

# HOUSE RESEARCH

## Bill Summary

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**Authors:** Swails  
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**Analyst:** Tom Pender, (651) 296-1885

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### Overview

This bill makes changes in the existing law involving warranties to consumers that are implied by statute in a contract between a consumer and a building contractor to build or improve a home, whether the warranties are stated in the contract or not. These are called “statutory warranties” as opposed to written warranties included in the contract. Under 2009 legislation, these warranties are now required to be included in the written construction contract, but they exist as statutory warranties even if not included in writing. For brevity, this summary will usually refer only to building contractors, but the existing law and the bill also apply to home improvement contractors.

### Section

- 1 Statutory homeowner warranty claims preserved.** Expands and clarifies an existing law that preserves liability under statutory warranties made by a corporate building contractor when the corporation is dissolved. The existing law allows the homeowner to seek recovery from the contractor (or the contractor’s insurer) even after the contractor dissolves. The expansion applies this principle to claims a contractor makes against a subcontractor or materials supplier that may have been the cause of the problem, thereby permitting access to the liability insurance of an at-fault dissolved corporate subcontractor or materials supplier. [An existing insurance law (section 60A.08, subd. 6) requires that liability insurance cover home warranty claims after the insured company has dissolved, if the defective work was done while the since-dissolved company was in existence and was insured for that type of claim by the insurance company.] Also clarifies that the existing law applies to both new home construction and home improvement, which is consistent with the existing law.
- 2 Statutory homeowner warranty claims preserved.** Same as section 1, but applies to dissolution of limited liability companies.

- 3**      **Written contract required.** Requires residential building contractors to provide the prospective customer with written performance standards before entering into a construction contract. Requires that they be included or incorporated by reference in any resulting contract.
- 4**      **Vendor.** Amends the definition of “vendor” to eliminate a provision limiting it to a contractor building a house “for the purpose of sale.” Clarifies that the term “vendor” does not include a subcontractor or material supplier, which is consistent with the existing law.
- 5**      **Inspection.** Defines “inspection for purposes of disputes over alleged construction defects as “a visual or invasive” examination of an alleged construction defect. An “invasive inspection” could, for instance, involve opening up a wall to check for mold that would not be seen in a visual inspection.
- 6**      **Response from vendor or home improvement contractor to notice of claim; right to inspect.** This section and sections 7 to 9 rewrite existing laws that govern the sequence of what is required to happen when a homeowner discovers a construction defect after the work is completed. This section starts that sequence by dealing with the homeowner’s discovery of the defect, notification to the contractor, the contractor’s right to inspect the alleged defect, and an extension of the time periods (called “the statute of limitations” and the “statute of repose”) in which the homeowner can sue the contractor, to allow time for this claim to be resolved without litigation.
- 7**      **Right to repair; agreement.** This section specifies the next step in the process started in section 6. That step is that the builder may make a written proposal to the homeowner to repair or replace the defective work, including the scope of the repair and the time of completion. If the two sides agree, requires the contractor to complete the agreed-upon work and give the homeowner a written notice that the contractor considers the work to be completed. If the builder and homeowner do not reach an agreement, requires use of the dispute resolution process described in section 11 of this bill.
- 8**      **Failure to perform inspection or repair.** Permits the homeowner to sue the builder, if the builder does not inspect the alleged damage, does not offer to make a repair, or does not perform a repair that was agreed-upon. In that case, the builder has chosen to refuse to participate in the process provided in this bill to avoid litigation.
- 9**      **Processes required before commencement of action.** Provides that, except when the preceding section of this bill applies, the homeowner may not sue the builder in district court until the later of completion of the dispute resolution process or sixty days after the homeowner receives the written offer to repair. (In other words, the homeowner cannot be stalled for more than 60 days.) (The inclusion of the phrase “in district court” preserves the option for the homeowner to sue at any time in conciliation court as a cost-effective and quicker way of resolving small claims.)
- 10**     **Exclusions.** Under existing law, the builder’s liability does not include damage not reported in writing to the builder within six months after the homeowner discovered it or should have discovered it. This section adds an exception if the homeowner establishes that the builder had actual notice of the defect.
- 11**     **Homeowner warranty dispute resolution.**

**Subd. 1. Panel of neutrals.** (a) Requires the commissioner of labor and industry to maintain a list of people who have agreed to be “qualified neutrals” to resolve disputes that are not otherwise resolved by mutual agreement of the parties. Requires the commissioner to establish qualifications and an application process for people who want to be on the list.

(b) Permits the commissioner of labor and industry to collect an annual \$200 fee from each qualified neutral.

**Subd. 2. Dispute resolution process; fee.** Says that a home warranty dispute resolution process is started by the two parties applying to the commissioner. Requires the commissioner to provide the parties with a list of three qualified neutrals the commissioner has randomly selected from the list. Requires the two parties to select one of them, or, if they cannot agree, to each reject one, resulting in the remaining qualified neutral being the choice.

**Subd. 3. Neutral evaluation.** Describes the process by which the qualified neutral receives the evidence and arrives at a non-binding written decision. Provides that the two parties share payment of the hourly fee charged by the qualified neutral, which must not exceed six hours. Requires the qualified neutral to collect a \$25 administration fee from each party and submit it promptly to the commissioner.

**Subd. 4. Alternative process.** Allows the parties to agree between themselves to a different dispute resolution process than the one provided in this section.

**Subd. 5. Effect on future proceedings.** Provides that the process and result of an attempt to resolve the dispute under this section is entirely confidential and cannot be used as evidence in subsequent litigation. Prohibits either party from calling the qualified neutral as a witness. In a subsequent lawsuit, allows the winner to collect from the loser the amount the winner paid to the qualified neutral.

**Subd. 6. Noncompliance with timelines; effect.** Excuses strict compliance with timelines of dispute resolution if the parties show a good-faith effort.

- 12**     **Limitations.** Requires that the warranties and exclusions, the right to inspect and offer to repair, and the dispute resolution process be provided to the homeowner in writing.
- 13**     **Report.** Requires the commissioner of labor and industry to report to the relevant legislative committees in 2014 regarding the results of the dispute resolution process created in section 11 of this bill.
- 14**     **Effective date; application.** Makes section 1 to 2 and 4 to 11 effective January 1, 2011, and apply to claims made and lawsuits that are started on or after that date. Makes sections 3 and 12 effective January 1, 2011, and apply to contracts entered into on or after that date. Says that this bill does not revive claims that have already expired or extend statutes of limitation or repose (which establish time limits on when a lawsuit can be started).