

SENATE BILL REPORT

SB 6701

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, January 28, 2010

Title: An act relating to real property warranties.

Brief Description: Addressing real property warranties.

Sponsors: Senators Kline, Kohl-Welles, Jacobsen, Keiser, Gordon, Tom, Fraser and McAuliffe.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/26/10, 1/28/10 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6701 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

Staff: Ingrid Mungia (786-7423)

Background: Warranties for Residential Construction. A homeowner who suffers losses due to defects in the construction of the home may be able to seek redress through a cause of action for breach of contract or for breach of an implied warranty of habitability. There are no statutory warranties governing residential construction, except in the case of condominiums.

Common Law Implied Warranty of Habitability. Under the common law, the buyer of a new home may sue the builder of the home for a breach of an implied warranty of habitability. This warranty covers structural defects in the house and its foundation that make the home unfit for its intended purpose. The warranty extends only to the first purchaser who occupies the home and may not be assigned to subsequent purchasers. The sale must be of a commercial nature and the relative bargaining positions of the parties must be inherently unfair to the buyer. The implied warranty of habitability may be disclaimed by the seller if the disclaimer is conspicuous, known to the buyer, and specifically bargained for.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Right to Cure Statute. The contractor right to cure statute provides that a homeowner may not file suit against a construction professional for alleged construction defects until the homeowner has given the construction professional notice of the defect and an opportunity to cure the defect within time lines set out in the statute. A suit filed before the owner provides the right to cure notice must be dismissed by the court.

Summary of Bill (Recommended Substitute): Common Law Implied Warranty of Habitability. The common law of implied warranty of habitability is modified to provide that it may not be contractually disclaimed, waived, modified, or limited.

Statutory Express Warranties. Statutory express warranties are established for the new construction or substantial remodel of residential real property. Residential real property means a single-family home, a duplex, a triplex, or a quadraplex. A construction professional involved in the construction of new residential real property or the substantial remodel of existing residential real property warrants that the work will be suitable for the ordinary uses of real property of its type and that the work will be free from defective materials and constructed in accordance with sound engineering and construction standards, constructed in a work-like manner and in compliance with all laws applicable to the improvements.

A current owner may bring an action against a construction professional for a breach of warranty. Absence of privity of contract is not a defense to an action for breach of the warranty. The owner must show that the alleged breach had adversely affected or will adversely affect the performance of the portion of the property alleged to be in breach. The damages that are awarded for a breach are the cost of repairs. However, if the cost of repairs is clearly disproportionate to the loss in market value, the damages are limited to loss in market value.

An action for breach of warranty must be brought within four years after the date the cause of action accrues, except in the case of a latent structural defect or a latent water penetration. The cause of action accrues, regardless of the owner's lack of knowledge: (1) In the case of newly constructed residential real property, on the date the first owner takes possession; or (2) in the case of the substantial remodel of existing residential real property, on the date of substantial completion of construction or termination of the construction project, whichever is later.

A cause of action for breach of a warranty for a latent structural defect or a latent water penetration defect must be commenced no later than ten years from the date the initial owner enters into possession of the property or in the case of a substantial remodel, no later than ten years from the date of substantial completion of construction or termination of the project, whichever is later.

The express warranties do not create an independent right to a class action against any construction professional.

Condominiums are exempt from the statutory warranty provisions.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): Adds a time limit on bringing a cause of action for a latent structural defect or a latent water penetration defect.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The purpose of this bill is to apply the common law warranties that apply to products to residential housing. The implied warranty of habitability is a very broad outline. This bill makes the implied warranty of habitability nondisclaimable. The implied warranty of construction is more complete. We have already done this for condominiums, so there is no reason not to do this for single family homes. This bill will equalize the playing field. Right now, homeowners have no rights in the state of Washington. Consumers in Washington State need protection from limited home warranties and must be afforded the legal right to remedies should their home be found to have a construction defect. Residential Warranty Company warranties have more protections for the building industry than for the consumers that they boast to protect. As a purchaser of a new home in Washington State, I learned the hard way that these warranties are no good. This bill contains regulatory changes, including improved, nonwaivable warranties which will help protect new homeowners, and those undertaking substantial remodels, from financially devastating experiences such as ours. Washington's homeowners need better regulatory and legal protections from devastating financial damages due to negligent home construction practices. This bill provides those protections. Please pass this bill intact for people like me.

CON: The construction industry helps drive our state's economy. Just last year, 32,700 construction jobs were lost according to Employment Security Department. This bill will harm the construction industry by making it easier to sue builders, drive up the cost of insurance, and drive up the cost of buying a home. We should be talking about a collaborative approach between consumers and builders. The committee should consider an expedited dispute resolution process in lieu of mandatory warranties, like the state of Oregon. There is a warranty statute for condos that were not single family because it was assumed that condo construction in the past was pretty spotty compared to single family. Present case law has given consumers much of the benefit that is given in this statutory warranty bill. This bill is missing the alternative dispute resolution provision required by case law, so consumers don't incur unnecessary costs. The language of the bill creates an uncertainty. The language of the bill potentially makes a building material supplier liable for whole home construction. The definition could be tightened up to resolve this uncertainty. Case law provides numerous causes of action and remedies that are available for consumers in Washington State. To the extent this bill adds additional causes of action or creates ambiguities that the courts would have to evaluate in the context of current case law, those new risks or exposures are not accounted for in the costs, in the premium structures, or in the risk profiles in the current programs in place for liability insurance. The provisions of this bill are uninsurable for

architects and engineers for the definition of construction professional. We do see the concerns raised by the proponents.

Persons Testifying: PRO: Senator Kline, prime sponsor; Karen Veldheer, Donia Townsend, Jayne Freitag-Koontz, Sandy Levy, homeowners.

CON: Timothy Harris, BIAW; Greg Clark, Washington Defense Trial Lawyers; Scott Hazlegrove, Weyerhaeuser & Cadman; Mel Sorenson, Property Casualty Insurance; Stan Bowman, American Institution of Architects Washington Council.