
HOUSE BILL 2806

State of Washington 58th Legislature 2004 Regular Session

By Representatives Romero, Hunt, Dunshee and Chase

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1 AN ACT Relating to builders' warranties on detached, single-family
2 homes; amending RCW 4.16.300 and 4.16.310; adding a new section to
3 chapter 64.50 RCW; and adding a new chapter to Title 19 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that for most
6 individuals and families the purchase of a home is the most important
7 investment decision they will make. In addition to providing shelter
8 and functioning as the center of one's personal and family life, the
9 home can be a source of future economic security as its value
10 appreciates over time. Increasingly, however, the buyers of new homes
11 are finding that deficiencies in the quality of construction are
12 resulting in homes that are not weather tight or structurally sound,
13 and which generally do not function up to the standards that the home
14 buyer should reasonably expect. Although state and local building
15 codes provide basic guidelines that must be met with respect to the
16 construction process, these codes do not address the actual functioning
17 of a home once the construction process has been completed, and are not
18 sufficient to ensure that a home is free of water intrusion or other
19 unforeseen problems related to construction deficiencies. Accordingly,

1 the legislature finds that explicit, detailed legal standards should be
2 created governing both the functioning of newly constructed homes and
3 the rights and responsibilities of the builder and the homeowner. By
4 creating these explicit standards, the legislature intends to provide
5 a reference point that can be used by builders and homeowners in
6 resolving disputes over alleged construction defects and, thus,
7 facilitate the resolution of homeowner claims.

8 The legislature further finds that the prompt and fair resolution
9 of construction defect claims serves the interests of homeowners,
10 builders, and the citizens of this state. The use of the courts for
11 the resolution of these claims has proven to be inefficient and costly,
12 insofar as legal actions often take years to resolve, clog our already
13 overburdened court system, and involve legal expenses that are unduly
14 burdensome on all parties. Furthermore, the costs associated with
15 protracted construction defect litigation have contributed to the
16 skyrocketing insurance premiums experienced in recent years by both
17 builders and homeowners. Therefore, the legislature finds that a
18 nonjudicial process should be created for the quick and fair resolution
19 of construction defect claims. By creating such a process, the
20 legislature intends to provide a mechanism by which builders and
21 homeowners may resolve these claims without resort to legal action.

22 NEW SECTION. **Sec. 2.** (1)(a) There is no monetary liability on the
23 part of, and no cause of action for damages against, any person or
24 other legal entity that is:

25 (i)(A) Under contract with an applicant for a residential building
26 permit to provide independent quality review of the plans and
27 specifications provided with the application in order to determine
28 compliance with all applicable requirements imposed by all applicable
29 building codes and statutes; or (B) under contract with that applicant
30 to provide independent quality review of the work of improvement to
31 determine compliance with these plans and specifications, if the person
32 or other legal entity meets the requirements of this section and either
33 (a)(ii) or (iii) of this subsection applies;

34 (ii) The person, or a person employed by any other legal entity,
35 performing the work as described in this subsection, has completed not
36 less than five years of verifiable experience in the appropriate field,
37 has obtained certification as a building inspector from the

1 International Code Council, and has successfully passed the technical
2 written examination promulgated by the council for a building
3 inspector; or

4 (iii) The person, or a person employed by any other legal entity,
5 performing the work as described in this section, has completed not
6 less than five years of verifiable experience in the appropriate field
7 and is a registered professional engineer, licensed general contractor,
8 or a licensed architect rendering independent quality review of the
9 work of improvement or plan examination services within the scope of
10 his or her registration or licensure.

11 (b) The immunity provided under this section does not apply to any
12 action initiated by the applicant who retained the qualified person.
13 A "qualified person" for purposes of this section means a person
14 meeting the requirements set forth under subsection (1)(a)(i) and (ii)
15 of this section.

16 (2) Except for qualified persons, this section does not relieve
17 from, excuse, or lessen in any manner the responsibility or liability
18 of any person, company, contractor, builder, developer, architect,
19 engineer, designer, or other individual or entity who develops,
20 improves, owns, operates, or manages any residential building for any
21 damages to persons or property caused by construction or design
22 defects. The fact that an inspection by a qualified person has taken
23 place may not be introduced as evidence in a construction defect
24 action, including any reports or other items generated by the qualified
25 person. This subsection does not apply in any action initiated by the
26 applicant who retained the qualified person.

27 (3) This section, as it relates to construction inspectors or plans
28 examiners, does not alter the requirements for licensure, or the
29 jurisdiction, authority, or scope of practice, of architects,
30 professional engineers, or general contractors.

31 (4) This section does not alter the immunity of public employees
32 for tort claims resulting from actions taken under this chapter.

33 (5) The qualifying person may engage in no other construction,
34 design, planning, supervision, or activities of any kind on the work of
35 improvement, nor provide quality review services for any other party on
36 the work of improvement.

37 (6) The qualifying person, or other legal entity, must maintain

1 professional errors and omissions insurance coverage in an amount not
2 less than two million dollars.

3 (7) The immunity provided under subsection (1) of this section does
4 not inure to the benefit of the qualified person for damages caused to
5 the applicant solely by the negligence or willful misconduct of the
6 qualified person resulting from the provision of services under the
7 contract with the applicant.

8 NEW SECTION. **Sec. 3.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires otherwise.

10 (1) "Structure" means a detached, single-family home and any other
11 building or improvement located upon the lot shared with the single-
12 family home. "Structure" does not include condominiums.

13 (2) "Designed moisture barrier" means an installed moisture barrier
14 specified in the plans and specifications, contract documents, or
15 manufacturer's recommendations.

16 (3) "Actual moisture barrier" means any component or material,
17 actually installed, that serves to any degree as a barrier against
18 moisture, whether or not intended as such.

19 (4) "Unintended water" means water that passes beyond, around, or
20 through a component or the material that is designed to prevent that
21 passage.

22 (5) "Close of escrow" means the date of the close of escrow between
23 the builder and the original homeowner. With respect to claims by a
24 homeowners association, "close of escrow" means the date of substantial
25 completion of structures on properties located within the association's
26 jurisdiction.

27 (6) "Claimant" or "homeowner" means the individual owners of
28 structures or a homeowners' association as defined under chapter 64.38
29 RCW.

30 (7) "Builder" means a builder, developer, or original seller.

31 NEW SECTION. **Sec. 4.** In any action seeking recovery of damages
32 arising out of, or related to deficiencies in, the residential
33 construction, design, specifications, surveying, planning, supervision,
34 testing, or observation of construction, a builder, subcontractor,
35 material supplier, individual product manufacturer, or design
36 professional is, except as specifically set forth in this chapter,

1 liable for, and the claimant's claims or causes of action are limited
2 to violation of, the following standards, except as specifically set
3 forth in this chapter. This chapter applies to original construction
4 intended to be sold as a detached, single-family home, including
5 appurtenant structures.

6 (1) The standards relating to water intrusion issues are as
7 follows:

8 (a) A door must not allow unintended water to pass beyond, around,
9 or through the door or its designed or actual moisture barriers, if
10 any;

11 (b) Windows, patio doors, deck doors, and their systems must not
12 allow water to pass beyond, around, or through the window, patio door,
13 or deck door or its designed or actual moisture barriers, including,
14 without limitation, internal barriers within the systems themselves.
15 For purposes of this subsection (1)(b), "systems" include, without
16 limitation, windows, window assemblies, framing, substrate, flashings,
17 and trim, if any;

18 (c) Windows, patio doors, deck doors, and their systems must not
19 allow excessive condensation to enter the structure and cause damage to
20 another component. For purposes of this subsection (1)(c), "systems"
21 include, without limitation, windows, window assemblies, framing,
22 substrate, flashings, and trim, if any;

23 (d) Roofs, roofing systems, chimney caps, and ventilation
24 components must not allow water to enter the structure or to pass
25 beyond, around, or through the designed or actual moisture barriers,
26 including, without limitation, internal barriers located within the
27 systems themselves. For purposes of this subsection (1)(d), "systems"
28 include, without limitation, framing, substrate, and sheathing, if any;

29 (e) Decks, deck systems, balconies, balcony systems, exterior
30 stairs, and stair systems must not allow water to pass into the
31 adjacent structure. For purposes of this subsection (1)(e), "systems"
32 include, without limitation, framing, substrate, flashing, and
33 sheathing, if any;

34 (f) Decks, deck systems, balconies, balcony systems, exterior
35 stairs, and stair systems must not allow unintended water to pass
36 within the systems themselves and cause damage to the systems. For
37 purposes of this subsection (1)(f), "systems" include, without
38 limitation, framing, substrate, flashing, and sheathing, if any;

1 (g) Foundation systems and slabs must not allow water or vapor to
2 enter into the structure so as to cause damage to another building
3 component;

4 (h) Foundation systems and slabs must not allow water or vapor to
5 enter into the structure so as to limit the installation of the type of
6 flooring materials typically used for the particular application;

7 (i) Hardscape, including paths and patios, irrigation systems,
8 landscaping systems, and drainage systems, that are installed as part
9 of the original construction, must not be installed in such a way as to
10 cause water or eroded soil to enter into or come in contact with the
11 structure so as to cause damage to another building component;

12 (j) Stucco, exterior siding, exterior walls, including, without
13 limitation, exterior framing, and other exterior wall finishes and
14 fixtures and the systems of those components and fixtures, including,
15 but not limited to, pot shelves, horizontal surfaces, columns, and
16 plant-ons, must be installed in such a way so as not to allow
17 unintended water to pass into the structure or to pass beyond, around,
18 or through the designed or actual moisture barriers of the system,
19 including any internal barriers located within the system itself. For
20 purposes of this subsection (1)(j), "systems" include, without
21 limitation, framing, substrate, flashings, trim, wall assemblies, and
22 internal wall cavities, if any;

23 (k) Stucco, exterior siding, and exterior walls must not allow
24 excessive condensation to enter the structure and cause damage to
25 another component. For purposes of this subsection (1)(k), "systems"
26 include, without limitation, framing, substrate, flashings, trim, wall
27 assemblies, and internal wall cavities, if any;

28 (l) Retaining and site walls and their associated drainage systems
29 must not allow unintended water to pass beyond, around, or through its
30 designed or actual moisture barriers including, without limitation, any
31 internal barriers, so as to cause damage. This standard does not apply
32 to those portions of any wall or drainage system that are designed to
33 have water flow beyond, around, or through them;

34 (m) Retaining walls and site walls, and their associated drainage
35 systems must only allow water to flow beyond, around, or through the
36 areas designated by design;

37 (n) Lines and components of the plumbing system, sewer system, and
38 utility systems must not leak;

1 (o) Plumbing lines, sewer lines, and utility lines must not corrode
2 so as to impede the useful life of the systems;

3 (p) Sewer systems must be installed in such a way as to allow the
4 designated amount of sewage to flow through the system;

5 (q) Shower and bath enclosures must not leak water into the
6 interior of walls, flooring systems, or other components; and

7 (r) Ceramic tile and tile countertops must not allow water into the
8 interior of walls, flooring systems, or other components so as to cause
9 damage.

10 (2) The standards relating to structural issues are as follows:

11 (a) Foundations, load bearing components, and slabs must not
12 contain significant cracks or significant vertical displacement;

13 (b) Foundations, load bearing components, and slabs must not cause
14 the structure, in whole or in part, to be structurally unsafe;

15 (c) Foundations, load bearing components, slabs, and underlying
16 soils must be constructed so as to materially comply with the design
17 criteria set by applicable government building codes, rules,
18 regulations, and ordinances for chemical deterioration or corrosion
19 resistance in effect at the time of original construction; and

20 (d) A structure must be constructed so as to materially comply with
21 the design criteria for earthquake and wind load resistance, as set
22 forth in the applicable government building codes, rules, regulations,
23 and ordinances in effect at the time of original construction.

24 (3) The standards relating to soil issues are as follows:

25 (a) Soils and engineered retaining walls must not cause, in whole
26 or in part, damage to the structure built upon the soil or engineered
27 retaining wall;

28 (b) Soils and engineered retaining walls must not cause, in whole
29 or in part, the structure to be structurally unsafe; and

30 (c) Soils must not cause, in whole or in part, the land upon which
31 no structure is built to become unusable for the purpose represented at
32 the time of original sale by the builder or for the purpose for which
33 that land is commonly used.

34 (4) The standards relating to fire protection issues are as
35 follows:

36 (a) A structure shall be constructed so as to materially comply
37 with the design criteria of the applicable government building codes,

1 rules, regulations, and ordinances for fire protection of the occupants
2 in effect at the time of the original construction;

3 (b) Fireplaces, chimneys, chimney structures, and chimney
4 termination caps must be constructed and installed in such a way so as
5 not to cause an unreasonable risk of fire outside the fireplace
6 enclosure or chimney; and

7 (c) Electrical and mechanical systems must be constructed and
8 installed in such a way so as not to cause an unreasonable risk of
9 fire.

10 (5) The standards relating to plumbing and sewer issues are as
11 follows: Plumbing and sewer systems must be installed to operate
12 properly and must not materially impair the use of the structure by its
13 inhabitants. However, an action may not be brought for a violation of
14 this subsection more than four years after close of escrow.

15 (6) The standards relating to electrical system issues are as
16 follows: Electrical systems must operate properly and must not
17 materially impair the use of the structure by its inhabitants.
18 However, an action may not be brought for a violation of this
19 subsection more than four years from close of escrow.

20 (7) The standards relating to the functioning of the structure and
21 other aspects of construction are as follows:

22 (a) Exterior pathways, driveways, hardscape, sidewalls, sidewalks,
23 and patios installed by the original builder must not contain cracks
24 that display significant vertical displacement or that are excessive.
25 However, an action may not be brought for a violation of this
26 subsection (7)(a) more than four years from close of escrow;

27 (b) Stucco, exterior siding, and other exterior wall finishes and
28 fixtures, including, but not limited to, pot shelves, horizontal
29 surfaces, columns, and plant-ons, must not contain significant cracks
30 or separations;

31 (c) To the extent not otherwise covered by subsections (1) through
32 (7) of this section, manufactured products, including, but not limited
33 to, windows, doors, roofs, plumbing products and fixtures, fireplaces,
34 electrical fixtures, HVAC units, countertops, cabinets, paint, and
35 appliances must be installed so as not to interfere with the products'
36 useful life, if any.

37 (i) For purposes of this subsection, "useful life" means a
38 representation of how long a product is warranted or represented,

1 through its limited warranty or any written representations, to last by
2 its manufacturer, including recommended or required maintenance. If
3 there is no representation by a manufacturer, a builder must install
4 manufactured products so as not to interfere with the product's
5 utility.

6 (ii) For purposes of this subsection, "manufactured product" means
7 a product that is completely manufactured off-site.

8 (iii) If no useful life representation is made, or if the
9 representation is less than one year, the useful life period is not
10 less than one year. If a manufactured product is damaged as a result
11 of a violation of the standards under this section, damage to the
12 product is a recoverable element of damages. This subsection does not
13 limit recovery if there has been damage to another building component
14 caused by a manufactured product during the manufactured product's
15 useful life.

16 (iv) This chapter does not apply in any action seeking recovery
17 solely for a defect in a manufactured product located within or
18 adjacent to a structure;

19 (d) Heating, if any, must be installed so as to be capable of
20 maintaining a room temperature of seventy degrees Fahrenheit at a point
21 three feet above the floor in any living space;

22 (e) Living space air-conditioning, if any, must be provided in a
23 manner consistent with the size and efficiency design criteria
24 specified;

25 (f) Attached structures must be constructed to comply with
26 interunit noise transmission standards set by the applicable government
27 building codes, rules, regulations, or ordinances in effect at the time
28 of the original construction. If there is no applicable code, rule,
29 regulation, or ordinance, this subsection does not apply. However, an
30 action may not be brought for a violation of this subsection more than
31 one year from the original occupancy of the adjacent unit;

32 (g) Irrigation systems and drainage must operate properly so as not
33 to damage landscaping or other external improvements. However, an
34 action may not be brought for a violation of this subsection more than
35 one year from close of escrow;

36 (h) Untreated wood posts must not be installed in contact with soil
37 so as to cause unreasonable decay to the wood based upon the finish

1 grade at the time of original construction. However, an action may not
2 be brought for a violation of this subsection more than two years from
3 close of escrow;

4 (i) Untreated steel fences and adjacent components must be
5 installed so as to prevent unreasonable corrosion. However, an action
6 may not be brought for a violation of this subsection more than four
7 years from close of escrow;

8 (j) Paint and stain must be applied in such a manner so as not to
9 cause deterioration of the building surfaces for the length of time
10 specified by the paint or stain manufacturers' representations, if any.
11 However, an action may not be brought for a violation of this
12 subsection more than five years from close of escrow;

13 (k) Roofing materials must be installed so as to avoid materials
14 falling from the roof;

15 (l) The landscaping systems must be installed in such a manner so
16 as to survive for not less than one year. However, an action may not
17 be brought for a violation of this subsection more than two years from
18 close of escrow;

19 (m) Ceramic tile and tile backing must be installed in such a
20 manner that the tile does not detach;

21 (n) Dryer ducts must be installed and terminated pursuant to
22 manufacturer installation requirements. However, an action may not be
23 brought for a violation of this subsection more than two years from
24 close of escrow;

25 (o) Structures must be constructed in such a manner so as not to
26 impair the occupants' safety because they contain public health hazards
27 as determined by a duly authorized public health official, health
28 agency, or governmental entity having jurisdiction. This subsection
29 does not limit recovery for any damages caused by a violation of this
30 section on the grounds that the damages do not constitute a health
31 hazard.

32 (8) The standards set forth in this chapter are intended to address
33 every function or component of a structure. To the extent that a
34 function or component of a structure is not addressed by the standards
35 under this chapter, it is actionable if it causes damage.

36 NEW SECTION. **Sec. 5.** (1) A builder may, but is not required to,
37 offer the homeowner an express contract that provides greater

1 protection than that required under section 4 of this act. This type
2 of express contract constitutes an enhanced protection agreement. If
3 a builder offers an enhanced protection agreement, the builder may
4 choose to be subject to its own express contractual provisions. If an
5 enhanced protection agreement is in place, section 4 of this act no
6 longer applies other than to set forth minimum standards by which to
7 judge the enforceability of the particular provisions of the enhanced
8 protection agreement. If a builder offers an enhanced protection
9 agreement in place of the provisions set forth in section 4 of this
10 act, the election to do so must be made in writing with the homeowner
11 no later than the close of escrow. The builder must provide the
12 homeowner with a complete copy of this chapter and advise the homeowner
13 that the builder has elected not to be subject to section 4 of this
14 act. If any provision of an enhanced protection agreement is later
15 found to be unenforceable as not meeting the minimum standards of
16 section 4 of this act, a builder may use this chapter in lieu of those
17 provisions found to be unenforceable. If a builder has elected to use
18 an enhanced protection agreement, and a homeowner disputes that the
19 particular provision or time periods of the enhanced protection
20 agreement are not greater than, or equal to, section 4 of this act as
21 they apply to the particular deficiency alleged by the homeowner, the
22 homeowner may seek to enforce the application of the standards set
23 forth in this chapter as to those claimed deficiencies. If a homeowner
24 seeks to enforce a particular standard in lieu of a provision of the
25 enhanced protection agreement, the homeowner must give the builder
26 written notice of that intent at the time the homeowner files a notice
27 of claim. If a homeowner seeks to enforce section 4 of this act, in
28 lieu of the enhanced protection agreement in a subsequent litigation or
29 other legal action, the builder has the right to have the matter
30 bifurcated, and to have an immediately binding determination of his or
31 her responsive pleading within sixty days after the filing of that
32 pleading, but in no event after the commencement of discovery, as to
33 the application of either section 4 of this act or the enhanced
34 protection agreement as to the deficiencies claimed by the homeowner.
35 If the builder fails to seek that determination in the time frame
36 specified, the builder waives the right to do so and the standards set
37 forth in this chapter apply. As to any nonoriginal homeowner, that
38 homeowner is in privity for purposes of an enhanced protection

1 agreement only to the extent that the builder has recorded the enhanced
2 protection agreement on title or provided actual notice to the
3 nonoriginal homeowner of the enhanced protection agreement. If the
4 enhanced protection agreement is not recorded on title or no actual
5 notice has been provided, the standards set forth in this chapter apply
6 to any nonoriginal homeowners' claims. A builder's election to use an
7 enhanced protection agreement addresses only the issues set forth in
8 section 4 of this act and does not constitute an election to use or not
9 use the provisions of section 7 of this act. The decision to use or
10 not use section 7 of this act is governed by that section.

11 (2) A homeowner is obligated to follow all reasonable maintenance
12 obligations and schedules communicated in writing to the homeowner by
13 the builder and product manufacturers, as well as commonly accepted
14 maintenance practices. A failure by a homeowner to follow these
15 obligations, schedules, and practices may subject the homeowner to the
16 affirmative defenses contained in section 7 of this act.

17 NEW SECTION. **Sec. 6.** As to fit and finish items, a builder must
18 provide a home buyer with a minimum one-year express written limited
19 warranty covering the fit and finish of the building components listed
20 in this subsection. This warranty must cover the fit and finish of
21 cabinets, mirrors, flooring, interior and exterior walls, countertops,
22 paint finishes, and trim, but does not apply to damage to those
23 components caused by defects in other components governed by the other
24 provisions of this chapter. Any fit and finish matters covered by this
25 warranty are not subject to the provisions of this chapter. If a
26 builder fails to provide the express warranty required by this section,
27 the warranty for these items is for a period of one year.

28 NEW SECTION. **Sec. 7.** (1) Prior to filing an action against any
29 party alleged to have contributed to a violation of the standards set
30 forth in section 4 of this act, the claimant must initiate the
31 following prelitigation procedures:

32 (a) The claimant or his or her legal representative must provide
33 written notice via certified mail, overnight mail, or personal delivery
34 to the builder, in the manner prescribed in this section, of the
35 claimant's claim that the construction of his or her residence violates
36 any of the standards set forth in section 4 of this act. That notice

1 must provide the claimant's name, address, and preferred method of
2 contact, and must state that the claimant alleges a violation against
3 the builder, and must describe the claim in reasonable detail
4 sufficient to determine the nature and location, to the extent known,
5 of the claimed violation. In the case of a group of homeowners or an
6 association, the notice may identify the claimants solely by address or
7 other description sufficient to apprise the builder of the locations of
8 the subject residences. That document must have the same force and
9 effect as a notice of commencement of a legal proceeding.

10 (b) The notice requirements of this section do not preclude a
11 homeowner from seeking redress through any applicable normal customer
12 service procedure as set forth in any contractual, warranty, or other
13 builder-generated document. However, if a homeowner seeks to do so,
14 that request does not satisfy the notice requirements of this section.

15 (2) Upon receipt of the written notice required under subsection
16 (1)(a) of this section, a builder must do all of the following:

17 (a) Within thirty days of a written request by a homeowner or his
18 or her legal representative, the builder must provide copies of all
19 relevant plans, specifications, mass or rough grading plans, final
20 soils reports, and available engineering calculations that pertain to
21 a homeowner's residence specifically or as part of a larger development
22 tract. The request must be honored if it states that it is made
23 relative to structural, fire safety, or soils provisions of this
24 chapter. However, a builder is not obligated to provide a copying
25 service, and reasonable copying costs must be borne by the requesting
26 party. A builder may require that the documents be copied on-site by
27 the requesting party, except that the homeowner may, at his or her
28 option, use his or her own copying service, which may include an off-
29 site copy facility that is bonded and insured. If a builder can show
30 that the builder maintained the documents, but that they later became
31 unavailable due to loss or destruction that was not the fault of the
32 builder, the builder may be excused from the requirements of this
33 subsection, in which case the builder must act with reasonable
34 diligence to assist the homeowner in obtaining those documents from any
35 applicable government authority or from the source that generated the
36 document. However, in that case, the time limits specified by this
37 section do not apply.

1 (b) At the expense of the homeowner, who may opt to use an off-site
2 copy facility that is bonded and insured, the builder must provide to
3 the homeowner or his or her legal representative copies of all
4 maintenance and preventive maintenance recommendations that pertain to
5 his or her residence within thirty days of service of a written request
6 for those documents. Those documents must also be provided to the
7 homeowner in conjunction with the initial sale of the residence.

8 (c) At the expense of the homeowner, who may opt to use an off-site
9 copy facility that is bonded and insured, a builder must provide to the
10 homeowner or his or her legal representative copies of all manufactured
11 products maintenance, preventive maintenance, and limited warranty
12 information within thirty days of a written request for those
13 documents. These documents must also be provided to the homeowner in
14 conjunction with the initial sale of the residence.

15 (d) At the expense of the homeowner, who may opt to use an off-site
16 copy facility that is bonded and insured, a builder must provide to the
17 homeowner or his or her legal representative copies of all of the
18 builder's limited contractual warranties in accordance with this
19 chapter in effect at the time of the original sale of the residence
20 within thirty days of a written request for those documents. Those
21 documents must also be provided to the homeowner in conjunction with
22 the initial sale of the residence.

23 (e) A builder must maintain the name and address of an agent for
24 notice under this chapter with the secretary of state or,
25 alternatively, elect to use a third party for that notice if the
26 builder has notified the homeowner in writing of the third party's name
27 and address, to whom claims and requests for information under this
28 section may be mailed. The name and address of the agent for notice or
29 third party must be included with the original sales documentation and
30 must be initialed and acknowledged by the purchaser and the builder's
31 sales representative. This subsection applies to instances in which a
32 builder contracts with a third party to accept claims and act on the
33 builder's behalf. A builder must give actual notice to the homeowner
34 that the builder has made such an election, and must include the name
35 and address of the third party.

36 (f) A builder must record on title a notice of the existence of the
37 procedures under this section and a notice that these procedures impact
38 the legal rights of the homeowner. This information must also be

1 included with the original sales documentation and must be initialed
2 and acknowledged by the purchaser and the builder's sales
3 representative.

4 (g) A builder must provide with the original sales documentation a
5 written copy of this section which must be initialed and acknowledged
6 by the purchaser and the builder's sales representative.

7 (h) As to any documents provided in conjunction with the original
8 sale, the builder must instruct the original purchaser to provide those
9 documents to any subsequent purchaser.

10 (i) Any builder who fails to comply with any of the requirements
11 under this section within the time specified is not entitled to the
12 protection of this chapter, and the homeowner is released from the
13 requirements of this chapter and may proceed with the filing of an
14 action, in which case the remaining sections of this chapter continue
15 to apply to the action.

16 (3) A builder or his or her representative must acknowledge, in
17 writing, receipt of the notice of the claim within fourteen days after
18 receipt of the notice of the claim. If the notice of the claim is
19 served by the claimant's legal representative, or if the builder
20 receives a written representation letter from a homeowner's attorney,
21 the builder must include the attorney in all subsequent substantive
22 communications, including, without limitation, all written
23 communications occurring under this chapter, and all substantive and
24 procedural communications, including all written communications,
25 following the commencement of any subsequent complaint or other legal
26 action, except that if the builder has retained or involved legal
27 counsel to assist the builder in this process, all communications by
28 the builder's counsel may only be with the claimant's legal
29 representative, if any.

30 (4) This section establishes a nonadversarial procedure, including
31 the remedies available under this section which, if the procedure does
32 not resolve the dispute between the parties, may result in a subsequent
33 action to enforce the other sections of this chapter. A builder may
34 attempt to commence nonadversarial contractual provisions other than
35 the nonadversarial procedures and remedies set forth in this section,
36 but may not, in addition to its own nonadversarial contractual
37 provisions, require adherence to the nonadversarial procedures and
38 remedies set forth in this section, regardless of whether the builder's

1 own alternative nonadversarial contractual provisions are successful in
2 resolving the dispute or ultimately deemed enforceable. At the time
3 the sales agreement is executed, the builder must notify the homeowner
4 whether the builder intends to engage in the nonadversarial procedure
5 of this section or attempt to enforce alternative nonadversarial
6 contractual provisions. If the builder elects to use alternative
7 nonadversarial contractual provisions in lieu of this section, the
8 election is binding, regardless of whether the builder's alternative
9 nonadversarial contractual provisions are successful in resolving the
10 ultimate dispute or are ultimately deemed enforceable.

11 (5) If a builder fails to acknowledge receipt of the notice of a
12 claim within the time specified, elects not to go through the process
13 set forth in this section, or fails to request an inspection within the
14 time specified, or at the conclusion or cessation of an alternative
15 nonadversarial proceeding, this section does not apply and the
16 homeowner is released from the requirements of this section and may
17 proceed with the filing of an action. However, the standards set forth
18 in the other sections of this chapter may continue to apply to the
19 action.

20 (6)(a) If a builder elects to inspect the claimed unmet standards,
21 the builder must complete the initial inspection and testing within
22 fourteen days after acknowledgment of receipt of the notice of the
23 claim, at a mutually convenient date and time. If the homeowner has
24 retained legal representation, the inspection must be scheduled with
25 the legal representative's office at a mutually convenient date and
26 time, unless the legal representative is unavailable during the
27 relevant time periods. All costs of builder inspection and testing,
28 including any damage caused by the builder inspection, must be borne by
29 the builder. The builder must also provide written proof that the
30 builder has liability insurance to cover any damages or injuries
31 occurring during inspection and testing. The builder must restore the
32 property to its pretesting condition within forty-eight hours of the
33 testing. The builder must, upon request, allow the inspections to be
34 observed and electronically recorded, videotaped, or photographed by
35 the claimant or his or her legal representative.

36 (b) Nothing that occurs during a builder's or claimant's inspection
37 or testing may be used or introduced as evidence to support a
38 spoliation defense by any potential party in any subsequent litigation.

1 (c) If a builder deems a second inspection or testing reasonably
2 necessary, and specifies the reasons therefor in writing within three
3 days following the initial inspection, the builder may conduct a second
4 inspection or testing. A second inspection or testing must be
5 completed within forty days of the initial inspection or testing. All
6 requirements concerning the initial inspection or testing must also
7 apply to the second inspection or testing.

8 (d) If the builder fails to inspect or test the property within the
9 time specified, the claimant is released from the requirements of this
10 section and may proceed with the filing of an action. However, the
11 other standards set forth in this chapter continue to apply to the
12 action.

13 (e) If a builder intends to hold a subcontractor, design
14 professional, individual product manufacturer, or material supplier,
15 including an insurance carrier, warranty company, or service company,
16 responsible for its contribution to the unmet standard, the builder
17 must provide notice to that person or entity sufficiently in advance to
18 allow them to attend the initial or, if requested, second inspection of
19 any alleged unmet standard and to participate in the repair process.
20 The claimant and his or her legal representative, if any, must be
21 advised in a reasonable time prior to the inspection as to the identity
22 of all persons or entities invited to attend. This subsection does not
23 apply to the builder's insurance company. Except with respect to any
24 claims involving a repair actually conducted under this section, this
25 subsection does not relieve a subcontractor, design professional,
26 individual product manufacturer, or material supplier of any liability
27 under an action brought by a claimant.

28 (7) Within thirty days of the initial or, if requested, second
29 inspection or testing, the builder may offer in writing to repair the
30 violation. The offer to repair must also compensate the homeowner for
31 all applicable damages recoverable under section 8(4) of this act,
32 within the time frame for the repair set forth in this section. An
33 offer under this subsection must be accompanied by a detailed,
34 specific, step-by-step statement identifying the particular violation
35 that is being repaired, explaining the nature, scope, and location of
36 the repair, and setting a reasonable completion date for the repair.
37 The offer must also include the names, addresses, telephone numbers,
38 and license numbers of the contractors whom the builder intends to have

1 perform the repair. Those contractors must be fully insured, and are
2 responsible, for all damages or injuries that they may cause to occur
3 during the repair, and evidence of that insurance must be provided to
4 the homeowner upon request. Upon written request by the homeowner or
5 his or her legal representative, and within the time frame set forth in
6 this section, the builder must also provide any available technical
7 documentation, including, without limitation, plans and specifications
8 pertaining to the claimed violation within the particular home or
9 development tract. The offer must also advise the homeowner in writing
10 of his or her right to request up to three additional contractors from
11 which to select to do the repair under this section.

12 (8) Upon receipt of the offer to repair, the homeowner has thirty
13 days to authorize the builder to proceed with the repair. The
14 homeowner may alternatively request, at the homeowner's option and
15 discretion, that the builder provide the names, addresses, telephone
16 numbers, and license numbers for up to three alternative contractors
17 who are not owned or financially controlled by the builder and who
18 regularly conduct business in the county where the structure is
19 located. If the homeowner so elects, the builder is entitled to an
20 additional noninvasive inspection, to occur at a mutually convenient
21 date and time within twenty days of the election, so as to permit the
22 other proposed contractors to review the proposed site of the repair.
23 Within thirty-five days after the request of the homeowner for
24 alternative contractors, the builder must present the homeowner with a
25 choice of contractors. Within twenty days after that presentation, the
26 homeowner must authorize the builder or one of the alternative
27 contractors to perform the repair.

28 (9) The offer to repair must be accompanied by an offer to mediate
29 the dispute if the homeowner so requests. The mediation is limited to
30 a four-hour mediation, except as otherwise mutually agreed before a
31 nonaffiliated mediator selected and paid for by the builder. At the
32 homeowner's option, the homeowner may agree to split the cost of the
33 mediator, and if he or she does so, the mediator is selected jointly.
34 The mediation must occur within fifteen days after the request to
35 mediate is received and occur at a mutually convenient location within
36 the county where the action is pending. If a builder has made an offer
37 to repair a violation, and the mediation has failed to resolve the

1 dispute, the homeowner must allow the repair to be performed either by
2 the builder, its contractor, or the selected contractor.

3 (10) If the builder fails to make an offer to repair or otherwise
4 strictly comply with this section within the time specified, the
5 claimant is released from the requirements of this section and may
6 proceed with the filing of an action. If the contractor performing the
7 repair does not complete the repair in the time or manner specified,
8 the claimant may file an action. If this occurs, the other standards
9 set forth in this chapter continue to apply to the action.

10 (11)(a) In the event that a resolution under this section involves
11 a repair by the builder, the builder must make an appointment with the
12 claimant, make all appropriate arrangements to effectuate a repair of
13 the claimed unmet standards, and compensate the homeowner for all
14 damages resulting therefrom free of charge to the claimant. The repair
15 must be scheduled through the claimant's legal representative, if any,
16 unless he or she is unavailable during the relevant time periods. The
17 repair must be commenced on a mutually convenient date within fourteen
18 days of acceptance or, if an alternative contractor is selected by the
19 homeowner, within fourteen days of the selection, or, if a mediation
20 occurs, within seven days of the mediation, or within five days after
21 a permit is obtained if one is required. The builder must act with
22 reasonable diligence in obtaining the permit.

23 (b) The builder must ensure that work done on the repairs is done
24 with the utmost diligence, and that the repairs are completed as soon
25 as reasonably possible. Every effort must be made to complete the
26 repair within one hundred twenty days of its commencement.

27 (12) The builder must, upon request, allow the repair to be
28 observed and electronically recorded, videotaped, or photographed by
29 the claimant or his or her legal representative. Nothing that occurs
30 during the repair process may be used or introduced as evidence to
31 support a spoliation defense by any potential party in any subsequent
32 litigation.

33 (13) The builder must provide the homeowner or his or her legal
34 representative, upon request, with copies of all correspondence,
35 photographs, and other materials pertaining or relating in any manner
36 to the repairs.

37 (14) If the builder elects to repair some, but not all, of the
38 claimed unmet standards, the builder shall, at the same time it makes

1 its offer, set forth with particularity in writing the reasons, and the
2 support for those reasons, for not repairing all claimed unmet
3 standards.

4 (15) If the builder fails to complete the repair within the time
5 specified in the repair plan, the claimant is released from the
6 requirements of this section and may proceed with the filing of an
7 action. If this occurs, the other standards set forth in this chapter
8 continue to apply to the action.

9 (16) The builder may not obtain a release or waiver of any kind in
10 exchange for the repair work mandated by this chapter. At the
11 conclusion of the repair, the claimant may proceed with filing an
12 action for violation of the applicable standard or for a claim of
13 inadequate repair, or both, including all applicable damages available
14 under section 8(4) of this act.

15 (17) If the applicable statute of limitations has otherwise run
16 during this process, the time period for filing a complaint or other
17 legal remedies for violation of any provision of this chapter, or for
18 a claim of inadequate repair, is extended from the time of the original
19 claim by the claimant to one hundred days after the repair is
20 completed, whether or not the particular violation is the one being
21 repaired. If the builder fails to acknowledge the claim within the
22 time specified, elects not to go through this statutory process, or
23 fails to request an inspection within the time specified, the time
24 period for filing a complaint or other legal remedies for violation of
25 this chapter is extended from the time of the original claim by the
26 claimant to forty-five days after the time for responding to the notice
27 of claim has expired. If the builder elects to attempt to enforce its
28 own nonadversarial procedure in lieu of the procedure set forth in this
29 section, the time period for filing a complaint or other legal remedies
30 for violation of this chapter is extended from the time of the original
31 claim by the claimant to one hundred days after either the completion
32 of the builder's alternative nonadversarial procedure, or one hundred
33 days after the builder's alternative nonadversarial procedure is deemed
34 unenforceable, whichever is later.

35 (18) If the builder has invoked this section and completed a
36 repair, prior to filing an action, if there has been no previous
37 mediation between the parties, the homeowner or his or her legal
38 representative must request mediation in writing. The mediation must

1 be limited to four hours, except as otherwise mutually agreed before a
2 nonaffiliated mediator selected and paid for by the builder. At the
3 homeowner's option, the homeowner may agree to split the cost of the
4 mediator and if he or she does so, the mediator is selected jointly.
5 The mediation must occur within fifteen days after the request for
6 mediation is received and must occur at a mutually convenient location
7 within the county where the action is pending. In the event that a
8 mediation is used at this point, any applicable statutes of limitations
9 are tolled from the date of the request to mediate until the next court
10 day after the mediation is completed, or the one hundred day period,
11 whichever is later.

12 (19)(a) This chapter does not prohibit the builder from making only
13 a cash offer and no repair. In this situation, the homeowner is free
14 to accept the offer, or he or she may reject the offer and proceed with
15 the filing of an action. If the latter occurs, the other standards of
16 this chapter continue to apply to the action.

17 (b) The builder may obtain a reasonable release in exchange for the
18 cash payment. The builder may negotiate the terms and conditions of
19 any reasonable release in terms of scope and consideration in
20 conjunction with a cash payment under this section.

21 (20)(a) The time periods and all other requirements in this section
22 are to be strictly construed and, unless extended by the mutual
23 agreement of the parties in accordance with this section, govern the
24 rights and obligations under this chapter. If a builder fails to act
25 in accordance with this section within the time frames mandated, unless
26 extended by the mutual agreement of the parties as evidenced by a
27 postclaim written confirmation by the affected homeowner demonstrating
28 that he or she has knowingly and voluntarily extended the statutory
29 time frame, the claimant may proceed with filing an action. If this
30 occurs, the other standards of this chapter continue to apply to the
31 action.

32 (b) If the claimant does not conform with the requirements of this
33 section, the builder may bring a motion to stay any subsequent court
34 action or other proceeding until the requirements of this section have
35 been satisfied. The court, in its discretion, may award the prevailing
36 party on such a motion his or her attorneys' fees and costs in bringing
37 or opposing the motion.

1 (21) If a claim combines causes of action or damages not covered by
2 this chapter, including, without limitation, personal injuries, class
3 actions, other statutory remedies, or fraud-based claims, the claimed
4 unmet standards must be administered according to this chapter,
5 although evidence of the property in its unrepaired condition may be
6 introduced to support the respective elements of any such cause of
7 action. As to any fraud-based claim, if the fact that the property has
8 been repaired under this chapter is admissible, the trier of fact must
9 be informed that the repair was not voluntarily accepted by the
10 homeowner. As to any class action claims that address solely the
11 incorporation of a defective component into a residence, the named and
12 unnamed class members need not comply with this section.

13 (22) Subsequently discovered claims of unmet standards must be
14 administered separately under this section, unless otherwise agreed to
15 by the parties. However, if the subsequently discovered claim is for
16 a violation of the same standard as that which has already been
17 initiated by the same claimant and the subject of a currently pending
18 action, the claimant need not reinitiate the process as to the same
19 standard.

20 (23) If any enforcement of the standards under this chapter is
21 commenced, the fact that a repair effort was made may be introduced to
22 the trier of fact. However, the claimant may use the condition of the
23 property prior to the repair as the basis for contending that the
24 repair work was inappropriate, inadequate, or incomplete, or that the
25 violation still exists. The claimant need not show that the repair
26 work resulted in further damage nor that damage has continued to occur
27 as a result of the violation.

28 (24) Evidence of both parties' conduct during this process may be
29 introduced during a subsequent enforcement action, if any, with the
30 exception of any mediation. Any repair efforts undertaken by the
31 builder are not settlement communications or offers of settlement and
32 are not inadmissible in evidence on such a basis.

33 (25) This chapter applies to subcontractors, material suppliers,
34 individual product manufacturers, and design professionals to the
35 extent that the subcontractors, material suppliers, individual product
36 manufacturers, and design professionals caused, in whole or in part, a
37 violation of a particular standard as the result of a negligent act or
38 omission or a breach of contract. In addition to the affirmative

1 defenses set forth in section 8(5) of this act, a subcontractor,
2 material supplier, design professional, individual product
3 manufacturer, or other entity may also offer common law and contractual
4 defenses as applicable to any claimed violation of a standard. All
5 actions by a claimant or builder to enforce an express contract, or any
6 provision thereof, against a subcontractor, material supplier,
7 individual product manufacturer, or design professional is preserved.
8 This chapter does not modify the law pertaining to joint and several
9 liability for subcontractors, material suppliers, individual product
10 manufacturers, and design professionals that contribute to any specific
11 violation of this chapter. In addition, this section does not apply to
12 any subcontractor, material supplier, individual product manufacturer,
13 or design professional to which strict liability would apply.

14 NEW SECTION. **Sec. 8.** (1)(a) Except as specifically set forth in
15 this chapter, a claim or cause of action may not be brought under this
16 chapter more than ten years after the close of escrow on the first sale
17 of the home.

18 (b) As used in this section, "action" includes an action for
19 indemnity brought against a person arising out of that person's
20 performance or furnishing of services or materials referred to in this
21 chapter, except that a cross-complaint for indemnity may be filed in an
22 action which has been brought within the time period set forth in (a)
23 of this subsection.

24 (c) The limitation prescribed by this section may not be asserted
25 by way of defense by any person in actual possession or the control, as
26 owner, tenant, or otherwise, of such an improvement, at the time any
27 deficiency in the improvement constitutes the proximate cause for which
28 it is proposed to make a claim or bring an action.

29 (d) Existing statutory and decisional law regarding tolling of the
30 statute of limitations apply to the time periods for filing an action
31 or making a claim under this chapter, except that repairs made under
32 section 7(10) of this act do not extend the period for filing an
33 action, or restart the relevant time limitations. If a builder
34 arranges for a contractor to perform a repair under section 7(10) of
35 this act, as to the builder the time period for calculating the
36 relevant statute of limitation pertains to the substantial completion
37 of the original construction and not to the date of repairs under this

1 chapter. The time limitations established by this chapter do not apply
2 to any action by a claimant for a contract or express contractual
3 provision. Causes of action and damages to which this chapter does not
4 apply are not limited by this section. In order to make a claim for
5 violation of the standards set forth in section 4 of this act, a
6 homeowner need only demonstrate, in accordance with the applicable
7 evidentiary standard, that the home does not meet the applicable
8 standard, subject to the affirmative defenses set forth in this
9 section. No further showing of causation or damages is required to
10 meet the burden of proof regarding a violation of a standard set forth
11 in section 4 of this act, provided that the violation arises out of,
12 pertains to, or is related to, the original construction.

13 (2) Except as provided in this chapter, no other cause of action
14 for a claim covered by this chapter or for damages recoverable under
15 subsection (4) of this section is allowed. In addition to the rights
16 under this chapter, this chapter does not apply to any action by a
17 claimant to enforce a contract or express contractual provision, or any
18 action for fraud, personal injury, or violation of a statute. Damages
19 awarded for the items set forth in subsection (4) of this section in
20 such other cause of action must be reduced by the amounts recovered
21 under that subsection for violation of the standards set forth in this
22 chapter.

23 (3) The homeowner's right to the reasonable value of repairing any
24 nonconformity is limited to the repair costs, or the diminution in
25 current value of the home caused by the nonconformity, whichever is
26 less, subject to the personal use exception as developed under common
27 law.

28 (4) If a claim for damages is made under this chapter, the
29 homeowner is only entitled to damages for the reasonable value of
30 repairing any violation of the standards set forth in this chapter, the
31 reasonable cost of repairing any damages caused by the repair efforts,
32 the reasonable cost of repairing and rectifying any damages resulting
33 from the failure of the home to meet the standards, the reasonable cost
34 of removing and replacing any improper repair by the builder,
35 reasonable relocation and storage expenses, lost business income if the
36 home was used as a principal place of a business licensed to be
37 operated from the home, reasonable investigative costs for each

1 established violation, and all other costs or fees recoverable by
2 contract or statute.

3 (5)(a) The provisions, standards, rights, and obligations set forth
4 in this chapter are binding upon all original purchasers and their
5 successors-in-interest. For purposes of this chapter, homeowners'
6 associations subject to chapter 64.38 RCW are considered to be original
7 purchasers and have standing to enforce the provisions, standards,
8 rights, and obligations set forth in this chapter.

9 (b) A builder may be excused, in whole or in part, from any
10 obligation, damage, loss, or liability if the builder can demonstrate
11 any of the following affirmative defenses in response to a claimed
12 violation:

13 (i) To the extent it is caused by an unforeseen act of nature that
14 caused the structure not to meet the standard. For purposes of this
15 section, an "unforeseen act of nature" means a weather condition,
16 earthquake, or manmade event such as war, terrorism, or vandalism, in
17 excess of the design criteria expressed by the applicable building
18 codes, rules, regulations, and ordinances in effect at the time of
19 original construction;

20 (ii) To the extent it is caused by a homeowner's unreasonable
21 failure to minimize or prevent those damages in a timely manner,
22 including the failure of the homeowner to allow reasonable and timely
23 access for inspections and repairs under this chapter. This includes
24 the failure to give timely notice to the builder after discovery of a
25 violation, but does not include damages due to the untimely or
26 inadequate response of a builder to the homeowner's claim;

27 (iii) To the extent it is caused by the homeowner or his or her
28 agent, employee, subcontractor, independent contractor, or consultant
29 by virtue of their failure to follow the builder's or manufacturer's
30 recommendations, or commonly accepted homeowner maintenance
31 obligations. In order to rely upon this defense as it relates to a
32 builder's recommended maintenance schedule, the builder must show that
33 the homeowner had written notice of these schedules and recommendations
34 and that the recommendations and schedules were reasonable at the time
35 they were issued;

36 (iv) To the extent it is caused by the homeowner or his or her
37 agent's or an independent third party's alterations, ordinary wear and

1 tear, misuse, abuse, or neglect, or by the structure's use for
2 something other than its intended purpose;

3 (v) To the extent that the time period for filing actions bars the
4 claimed violation;

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

7 (vii) To the extent that the builder's repair was successful in
8 correcting the particular violation of the applicable standard; and

9 (viii) As to any causes of action to which this statute does not
10 apply, all applicable affirmative defenses are preserved.

11 NEW SECTION. **Sec. 9.** This chapter applies with respect to those
12 detached, single-family homes and appurtenant structures that are
13 subject to a close of escrow on the first sale of the home on or after
14 January 1, 2005.

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 64.50 RCW
16 to read as follows:

17 This chapter does not apply to those claims or causes of action
18 subject to sections 1 through 9 of this act.

19 **Sec. 11.** RCW 4.16.300 and 1986 c 305 s 703 are each amended to
20 read as follows:

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

31 (2) This section does not apply to those claims or causes of action
32 subject to sections 1 through 9 of this act.

33 **Sec. 12.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read
34 as follows:

1 (1) All claims or causes of action as set forth in RCW 4.16.300
2 shall accrue, and the applicable statute of limitation shall begin to
3 run only during the period within six years after substantial
4 completion of construction, or during the period within six years after
5 the termination of the services enumerated in RCW 4.16.300, whichever
6 is later. The phrase "substantial completion of construction" shall
7 mean the state of completion reached when an improvement upon real
8 property may be used or occupied for its intended use. Any cause of
9 action which has not accrued within six years after such substantial
10 completion of construction, or within six years after such termination
11 of services, whichever is later, shall be barred: PROVIDED, That this
12 limitation shall not be asserted as a defense by any owner, tenant or
13 other person in possession and control of the improvement at the time
14 such cause of action accrues. The limitations prescribed in this
15 section apply to all claims or causes of action as set forth in RCW
16 4.16.300 brought in the name or for the benefit of the state which are
17 made or commenced after June 11, 1986.

18 If a written notice is filed under RCW 64.50.020 within the time
19 prescribed for the filing of an action under this chapter, the period
20 of time during which the filing of an action is barred under RCW
21 64.50.020 plus sixty days shall not be a part of the period limited for
22 the commencement of an action, nor for the application of this section.

23 (2) This section does not apply to those claims or causes of action
24 subject to sections 1 through 9 of this act.

25 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act constitute
26 a new chapter in Title 19 RCW.

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