

2SSB 5895 - S AMD 166

By Senators Holmquist and King

NOT ADOPTED 3/11/2009

Strike everything after the enacting clause and insert the following:

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**"PART 1. NOTICE AND RIGHT TO CURE**

**Sec. 1.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and 64.38.010(1).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in \*RCW 64.34.020(12) and a declarant as defined in \*RCW 64.34.020(13), performing or furnishing the design, supervision, inspection,

1 construction, or observation of the construction of any improvement to  
2 real property, whether operating as a sole proprietor, partnership,  
3 corporation, or other business entity.

4 (5) "Homeowner" means: (a) Any person, company, firm,  
5 partnership, corporation, or association who contracts with a  
6 construction professional for the construction, sale, or construction  
7 and sale of a residence; and (b) an "association" as defined in this  
8 section. "Homeowner" includes, but is not limited to, a subsequent  
9 purchaser of a residence from any homeowner.

10 (6) "Residential construction board claim" means a claim of  
11 construction defect for a residence for which either the claimant or  
12 the construction professional in good faith believes can be remedied  
13 for a total cost of fifty thousand dollars or less.

14 (7) "Residence" means a single-family house, duplex, triplex,  
15 quadraplex, or a unit in a multiunit residential structure in which  
16 title to each individual unit is transferred to the owner under a  
17 condominium or cooperative system, and shall include common elements  
18 as defined in RCW 64.34.020(6) and common areas as defined in RCW  
19 64.38.010(4).

20 ~~((+7))~~ (8) "Response notice" means a written response provided by  
21 a construction professional pursuant to RCW 64.50.020(2).

22 (9) "Serve" or "service" means personal service or delivery by  
23 certified mail to the last known address of the addressee.

24 ~~((+8))~~ (10) "Substantial remodel" means a remodel of a residence,  
25 for which the total cost exceeds one-half of the assessed value of the  
26 residence for property tax purposes at the time the contract for the  
27 remodel work was made.

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30 **Sec. 2.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to read  
31 as follows:

32 (1) In every construction defect action brought against a  
33 construction professional, the claimant shall, no later than forty-  
34 five days before filing an action, serve written notice of claim on

1 the construction professional. The notice of claim shall state that  
2 the claimant asserts a construction defect claim against the  
3 construction professional and shall describe the claim in reasonable  
4 detail sufficient to determine the general nature of the defect.

5 (2) Within twenty-one days after service of the notice of claim,  
6 the construction professional shall serve a written response notice on  
7 the claimant by registered mail or personal service. The written  
8 response notice shall:

9 (a) Propose to inspect the residence that is the subject of the  
10 claim, including a description of the scope of the inspection, and to  
11 complete the inspection within a specified time frame. The proposal  
12 shall include the statement that the construction professional shall,  
13 based on the inspection, offer to remedy the defect, compromise by  
14 payment, or dispute the claim;

15 (b) Offer to compromise and settle the claim by monetary payment  
16 without inspection. A construction professional's offer under this  
17 subsection (2)(b) to compromise and settle a homeowner's claim may  
18 include, but is not limited to, an express offer to purchase the  
19 claimant's residence that is the subject of the claim, and to pay the  
20 claimant's reasonable relocation costs; or

21 (c) State that the construction professional disputes the claim  
22 and will neither remedy the construction defect nor compromise and  
23 settle the claim.

24 (3)(a) If the construction professional disputes the claim or does  
25 not respond to the claimant's notice of claim within the time stated  
26 in subsection (2) of this section, the claimant may bring an action  
27 against the construction professional for the claim described in the  
28 notice of claim without further notice.

29 (b) If the claimant rejects the (~~inspection proposal or the~~)  
30 settlement offer made by the construction professional pursuant to  
31 subsection (2) of this section, the claimant shall serve written  
32 notice of the claimant's rejection on the construction professional.  
33 After service of the rejection, the claimant may bring an action  
34 against the construction professional for the construction defect

1 claim described in the notice of claim. If the construction  
2 professional has not received from the claimant, within thirty days  
3 after the claimant's receipt of the construction professional's  
4 response, either an acceptance or rejection of the (~~inspection~~  
5 ~~proposal~~~~or~~) settlement offer, then at anytime thereafter the  
6 construction professional may terminate the (~~proposal~~~~or~~) offer by  
7 serving written notice to the claimant, and the claimant may  
8 thereafter bring an action against the construction professional for  
9 the construction defect claim described in the notice of claim.

10 (4)(a) If the (~~claimant elects to allow the~~) construction  
11 professional proposes to inspect (~~in accordance with the construction~~  
12 ~~professional's proposal~~) pursuant to subsection (2)(a) of this  
13 section, the claimant shall provide the construction professional and  
14 its contractors or other agents reasonable access to the claimant's  
15 residence during normal working hours to inspect the premises and the  
16 claimed defect.

17 (b) Whether conducted by a third party inspector or the  
18 construction professional, the person conducting the inspection shall  
19 produce a written report which shall describe the scope of the  
20 inspection, the findings and results of the inspection, a description  
21 of the additional construction necessary to remedy the defect  
22 described in the claim, a timetable for the completion of such  
23 construction, and an estimate of the costs of repair.

24 (c) Within fourteen days following completion of the inspection  
25 and delivery of the inspection report, the construction professional  
26 shall serve on the claimant:

27 (i) A written offer to remedy the construction defect at no cost  
28 to the claimant(~~(, including a report of the scope of the inspection,~~  
29 ~~the findings and results of the inspection, a description of the~~  
30 ~~additional construction necessary to remedy the defect described in~~  
31 ~~the claim, and a timetable for the completion of such construction));~~

32 (ii) A written offer to compromise and settle the claim by  
33 monetary payment pursuant to subsection (2)(b) of this section; or  
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1 (iii) A written statement that the construction professional will  
2 not proceed further to remedy the defect.

3 ~~((e))~~ (d) If the construction professional does not proceed  
4 further to remedy the construction defect within the agreed timetable,  
5 or if the construction professional fails to comply with the  
6 provisions of ~~((b))~~ (c) of this subsection, the claimant may bring  
7 an action against the construction professional for the claim  
8 described in the notice of claim without further notice.

9 ~~((d))~~ (e) If the claimant rejects the offer made by the  
10 construction professional pursuant to ~~((b))~~(c)(i) or (ii) of this  
11 subsection to either remedy the construction defect or to compromise  
12 and settle the claim by monetary payment, the claimant shall serve  
13 written notice of the claimant's rejection on the construction  
14 professional.

15 (f) For claims that are not residential construction board claims,  
16 after service of the rejection notice pursuant to subsection (e) of  
17 this subsection (4), the claimant may bring an action against the  
18 construction professional for the construction defect claim described  
19 in the notice of claim. For claims that are not residential  
20 construction board claims, if the construction professional has not  
21 received from the claimant, within thirty days after the claimant's  
22 receipt of the construction professional's response, either an  
23 acceptance or rejection of the offer made pursuant to ~~((b))~~(c)(i) or  
24 (ii) of this subsection, then at anytime thereafter the construction  
25 professional may terminate the offer by serving written notice to the  
26 claimant.

27 (5)(a) Any claimant accepting the offer of a construction  
28 professional to remedy the construction defect pursuant to subsection  
29 (4)~~((b))~~(c)(i) of this section shall do so by serving the  
30 construction professional with a written notice of acceptance within a  
31 reasonable time period after receipt of the offer, and no later than  
32 thirty days after receipt of the offer. The claimant shall provide  
33 the construction professional and its contractors or other agents  
34 reasonable access to the claimant's residence during normal working

1 hours to perform and complete the construction by the timetable stated  
2 in the offer.

3 (b) The claimant and construction professional may, by written  
4 mutual agreement, alter the extent of construction or the timetable  
5 for completion of construction stated in the offer, including, but not  
6 limited to, repair of additional defects.

7 (6) Any action commenced by a claimant prior to compliance with  
8 the requirements of this section shall be subject to dismissal without  
9 prejudice, and may not be recommenced until the claimant has complied  
10 with the requirements of this section.

11 (7) Nothing in this section may be construed to prevent a claimant  
12 from commencing an action on the construction defect claim described  
13 in the notice of claim if the construction professional fails to  
14 perform the construction agreed upon, fails to remedy the defect, or  
15 fails to perform by the timetable agreed upon pursuant to subsection  
16 (2)(a) or (5) of this section.

17 (8) Prior to commencing any action with a court or the residential  
18 construction board alleging a construction defect, or after the  
19 dismissal of any action without prejudice pursuant to subsection (6)  
20 of this section, the claimant may amend the notice of claim to include  
21 construction defects discovered after the service of the original  
22 notice of claim, and must otherwise comply with the requirements of  
23 this section for the additional claims. The service of an amended  
24 notice of claim shall relate back to the original notice of claim for  
25 purposes of tolling statutes of limitations and repose. Claims for  
26 defects discovered after the commencement or recommencement of an  
27 action may be added to such action only after providing notice to the  
28 construction professional of the defect and allowing for response  
29 under subsection (2) of this section.

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31 **PART II. RESIDENTIAL CONSTRUCTION BOARD & CONSUMER EDUCATION OFFICE**

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1        NEW SECTION. **Sec. 3.** For the purposes of sections 4 through 14  
2 of this act, the following definitions apply unless the context  
3 clearly requires otherwise:

4        (1) "Board" means the residential construction board created  
5 under section 4 of this act.

6        (2) "Contractor" means a person registered under chapter 18.27  
7 RCW who performed services for the construction, alteration or  
8 repair of a residence.

9        (3) "Defect" means a deficiency, an inadequacy or an  
10 insufficiency arising out of or relating to the construction,  
11 alteration or repair of a residence. "Defect" includes a  
12 deficiency, an inadequacy or an insufficiency in a system, component  
13 or material incorporated into a residence.

14        (4) "Mediator" means a person selected by the residential  
15 construction board to investigate defect complaints under this act.

16        (5) "Owner" means a person that possesses an interest in a  
17 residence or in land that is a residential site or has entered into  
18 a contract for the purchase of an interest in the residence or land.  
19 Owner includes, but is not limited to, a subsequent purchaser of a  
20 residence from any owner.

21        (6) "Residence" means a single-family house, duplex, triplex, or  
22 quadraplex.

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24        NEW SECTION. **Sec. 4.** A residential construction board is  
25 created in the office of the attorney general. The board shall  
26 consist of seven members, appointed by the governor. The governor  
27 shall appoint initial members of the board to staggered terms of  
28 from two to four years. Thereafter, all members shall be appointed  
29 to full four-year terms. Members of the board hold their office  
30 until successors are appointed. A vacancy shall be filled by  
31 appointment by the governor for the unexpired portion of the term in  
32 which the vacancy occurs. Existing members of the board may be re-  
33 appointed for additional terms. The board shall select from its  
34 members a chair person, vice chair person, and any other officer the

1 board determines is necessary to perform its duties. The board  
2 shall consist of:

3 (a) Three members possessing a minimum of ten years of  
4 experience in the construction of residences and directly, or as  
5 employees or officers of a firm, registered under chapter 18.27 RCW;

6 (b) One member possessing a minimum of ten years of experience  
7 in the remodeling of residences and directly, or as employees or  
8 officers of a firm, registered under chapter 18.27 RCW;

9 (c) One architect licensed under chapter 18.08 RCW or  
10 professional engineer registered under chapter 18.43 RCW;

11 (d) One building inspector employed by a city or county; and

12 (e) One member of the general public.  
13

14 NEW SECTION. **Sec. 5.** (1) The board shall form and manage a  
15 consumer education office whose duties shall include:

16 (a) Educating consumers about contracting for residential  
17 construction services, including the requirements of chapter 18.27  
18 RCW and methods available to protect themselves against loss;

19 (b) Producing written and electronic consumer education  
20 materials about contracting for residential construction services  
21 and legal resources available to consumers;

22 (c) Creating a pamphlet explaining a homeowner's legal rights  
23 and remedies and provide contractors and other construction  
24 professionals with a downloadable version of the brochure to attach  
25 to contracts for purchase and sale of new residential real property  
26 or the substantial remodel of existing residential real property.  
27 The office shall periodically update this pamphlet;

28 (d) Identifying and working collaboratively with agencies and  
29 organizations who are already engaged in consumer education efforts  
30 in the area of residential construction, such as the department of  
31 labor and industries, the department of licensing, local  
32 governments, the construction industry, financial institutions, and  
33 other interested organizations and individuals, to increase outreach  
34 to consumers;



1 (e) Sharing consumer education materials with and serve as a  
2 resource for agencies and organizations who are already engaged in  
3 consumer education;

4 (f) Developing a uniform manner of receiving, cataloging,  
5 analyzing, and responding to consumer complaints about residential  
6 construction;

7 (g) Identifying which agencies and organizations are already  
8 receiving complaints and coordinate with them to ensure that all  
9 agencies and organizations are requesting the same information from  
10 complaining consumers and that all consumers are referred to the  
11 office;

12 (h) Entering into data-sharing agreements with the department of  
13 labor and industries, local governments, and other agencies with  
14 enforcement duties in residential construction to increase  
15 assistance to consumers and enforcement of construction-related  
16 laws; and

17 (i) Reporting to the legislature on an annual basis the total  
18 number of complaints, the nature of the complaints, the monetary  
19 value of the complaints, whether complaints have been resolved, and  
20 any other information that the office deems relevant. The first  
21 report is due on January 1, 2010, and subsequent reports are due on  
22 November 1st of each year thereafter.

23 (2) The board shall:

24 (a) Manage a residential construction defect complaint  
25 resolution process consistent with the requirements of this act; and

26 (b) Report to the legislature on an annual basis any  
27 recommendations for changes in law or rule to improve the quality of  
28 residential home construction.

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30 NEW SECTION. Sec. 6. (1) The board shall solicit and review  
31 qualifications for mediators based on the following standards:

32 (a) Minimum of ten years of experience in residential  
33 construction;

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1 (b) Current contractors registration in the state or former  
2 contactors registration in the state, provided registration was not  
3 terminated by an action of the department of labor and industries;  
4 and;

5 (c) Other qualifications the board may deem appropriate.

6 (2)(a) The board shall select mediators the board deems, by a  
7 majority vote, meet the qualifications for the board. There shall  
8 be no right of appeal of a selection decision made by the board.  
9 All qualified mediator names shall be compiled into a single ranked  
10 list. Names of newly selected mediators shall be added to the  
11 bottom of the list.

12 (b) Mediators shall not be employees of the board or the state.  
13 Mediators shall be paid on a per case basis at a rate set by the  
14 board.

15 (c) Mediators may be removed from the list for any reason by a  
16 vote of the majority of members of the board. There shall be no  
17 right of appeal of a removal decision made by the board.

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19 NEW SECTION. Sec. 7. (1) The board shall assign a mediator to  
20 each complaint filed with the board. The board shall assign the  
21 mediator from the top of the list of mediators approved by the board  
22 by providing written notice to the arbitrator, owner, and contractor  
23 of the assignment.

24 (2) A mediator may reject an assignment for any reason by  
25 providing written notice to the board within five business days of  
26 receiving the assignment notice from the board. A mediator shall  
27 reject an assignment if the mediator is aware of any common  
28 financial interest between the mediator and the owner or contractor.

29 (3) The mediator shall disclose in writing within three business  
30 days of receiving the assignment notice to the board, the owner, and  
31 the contractor any pre-existing personal or professional  
32 relationships between the mediator and the owner or the contractor.  
33 Presence of a pre-existing relationship shall not be a basis for  
34 requiring a mediator to reject an assignment.

1 (4) The owner may reject up to one mediator for any reason, by  
2 providing written notice to the board of the rejection within five  
3 business days of receiving the assignment notice from the board.

4 (5) The contractor may reject up to one mediator for any reason,  
5 by providing written notice to the board of the rejection within  
6 five business days of receiving the assignment notice from the  
7 board.

8 (6) If a mediator assignment is rejected for any reason, the  
9 board shall assign the next mediator in the manner provided for  
10 under this section.

11 (7) After the mediator is assigned to a complaint, regardless of  
12 whether the mediator rejects or is rejected from further  
13 investigation of the complaint, the mediator's name shall be added  
14 at the bottom of the list of approved mediators and shall be  
15 available for assignment to future cases as the mediator's name  
16 advances on the list.

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18 NEW SECTION. **Sec. 8.** If an owner files a complaint with the  
19 board against any contractor to assert a claim arising out of or  
20 related to the construction, alteration or repair of a residence  
21 located in this state and the owner has not followed the procedure  
22 set forth in chapter 64.50 RCW, the board shall dismiss the  
23 complaint without prejudice.

24 NEW SECTION. **Sec. 9.** The board shall have the jurisdiction to  
25 receive all owner complaints regarding residential construction  
26 defects.

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28 NEW SECTION. **Sec. 10.** A complaint under section 12 of this act  
29 must arise from the performance, or a contract for the performance,  
30 of work that requires a contractor registered under chapter 18.27  
31 RCW.

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33 NEW SECTION. **Sec. 11.** The board must receive the complaint no  
34 later than six years after the completion of construction as defined

1 by RCW 4.16.310. If a claim is filed with the board within the  
2 applicable statute of limitations, the filing of the claim tolls the  
3 statute of limitations for the period of time until the board issues  
4 a decision under section 12 of this act.

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6 NEW SECTION. **Sec. 12.** (1) Prior to commencing any  
7 construction defect action with a court or filing a claim under a  
8 written express warranty complying with section 16 of this act, an  
9 owner must submit a complaint to the board.

10 (2) The owner must file the complaint with the board in a form  
11 prescribed by the board.

12 (3) The board shall suspend processing of the complaint if:

13 (a) The amount of the complaint exceeds \$50,000; or

14 (b) The board determines that the nature or complexity of the  
15 dispute described in the complaint is such that a court is the  
16 appropriate forum for the adjudication of the dispute; or

17 (c) The board determines the contractor is not registered under  
18 chapter 18.27 RCW.

19 (4) The board may dismiss or close the complaint if any of the  
20 following conditions apply:

21 (a) The owner does not respond to a mediator request and the  
22 request is necessary to the mediator's investigation of the  
23 complaint;

24 (b) The owner does not allow the mediator to conduct one or more  
25 on-site meetings to mediate or investigate the complaint; or

26 (c) The owner does not permit the contractor against whom the  
27 complaint is filed to be present at an on-site investigation made by  
28 the mediator; or

29 (d) The mediator determines that the contractor against whom the  
30 complaint is filed is capable of complying with recommendations made  
31 by the mediator relative to the complaint, but the owner does not  
32 permit the contractor to comply with the recommendations.

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1 (5) Upon acceptance of the complaint, the board shall assign a  
2 mediator to the complaint in the form and manner prescribed by this  
3 act.

4 (6) The mediator shall initiate proceedings to determine the  
5 validity of the complaint.

6 (7) At a minimum, the mediator shall conduct one or more on-site  
7 meetings to mediate or investigate the complaint.

8 (8) If the mediator is unable to resolve the complaint under  
9 this section, the mediator shall issue a written decision, including  
10 an indication of an amount of damages. In determining whether a  
11 complaint should result in an award of damages, the mediator shall  
12 consider:

13 (a) The fitness of the materials selected and used by the  
14 contractor;

15 (b) Whether the work was performed in accordance with accepted  
16 trade practices;

17 (c) Whether the work was performed in compliance with code  
18 regulations in effect at the time it was constructed;

19 (d) Whether the resulting building or improvement was suitable  
20 for its intended purpose; and

21 (e) Failure of the current or former owner to conduct normal and  
22 routine maintenance of the residence.

23 (9) The mediator shall deliver the decision to the board. The  
24 board shall forward the decision to the owner and contractor.

25 (10) The basis for a mediator's decision identified in  
26 subsection (8) of this section does not constitute a legal cause of  
27 action.

28  
29 NEW SECTION. **Sec. 13.** Notwithstanding the provisions of  
30 chapter 7.06 RCW, any other provision of law or any contractual  
31 provision, failure of a contractor to initiate mediation proceedings  
32 within thirty days after notification by the board of a complaint  
33 under section 12 of this act is a waiver by the contractor of any  
34 contractual right to mediation or arbitration.

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NEW SECTION. **Sec. 14.** (1) Within twenty days after the filing of the mediator's decision with the board, the owner or the contractor may reject the decision of the mediator by delivering written notice of the rejection to the board. The board shall forward written notice of the rejection to the owner and the contractor within five days of receiving the rejection of the decision.

(2) Upon receipt of written notice of rejection of the mediator's decision, an owner pursuing a claim under an implied warranty of habitability may file with the clerk of a superior court with jurisdiction a written notice of request for a trial de novo on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded. Any owner pursuing a claim under an express written warranty may file the claim in the form and manner prescribed by the warranty contract.

**Sec. 15.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to read as follows:

(1)The department shall charge a fee of one hundred dollars for issuing or renewing a certificate of registration during the 2001-2003 biennium. The department shall revise this amount at least once every two years for the purpose of recognizing economic changes as reflected by the fiscal growth factor under chapter 43.135 RCW.

(2) The department shall also charge a fee of one hundred dollars per year for issuing or renewing a certificate of registration. The department shall remit this fee, without overhead or administrative expense, to the office of the attorney general for the exclusive purpose of funding the activities of the residential construction board and office of consumer education created by this act.

**PART III. WARRANTIES**

1        NEW SECTION. **Sec. 16.** (1) Except as provided in subsections (2)  
2 or (3) of this section, the implied warranty of habitability may not  
3 be contractually disclaimed, waived, modified, or limited. The  
4 implied warranty of habitability transfers from the homeowner to  
5 subsequent purchasers. Subsequent purchasers of a residence may  
6 bring an action for breach of implied warranty of habitability.

7        (2) The implied warranty of habitability may be disclaimed or  
8 waived if the contractor or seller provides to the homeowner a  
9 transferable written express warranty at the time of closing that  
10 meets or exceeds the standards approved by the United States  
11 department of housing and urban development.

12        (3) The implied warranty of habitability may be modified or  
13 limited, provided the contractor performing work disclaims  
14 specifically listed components or features of the construction  
15 selected or specified by the owner.

16        (4) A disclaimer, waiver, modification, or limitation of an  
17 implied warranty of habitability under subsection (2) or (3) of this  
18 section must be:

19        (a) Written;

20        (b) Conspicuous;

21        (c) Typed or printed in ten-point bold face type; and

22        (d) Signed by the homeowner,

23        (5) Damages awarded for a breach of the implied warranty of  
24 habitability are the cost of repairs. However, if it is established  
25 that the cost of repairs is clearly disproportionate to the loss in  
26 market value caused by the breach, damages are limited to the loss  
27 in market value.

28        (6) This section shall not apply to condominium units created  
29 pursuant to chapters 64.32 or 64.34 RCW.

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31        NEW SECTION. **Sec. 17.** Sections 3 through 14 and section 16 of  
32 this act are each added to chapter 64.50 RCW

33 **2SSB 5895** - S AMD 166

34 By Senators Holmquist and King

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2 On page 1, line 1 of the title, after "Relating to", strike the  
3 remainder of the title and insert "establishing a residential  
4 construction board; amending RCW 18.27.075, 54.50.010, and 64.50.020;  
5 and adding new sections to chapter 64.50 RCW."

--- END ---