

SSB 5550 - S AMD
By Senator Weinstein

ADOPTED AS AMENDED 03/08/2007

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

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

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

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

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

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

19 (3) "Defect" means any violation or nonconformity with applicable
20 building codes, regulations, or permits that has an adverse effect or
21 will have an adverse effect on the new home or component of the new
22 home alleged to be in violation of the new home warranty. As used in
23 this subsection, an "adverse effect" must be more than technical and
24 must be significant to a reasonable person. To establish an adverse
25 effect, the person alleging the breach is not required to prove that
26 the breach renders the new home uninhabitable or unfit for its intended
27 purpose.

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

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

4 (6) "Load-bearing portions of the home" means the load-bearing
5 portions of the:

6 (a) Foundation system and footings;

7 (b) Beams;

8 (c) Girders;

9 (d) Lintels;

10 (e) Columns;

11 (f) Walls and partitions;

12 (g) Floor systems; and

13 (h) Roof framing systems.

14 (7)(a) "New home" means every newly constructed private dwelling
15 unit in the state and the appliances, fixtures, and items of equipment
16 and structure that are made a part of a newly constructed private
17 dwelling unit at the time of construction. Newly constructed private
18 dwelling units include substantial remodels. "Substantial remodel"
19 means a remodel of a residence, for which the total cost exceeds one-
20 half of the assessed value of the improvements for property tax
21 purposes at the time the contract for remodel was made.

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

23 (i) A condominium, as defined in RCW 64.34.020, used for
24 residential purposes, as defined in RCW 64.34.020;

25 (ii) A residential timeshare as defined in RCW 64.36.010;

26 (iii) A manufactured home or mobile home as defined in RCW
27 65.20.020;

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

32 (v) Driveways;

33 (vi) Walkways;

34 (vii) Boundary walls;

35 (viii) Retaining walls not necessary for the structural stability
36 of the new home;

37 (ix) Landscaping;

38 (x) Sprinkler or irrigation systems;

1 (xi) Fences;
2 (xii) Off-site improvements;
3 (xiii) Appurtenant recreational facilities; and
4 (xiv) Other similar items as determined by the director of the
5 department of labor and industries by rule.

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

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

11 (10) "Plumbing systems" means:

12 (a) Gas supply lines and fittings;

13 (b) Water supply, waste, and vent pipes and their fittings;

14 (c) Septic tanks and their drain fields; and

15 (d) Water, gas, and sewer service piping and their extensions to
16 the tie-in of a public utility connection, or on-site wells and sewage
17 disposal systems.

18 (11)(a) "Structural defect" means any defect in the load-bearing
19 portions of a new home that adversely affects its load-bearing function
20 to the extent that the home becomes or is in danger of becoming unsafe,
21 unsanitary, or otherwise not reasonably safely inhabitable.

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

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

27 (i) Resulting from a flood or earthquake; or

28 (ii) For which compensation has been provided.

29 (12) "Warranty date" means the first day on which the owner
30 occupies the new home, closes on the new home, makes the final contract
31 payment on the new home, or obtains an occupancy permit for the new
32 home if the home is built on the owner's property, whichever is
33 earlier.

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

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

3 (ii) For three years, beginning on the warranty date, the new home
4 is free from any defects in the electrical, plumbing, heating, cooling,
5 and ventilating systems, except that in the case of appliances,
6 fixtures, and items of equipment, the warranty need not exceed the
7 length and scope of the warranty offered by the manufacturer, and the
8 warranty of merchantability, fitness, and all other implied warranties
9 with respect to appliances, fixtures, and items of equipment shall be
10 governed by the Washington uniform commercial code;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) The warranty created by this section runs from the builder to
2 the owner. This warranty entitles the owner to recover from the
3 builder all costs associated with repairing the defects, including all
4 incidental and consequential damages. The liability of a builder under
5 the new home warranty shall be limited to the fair market value of the
6 home. Absence of privity of contract between the owner and the builder
7 is not a defense to the enforcement of this warranty.

8 (3) If the defect is the result of work performed by a
9 subcontractor, the builder has a right of contribution from that
10 subcontractor for amounts paid to the owner as a result of the new home
11 warranty.

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

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

27 (6) The new home warranty is a cumulative remedy, and shall not
28 have the effect of diminishing or replacing any other remedy or
29 warranty created by law or equity or agreement between the parties.

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

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

36 (9) All new homes must include in the purchase and sale agreement
37 between the builder and the buyer the following statement: "This home
38 was built in accordance with the statutory warranty set forth in

1 chapter 64.-- RCW (sections 1 and 2 of this act), which representation
2 and warranty may not be omitted, waived, or disclaimed in any way."
3 This subsection is intended to provide notice to owners of their rights
4 under the new home warranty created under sections 1 and 2 of this act
5 and is not intended to create a separate cause of action under this
6 act.

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

9 **Sec. 3.** RCW 4.16.300 and 2004 c 257 s 1 are each amended to read
10 as follows:

11 (1) Except as provided in subsection (2) of this section, RCW
12 4.16.300 through 4.16.320 shall apply to all claims or causes of action
13 of any kind against any person, arising from such person having
14 constructed, altered or repaired any improvement upon real property, or
15 having performed or furnished any design, planning, surveying,
16 architectural or construction or engineering services, or supervision
17 or observation of construction, or administration of construction
18 contracts for any construction, alteration or repair of any improvement
19 upon real property. This section is specifically intended to benefit
20 persons having performed work for which the persons must be registered
21 or licensed under RCW 18.08.310, 18.27.020, 18.43.040, 18.96.020, or
22 19.28.041, and shall not apply to claims or causes of action against
23 persons not required to be so registered or licensed.

24 (2) RCW 4.16.300 through 4.16.320 shall not apply to chapter 64.--
25 RCW (sections 1 and 2 of this act).

26 NEW SECTION. **Sec. 4.** (1) A committee on residential construction
27 is created. The committee consists of the following members who have
28 experience and expertise in residential construction law or residential
29 construction:

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

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

34 (c) The following eleven members jointly appointed by the speaker
35 of the house of representatives and the president of the senate:

1 (i) One builder of single-family homes, based upon the
2 recommendation of the statewide building industry association;

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

5 (iii) One residential construction plaintiff attorney with
6 experience representing homeowners in single-family construction defect
7 actions;

8 (iv) Three representatives of the Washington homeowners coalition;

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

10 (vi) One architect;

11 (vii) One representative of the statewide building industry
12 association;

13 (viii) One representative of the insurance industry; and

14 (ix) One expert in water penetration issues affecting residential
15 construction; and

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

18 (2) The committee shall:

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

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

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

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

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

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

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

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

9 (3) Staff support for the committee must be provided by senate
10 committee services and the house of representatives office of program
11 research.

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

14 (5) By December 31, 2007, the committee shall deliver to the
15 consumer protection and housing committee of the senate and the
16 judiciary committee of the house of representatives a report of the
17 findings and conclusions of the committee and any proposed legislation.

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

19 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act constitute a
20 new chapter in Title 64 RCW.

21 NEW SECTION. **Sec. 6.** Sections 1 and 2 of this act take effect
22 July 1, 2008."

SSB 5550 - S AMD
By Senator Weinstein

ADOPTED AS AMENDED 03/08/2007

23 On page 1, line 1 of the title, after "property;" strike the
24 remainder of the title and insert "amending RCW 4.16.300; adding a new
25 chapter to Title 64 RCW; creating a new section; providing an effective
26 date; and providing an expiration date."

EFFECT: (1) Under the definition of "defect," "unit or common element" is changed to "new home."

(2) The language relating to nonprofits is deleted.

(3) Under the purchase & sale agreement that the builder must provide to buyers, the language is clarified to state, "This home was built in accordance with the statutory warranty set forth in chapter 64.-- RCW (sections 1 and 2 of this act)..." in lieu of "This home was built in compliance with all applicable building codes." New language states, "This subsection is intended to provide notice to owners of their rights under the new home warranty created under sections 1 and 2 of this act and is not intended to create a separate cause of action under this act."

(4) No action against a builder under this act may be brought more than ten years after the warranty date.

(5) The committee on residential construction has 4 more members than the committee proposed by SSB 5550. It is clarified that the builder representative is appointed based upon the recommendation of the statewide building industry association. The other additional committee members include: Two more representatives from the Washington Homeowner's Coalition, one representative of the statewide building industry association, and one representative of the insurance industry.

--- END ---