
SENATE BILL 5046

State of Washington 60th Legislature 2007 Regular Session

By Senators Weinstein, Fairley, Regala, Oemig, Keiser, Fraser,
Jacobsen, McAuliffe, Kohl-Welles and Kline

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Protection & Housing.

1 AN ACT Relating to creating a cause of action for defects in
2 construction on a residence; and adding new sections to chapter 4.24
3 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
6 to read as follows:

7 (1) Any homeowner may file an action in tort against the builder,
8 general contractor, subcontractor, material supplier, individual
9 product manufacturer, or design professional to recover damages arising
10 out of, or related to deficiencies in, the construction, design,
11 specifications, surveying, planning, supervision, or testing of the
12 homeowner's residence. This act applies to original construction
13 intended to be sold as an individual dwelling unit as well as
14 remodeling construction on an existing residence. This act does not
15 apply to condominium conversions.

16 (2) Each of the persons listed in subsection (1) of this section
17 against whom the homeowner may file an action shall be liable for, and
18 the homeowner's claims or causes of action shall be limited to

1 violation of, the following standards, except as specifically set forth
2 in this act:

3 (a) With respect to water issues:

4 (i) Unintended water shall not pass beyond, around, or through a
5 door or its designed or actual moisture barriers, if any.

6 (ii) Water shall not pass beyond, around, or through windows, patio
7 doors, deck doors, and their systems or their designed or actual
8 moisture barriers, including, without limitation, internal barriers
9 within the systems themselves. For purposes of this subsection
10 (2)(a)(ii), "systems" includes, without limitation, windows, window
11 assemblies, framing, substrate, flashings, and trim, if any.

12 (iii) Excessive condensation shall not pass through windows, patio
13 doors, deck doors, and their systems to enter the structure and cause
14 damage to another component. For purposes of this subsection
15 (2)(a)(iii), "systems" includes, without limitation, windows, window
16 assemblies, framing, substrate, flashings, and trim, if any.

17 (iv) Roofs, roofing systems, chimney caps, and ventilation
18 components shall not allow water to enter the structure or to pass
19 beyond, around, or through the designed or actual moisture barriers,
20 including, without limitation, internal barriers located within the
21 systems themselves. For purposes of this subsection (2)(a)(iv),
22 "systems" includes, without limitation, framing, substrate, and
23 sheathing, if any.

24 (v) Water shall not pass into the adjacent structure through decks,
25 deck systems, balconies, balcony systems, exterior stairs, and stair
26 systems. For purposes of this subsection (2)(a)(v), "systems"
27 includes, without limitation, framing, substrate, flashing, and
28 sheathing, if any.

29 (vi) Decks, deck systems, balconies, balcony systems, exterior
30 stairs, and stair systems shall not allow unintended water to pass
31 within the systems themselves and cause damage to the systems. For
32 purposes of this subsection (2)(a)(vi), "systems" includes, without
33 limitation, framing, substrate, flashing, and sheathing, if any.

34 (vii) Water or vapor shall not enter into the structure so as to
35 cause damage to another building component through the foundation
36 systems and slabs.

37 (viii) Foundation systems and slabs shall not allow water or vapor

1 to enter into the structure so as to limit the installation of the type
2 of flooring materials typically used for the particular application.

3 (ix) Hardscape, including paths and patios, irrigation systems,
4 landscaping systems, and drainage systems, that are installed as part
5 of the original construction, shall not be installed in such a way as
6 to cause water or soil erosion to enter into or come in contact with
7 the structure so as to cause damage to another building component.

8 (x) Stucco, exterior siding, exterior walls, including, without
9 limitation, exterior framing, and other exterior wall finishes and
10 fixtures and the systems of those components and fixtures, including,
11 but not limited to, pot shelves, horizontal surfaces, columns, and
12 plant-ons, shall be installed in such a way so as not to allow
13 unintended water to pass into the structure or to pass beyond, around,
14 or through the designed or actual moisture barriers of the system,
15 including any internal barriers located within the system itself. For
16 purposes of this subsection (2)(a)(x), "systems" includes, without
17 limitation, framing, substrate, flashings, trim, wall assemblies, and
18 internal wall cavities, if any.

19 (xi) Stucco, exterior siding, and exterior walls shall be
20 constructed in such a way as to not allow excessive condensation to
21 enter the structure and cause damage to another component. For
22 purposes of this subsection (2)(a)(xi), "systems" includes, without
23 limitation, framing, substrate, flashings, trim, wall assemblies, and
24 internal wall cavities, if any.

25 (xii) Retaining walls and site walls and their associated drainage
26 systems shall be constructed in such a way so as to not allow
27 unintended water to pass beyond, around, or through their designed or
28 actual moisture barriers including, without limitation, any internal
29 barriers, so as to cause damage. This standard does not apply to those
30 portions of any wall or drainage system that are designed to have water
31 flow beyond, around, or through them.

32 (xiii) Retaining walls and site walls, and their associated
33 drainage systems, shall only allow water to flow beyond, around, or
34 through the areas designated by design.

35 (xiv) The lines and components of the plumbing system, sewer
36 system, and utility systems shall not leak.

37 (xv) Plumbing lines, sewer lines, and utility lines shall not
38 corrode so as to impede the useful life of the systems.

1 (xvi) Sewer systems shall be installed in such a way as to allow
2 the designated amount of sewage to flow through the system.

3 (xvii) Shower and bath enclosures shall not leak water into the
4 interior of walls, flooring systems, or the interior of other
5 components.

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

9 (b) With respect to structural issues:

10 (i) Foundations, load-bearing components, and slabs, shall not
11 contain significant cracks or significant vertical displacement.

12 (ii) Foundations, load-bearing components, and slabs shall not
13 cause the structure, in whole or in part, to be structurally unsafe.

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

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

23 (c) With respect to soil issues:

24 (i) Soils and engineered retaining walls shall not cause, in whole
25 or in part, damage to the structure built upon the soil or engineered
26 retaining wall.

27 (ii) Soils and engineered retaining walls shall not cause, in whole
28 or in part, the structure to be structurally unsafe.

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

33 (d) With respect to fire protection issues:

34 (i) A structure shall be constructed so as to materially comply
35 with the design criteria of the applicable government building codes,
36 regulations, and ordinances for fire protection of the occupants in
37 effect at the time of the original construction.

1 (ii) Fireplaces, chimneys, chimney structures, and chimney
2 termination caps shall be constructed and installed in such a way so as
3 not to cause an unreasonable risk of fire outside the fireplace
4 enclosure or chimney.

5 (iii) Electrical and mechanical systems shall be constructed and
6 installed in such a way so as not to cause an unreasonable risk of
7 fire.

8 (e) With respect to plumbing and sewer issues: Plumbing and sewer
9 systems shall be installed to operate properly and shall not materially
10 impair the use of the structure by its inhabitants.

11 (f) With respect to electrical system issues: Electrical systems
12 shall operate properly and shall not materially impair the use of the
13 structure by its inhabitants.

14 (g) With respect to issues regarding other areas of construction:

15 (i) Exterior pathways, driveways, hardscape, sidewalls, sidewalks,
16 and patios installed by the original builder shall not contain cracks
17 that display significant vertical displacement or that are excessive by
18 industry standards.

19 (ii) Stucco, exterior siding, and other exterior wall finishes and
20 fixtures, including, but not limited to, pot shelves, horizontal
21 surfaces, columns, and plant-ons, shall not contain significant cracks
22 or separations.

23 (iii)(A) To the extent not otherwise covered by the standards
24 listed in this subsection (2)(g), manufactured products, including, but
25 not limited to, windows, doors, roofs, plumbing products and fixtures,
26 fireplaces, electrical fixtures, HVAC units, countertops, cabinets,
27 paint, and appliances shall be installed so as not to interfere with
28 the products' useful life, if any.

29 (B) For purposes of (g)(iii)(A) of this subsection, "useful life"
30 means a representation of how long a product is warranted or
31 represented, through its limited warranty or any written
32 representations, to last by its manufacturer, including recommended or
33 required maintenance. If there is no representation by a manufacturer,
34 a builder shall install manufactured products so as not to interfere
35 with the product's utility.

36 (C) For purposes of (g)(iii)(B) of this subsection, "manufactured
37 product" means a product that is completely manufactured off-site.

1 (D) If no useful life representation is made, or if the
2 representation is less than one year, the period shall be no less than
3 one year. If a manufactured product is damaged as a result of a
4 violation of these standards, damage to the product is a recoverable
5 element of damages. This subsection (2)(g)(iii)(D) does not limit
6 recovery if there has been damage to another building component caused
7 by a manufactured product during the manufactured product's useful
8 life.

9 (E) This act does not apply in any action seeking recovery solely
10 for a defect in a manufactured product located within or adjacent to a
11 structure.

12 (3) Heating, if any, shall be installed so as to be capable of
13 maintaining a room temperature of seventy degrees Fahrenheit at a point
14 three feet above the floor in all living spaces.

15 (4) Attached structures shall be constructed to comply with
16 interunit noise transmission standards set by the applicable government
17 building codes, ordinances, or regulations in effect at the time of the
18 original construction. If there is no applicable code, ordinance, or
19 regulation, this subsection does not apply.

20 (5) Irrigation systems and drainage shall operate properly so as
21 not to damage landscaping or other external improvements.

22 (6) Untreated wood posts shall not be installed in contact with
23 soil so as to cause unreasonable decay to the wood based upon the
24 finish grade at the time of original construction.

25 (7) Untreated steel fences and adjacent components shall be
26 installed so as to prevent unreasonable corrosion.

27 (8) Paint and stains shall be applied in such a manner so as not to
28 cause deterioration of the building surfaces for the length of time
29 specified by the paint or stain manufacturers' representations, if any.

30 (9) Roofing materials shall be installed so as to avoid materials
31 falling from the roof.

32 (10) The landscaping systems shall be installed in such a manner so
33 as to survive for not less than one year.

34 (11) Ceramic tile and tile backing shall be installed in such a
35 manner that the tile does not detach when subject to normal wear and
36 tear.

37 (12) Dryer ducts shall be installed and terminated pursuant to
38 manufacturer installation requirements.

1 (13) Structures shall be constructed in such a manner so as not to
2 impair the occupants' safety because they contain public health hazards
3 as determined by a duly authorized public health official, health
4 agency, or governmental entity having jurisdiction. This subsection
5 does not limit recovery for any damages caused by a violation of any
6 other subsection of this section on the grounds that the damages do not
7 constitute a health hazard.

8 (14) The standards set forth in this act are intended to address
9 every function or component of a structure. To the extent that a
10 function or component of a structure is not addressed by these
11 standards, it shall be actionable if it causes damage.

12 (15) Notwithstanding the standards listed in this act, the
13 violation of any applicable government building code by any of the
14 persons listed in subsection (1) of this section shall establish a
15 prima facie case of negligence.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW
17 to read as follows:

18 Privity of contract is not necessary to maintain an action for
19 damages under this act.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
21 to read as follows:

22 No action for damages under this act shall be maintained unless it
23 is commenced within four years of the date the claimant discovered, or
24 with reasonable diligence should have discovered, that a standard
25 listed in section 1 of this act was not followed.

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