express warranties, the
31 owner may be afforded only certain limited implied warranties as are
32 provided by law; and

33 (e) That an owner who has made an affirmative waiver of the
34 warranty coverage still may rescind the waiver and request a new home
35 warranty in accordance with the provisions of chapter 64.-- RCW
36 (sections 3 through 12 of this act) within one hundred twenty hours
37 from the time and date of the contract by providing the builder with
38 written notice in a manner described in section 5(3)(a) of this act.

1 NEW SECTION. **Sec. 10.** WARRANTIES SUPPLEMENTAL; NONCOMPLIANCE AS
2 UNFAIR TRADE PRACTICE. (1) Any warranties provided in accordance with
3 the requirements of this chapter are in addition to all other implied
4 or express warranties provided by law or agreement.

5 (2) The legislature finds that the practices covered by this
6 chapter are matters vitally affecting the public interest for the
7 purpose of applying the consumer protection act, chapter 19.86 RCW. A
8 violation of this chapter is not reasonable in relation to the
9 development and preservation of business and is an unfair or deceptive
10 act in trade or commerce and an unfair method of competition for the
11 purpose of applying the consumer protection act, chapter 19.86 RCW.

12 NEW SECTION. **Sec. 11.** VIOLATION; PENALTY. (1) Any person who
13 with intent knowingly violates the provisions of this chapter or
14 knowingly misrepresents the existence of a new home warranty is guilty
15 of a misdemeanor in addition to any other penalties provided for in
16 this chapter.

17 (2) All actions under this section shall be prosecuted in the
18 county where the violation occurs.

19 NEW SECTION. **Sec. 12.** RULES. The director shall adopt rules
20 necessary to implement this chapter.

21 NEW SECTION. **Sec. 13.** CAPTIONS NOT LAW. Captions used in this
22 act are not any part of the law.

23 **Sec. 14.** RCW 4.16.300 and 1986 c 305 s 703 are each amended to
24 read as follows:

25 RCW 4.16.300 through 4.16.320 shall apply to all claims or causes
26 of action of any kind against any person, arising from such person
27 having constructed, altered or repaired any improvement upon real
28 property, or having performed or furnished any design, planning,
29 surveying, architectural or construction or engineering services, or
30 supervision or observation of construction, or administration of
31 construction contracts for any construction, alteration or repair of
32 any improvement upon real property. This section is intended to
33 benefit only those persons referenced herein and shall not apply to
34 claims or causes of action against manufacturers. This section does

1 not apply to a building code compliance home warranty under section 2
2 of this act.

3 NEW SECTION. **Sec. 15.** (1) Sections 1 and 2 of this act constitute
4 a new chapter in Title 64 RCW.

5 (2) Sections 3 through 12 of this act constitute a new chapter in
6 Title 64 RCW.

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