

46:3B-1 to 46:3B-12

LEGISLATIVE HISTORY CHECKLIST

NJSA 46:3B-1 to 46:3B-12 ("New Home Warranty & Builders Registration Act")

LAWS OF 1977 CHAPTER 467

Bill No. A1892

Sponsor(s) Herman, Stewart, Gorman

Date Introduced April 8, 1976

Committee: Assembly Commerce, Banking & Insurance

Senate Labor, Industry & Professions

Amended during passage Yes ~~NO~~

Amendments during passage denoted by asterisks

Date of Passage: Assembly Feb. 17, 1977

Senate Dec. 1, 1977

Date of approval March 3, 1978

Following statements are attached if available:

Sponsor statement Yes ~~NO~~ (Below)

Committee Statement: Assembly Yes ~~NO~~

Senate Yes ~~NO~~

Fiscal Note Yes ~~NO~~

Veto message ~~NO~~ No

Message on signing ~~NO~~ No

Following were printed:

Reports ~~NO~~ No

Hearings ~~NO~~ No

Sponsor's Statement:
The purpose of this bill is expressed in its title.

CLIPPING ATTACHED:
"NJ LAWMAKERS EYE 10-YEAR WARRANTY ON NEW HOMES"
TRENTON EVE. TIMES, DEC. 15, 1977

3/1/78

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CHAPTER 467 LAWS OF N. J. 1977
APPROVED 3-3-78

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ASSEMBLY, No. 1892

STATE OF NEW JERSEY

INTRODUCED APRIL 8, 1976

By Assemblymen HERMAN, STEWART and GORMAN

Referred to Committee on Commerce, Banking and Insurance

AN ACT to provide for a new home warranty and for security programs in connection therewith, and for the registration of builders of new homes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as "The New Home
2 Warranty and Builders' Registration Act."

1 2. As used in this act:

2 a. "Department" means the Department of Community Affairs;

3 b. "Commissioner" means the Commissioner of the Department
4 of Community Affairs;

5 c. "Warranty" means the warranty prescribed by the commis-
6 sioner pursuant to this act;

7 d. "New home" means any dwelling unit not previously occupied,
8 excluding dwelling units constructed solely for lease;

9 e. "Owner" means any person for whom the new home is built
10 or to whom the home is sold for occupation by him or his family
11 as a home and his successors in title to the home or mortgagee in
12 possession. Owner does not mean any development company,
13 association or subsidiary company of the builder or any person
14 or organization to whom the home may be sold or otherwise
15 conveyed by the builder for subsequent resale, letting or other
16 purpose;

17 f. "Builder" means any individual **corporation, partnership or*
18 *other business organizations** engaged in the construction of new
19 homes.

20 *g. "Major construction defect" means any actual damage to the
21 load bearing portion of the home including damage due to subsi-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

22 dence, expansion or lateral movement of the soil (excluding move-
 23 ment caused by flood or earthquake) which effects its load bearing
 24 function and which vitally affects or is imminently likely to vitally
 25 affect use of the home for residential purposes.

26 h. "Warranty date" means the first occupation or settlement
 27 date, whichever is sooner.*

1 3. *a.* The commissioner is hereby authorized and directed to
 2 prescribe by rule or regulation a new home warranty *and proce-
 2A dures for the implementation and processing of claims against
 2B the new home warranty security fund as provided for in section 7a.
 3 of this act*. Such warranty shall include standards for construction
 4 and of quality for the structural elements and components of a new
 5 home with an indication, where appropriate, of what degree of
 6 noncompliance with such standards shall constitute a defect***[** and
 7 reasonable time periods for which such elements and components
 8 should be free from defects**]***. Such rule or regulation shall be
 9 adopted, and may be supplemented, amended or repealed in accord-
 10 ance with the Administrative Procedures Act (P. L. 1968, c. 410,
 11 C. 52:14B-1 et seq.), provided, however, that a hearing shall be
 12 required prior to the adoption, supplement, amendment or repeal
 13 of such rule or regulation.

14 *b. The time periods of warranties established pursuant to this
 15 act are as follows: (1) One year from and after the warranty date
 16 the dwelling shall be free from defects caused by faulty workman-
 17 ship and defective materials due to noncompliance with the building
 18 standards as approved by the commissioner pursuant to paragraph
 19 3a. of this act except as set forth in section 3b. (2) and (3).

20 (2) Two years from and after the warranty date the dwelling
 21 shall be free from defects caused by faulty installation of plumb-
 22 ing, electrical, heating and cooling delivery systems; however, in
 23 the case of appliances, no warranty shall exceed the length and
 24 scope of the warranty offered by the manufacturer.

25 (3) Ten years from and after the warranty date for major con-
 26 struction defects as defined in this act.

27 (4) However, any alternate program as provided for in section 8
 28 of this act submitted for approval, subsequent to the effective date
 29 of this act, may contain warranties and time periods greater than
 30 provided for in section 3b. (1), (2), and (3) of this act.*

1 4. A builder of a new home shall be liable to any owner thereof
 2 during the time period when the new home warranty, prescribed
 3 by the commissioner pursuant to this act, is applicable to the home
 4 for any defect therein which is covered by the warranty in accord-
 5 ance with its terms and conditions. ***[**The new home warranty ap-

6 plicable to a new home shall be the warranty in effect on the date
7 that construction of the home is commenced.]* The liability of a
8 builder under the new home warranty shall be limited to the
9 purchase price of the home in the first good faith sale thereof or
10 the fair market value of the home on its completion date if there
11 is no good faith sale.

1 5. No builder shall engage in the business of constructing new
2 homes unless he is registered with the department. The depart-
3 ment shall provide application forms for such registration and
4 shall prescribe the information to be included therein. Each appli-
5 cation shall be accompanied by a *reasonable* fee, prescribed by
6 the commissioner, and proof, satisfactory to the commissioner, of
7 participation in the new home warranty security fund or an
8 approved alternate new home warranty security program. Upon
9 receipt of the above, the department shall issue a certificate of
9A registration.

10 Each certificate of registration shall be valid for a period of
11 2 years from the date of issue and may be renewed for additional
12 2-year periods.

13 As a condition for the registration, a builder shall be required
14 to participate in the new home warranty security fund or an ap-
15 proved alternate new home warranty security program.

16 No corporation, partnership or other business organization shall
17 be entitled to registration hereunder, nor shall they engage in the
18 construction of new homes unless a stockholder, director, officer,
19 partner, or employee thereof, as the case may be, shall be a regis-
20 tered builder ***[who shall be liable for defects covered by the**
21 **warranty in new homes constructed by the organization. The orga-**
22 **nization may indemnify the registered builder for the full costs of**
23 **such liability]*.**

1 6. a. The commissioner, ***[on his own motion or]*** upon the com-
2 plaint of an aggrieved person, may conduct investigations into the
3 ***[activities of]*** *allegations made against* any builder required
4 to be registered under this act. In pursuit of such investigations,
5 the commissioner shall be authorized to hold hearings in accord-
6 ance with the provisions of the Administrative Procedures Act
7 (P. L. 1968, c. 410, C. 52:14B-1 et seq.) applicable to contested
8 cases, to subpoena witnesses and compel their attendance, to require
9 the production of papers, records or documents, administer oaths
10 or affirmations to witnesses, to inspect *such relevant* ***[the]***
11 books, papers, records or documents of ***[any]*** *such* builder at
12 his place of business during business hours, and to conduct inspec-

13 tions of new home construction sites owned by a builder or in which
13A a builder has an ownership interest.

14 b. The commissioner may deny, suspend or revoke any certificate
15 of registration, after affording the registrant or applicant the
16 opportunity for a hearing in accordance with the provisions of the
17 Administrative Procedures Act (P. L. 1968, c. 410, C. 52:14B-1
18 et seq.) applicable to contested cases, if the registrant or applicant
19 has:

20 (1) Willfully made a misstatement of a material fact in his
21 application for registration or renewal;

22 (2) Willfully committed fraud in the practice of his
23 occupation;

24 (3) Practiced his occupation in a grossly negligent manner;

25 (4) Willfully violated any applicable building code to sub-
26 stantial degree;

27 (5) Failed to continue his participation in the new home
28 warranty security fund or an approved alternate new home
29 warranty security program **after proper notice from the*
29A *commissioner in writing by certified mail**; or

30 (6) Violated any provision of this act or any rule or regula-
31 tion adopted pursuant thereto **, after proper notice from the*
31A *commissioner in writing by certified mail**.

1 7. a. There is hereby established a new home warranty security
2 fund to be maintained by the State Treasurer and administered
3 by the commissioner. The purpose of the fund is to provide moneys
4 sufficient to pay claims by owners against builders participating
5 in the fund for defects in new homes covered by the new home
6 warranty. The amounts payable by participating builders shall
7 be established and may be changed from time to time, as the
8 experience of the fund shall require, by the commissioner, and
9 shall be sufficient to cover anticipated claims, to provide a reason-
10 able reserve and to cover the costs of administering the fund.
11 Amounts paid by participating builders shall be forwarded to the
12 State Treasurer and shall be accounted for and credited by him
13 to the new home warranty security fund.

14 b. The State Treasurer shall hold, manage and, through the
15 Division of Investment, invest and reinvest moneys in the fund
16 and credit all income earned thereon to the fund in the same manner
17 as provided by law for the investment of pension and retirement
18 funds administered by the State. The department shall keep the
19 State Treasurer advised of anticipated cash demands for payment
20 of claims against the fund.

21 c. Prior to making a claim against the fund for defects covered
22 by the warranty, an owner shall notify the builder of such defects
23 and allow a reasonable time period for their repair. If the repairs
24 are not made within a reasonable time or are not satisfactory to
25 the owner, he may file a claim against the fund in the form and
26 manner prescribed by the commissioner. The commissioner shall
27 investigate each claim to determine the validity thereof, and the
28 amount of the award that shall be made thereon, and shall hold
29 a hearing if requested by either party, in accordance with the
30 provisions of the Administrative Procedures Act (P. L. 1968, c.
31 410, C. 52:14B-1 et seq.) applicable to contested cases. **Reasonable*
31A *hearing fees shall be assessed against the unsuccessful party.** The
32 amount of the award shall be sufficient to cover the reasonable costs
33 necessary to correct any defect or defects covered under the war-
34 ranty, but the total amount of awards from the fund for any new
35 home shall not exceed the purchase price of the home in the first
36 good faith sale thereof or the fair market value on the home on its
37 completion date if there is no good faith sale. ***All claims sub-*
37A *mitted by an owner shall first be reviewed through a conciliation or*
37B *arbitration procedure by the department, and in the event that*
37C *the owner is found to be in the right, then the builder shall be*
37D *required to correct such claims as determined through the con-*
37E *conciliation or arbitration procedure. If a builder is unable or will-*
37F *fully refuses to correct such deficiency, then an amount sufficient*
37G *to cure the problem shall be paid from the fund to the owner.*
37H *In such cases, the commissioner may then proceed against the*
37I *builder in accordance with section 6b of this act.*** Upon certifica-
38 tion from the commissioner of the amount of an award, the State
39 Treasurer shall make payment to the claimant from the fund.
40 d. If at any time the moneys available in the fund are insufficient
41 to satisfy outstanding awards and anticipated awards for the suc-
42 ceeding year, the commissioner shall, by regulation and after
43 public hearing upon reasonable notice to all interested parties,
44 require participating builders to pay additional amounts to re-
45 plenish the fund. The commissioner may also provide for sur-
46 charges against those participating builders who are responsible
47 for a significant number of awards against the fund, and may
48 discontinue the participation in the fund of any builder who is
49 responsible for an excessive number of awards against the fund
50 after a hearing in accordance with the provisions of the Ad-
51 ministrative Procedures Act (P. L. 1968, c. 410, C. 52:14B-1 et seq.)
52 applicable to contested cases. At no time shall the State be required

53 to contribute any moneys to the fund, nor shall the State have any
54 liability to any person having any right to or claim against the
55 fund over and above the amount therein.

1 8. The commissioner is authorized and directed to review and
2 approve alternate new home warranty security programs which
3 provide for payment of claims against builders for defects covered
4 under the new home warranty and financial security adequate to
5 cover the total amount of claims that may be reasonably anticipated
6 against participating builders at least equivalent to that provided
7 by the new home warranty security fund. **However, any new home*
7A *warranty insurance program approved by the Commissioner of*
7B *Insurance prior to the adoption of this act shall: (1) Constitute an*
7C *approved alternate new home warranty security program and shall*
7D *be deemed in accordance with this section and in compliance with*
7E *this act in the form and substance heretofore approved by the*
7F *Commissioner of Insurance, (2) not be subject to any rules and*
7G *regulations adopted by the Commissioner of the Department of*
7H *Community Affairs pursuant to this act when such rules and regu-*
7I *lations are in conflict with said previously approved new home*
7J *warranty program.** Any person desiring approval of a new
8 home warranty security program shall make application to the
9 commissioner in such form and manner as he shall pre-
10 scribe. He may establish and charge reasonable fees to cover
11 the costs incurred in reviewing and approving such applica-
12 tions. The commissioner shall review each application and conduct
13 any investigation he deems necessary with respect to an applica-
14 tion. The commissioner may, and if an applicant so requests, he
15 shall, hold a hearing on an application in accordance with the
16 provisions of the Administrative Procedures Act (P. L. 1968, c. 410,
17 C. 52:14B-1 et seq.) applicable to contested cases. If the commis-
18 sioner finds that a new home warranty security program provides
19 coverage and financial security at least equivalent to the new home
20 warranty security fund, he shall approve the program. The com-
21 missioner may revoke or suspend the approval for such a program
22 after a hearing in accordance with the same procedures applicable
23 to hearings on applications if he finds that the program no longer
24 provides coverage and financial security equivalent to the new
25 home warranty security fund.

1 9. Nothing contained herein shall affect other rights and reme-
2 dies available to the owner. **The owner shall have the opportunity*
3 *to pursue any remedy legally available to the owner. However,*
4 *initiation of procedures to enforce a remedy shall constitute an*

5 election which shall bar the owner from all other remedies. Nothing
6 contained herein shall be deemed to limit the owners right of appeal
7 as applicable to the remedy elected.*

1 10. The commissioner ***[may]*** **shall** promulgate such rules
2 and regulations as may be necessary to carry out the provisions
3 of this act.

1 11. This act shall supersede any municipal ordinance or regula-
2 tion which provides for the licensing or registration of builders
3 ****or for the protection by bonds or warranties required to be*
4 *supplied by builders, exclusive of those required by water, sewer,*
5 *utilities, or land use requirements***.*

1 12. Any builder who fails to register as required hereunder shall
2 be subject to a penalty not to exceed \$2,000.00 for each offense to
3 be enforced and collected by the commissioner in the name of the
4 State in a summary proceeding in accordance with the Penalty
5 Enforcement Law (N. J. S. 2A:58-1 et seq.).

1 13. This act shall take effect 6 months after enactment.

FISCAL NOTE TO
ASSEMBLY, No. 1892

STATE OF NEW JERSEY

DATED: JANUARY 19, 1977

The Official Copy Reprint of Assembly Bill No. 1892 is designated "The New Home Warranty and Builders' Registration Act." It provides for a new home warranty, for security programs, and registration of new home builders.

The Department of Community Affairs estimates that enactment of this legislation would create a surplus revenue of \$30,000.00 for the last half of fiscal 1977-78, \$60,000.00 for fiscal 1978-79 and \$47,000.00 for fiscal 1979-80. The amounts estimated are only the surpluses above administrative costs. It is stated, it is not possible to estimate costs to the Fund itself as too many variables are involved.

The fiscal note is based on an estimate of costs rather than actual cost information.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

ASSEMBLY COMMERCE, BANKING AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1892
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 27, 1976

This act provides for the establishment of a new home warranty program and the registration of home builders with the Department of Community Affairs. The bill authorizes the Commissioner of the Department of Community Affairs to prescribe a new home warranty program by regulation. The warranty would include standards for construction and for the quality of the structural elements and components of a new home. The bill would require the commissioner to indicate by regulation what would constitute a defect in construction. A hearing would be required to be held prior to the adoption, supplement, amendment, or repeal of such rules and regulations.

The bill would make the builder of a new home liable to the owner for any defect which exists during the period when the warranty is in effect. The liability of the builder to the owner would be limited to the purchase price or the fair market value of the home, depending upon the condition of sale.

Builders would be required to be registered with the Department of Community Affairs, pay a fee prescribed by the commissioner, and participate in a new home security fund created by the act or an alternate program approved by the commissioner. No corporation, partnership or other business organization would be entitled to registration under the act unless a stockholder, director, officer, partner, or employee is a registered builder. Each certificate of registration would be valid for 2 years. The bill also provides that the commissioner may conduct investigations into activities of any registered builder, hold hearings, deny, suspend, or revoke any certificate of registration if the builder has violated the provisions of the act.

The bill establishes a New Home Warranty Security Fund, which would be maintained by the State Treasurer. All registered builders

would be required to pay an assessment established by the commissioner, and the fund would be used to provide money sufficient to indemnify owners for claims which are not satisfied. The owner would be required to notify the builder of defects; if the builder does not make the necessary repairs, the owner of the house may file a claim against the fund. The commissioner would be required to investigate the validity of the claim, and could hold a hearing if such hearing was requested by either party. Upon certification of a claim by the commissioner, which may not exceed the cost of the home, the State Treasurer would pay the owner the sum due to him.

The commisioner would be permitted to provide for surcharges against those registered builders who are responsible for a significant number of awards against the fund, and would be permitted to discontinue registration of a builder who had a large number of claims against him.

The Assembly Commerce, Banking and Insurance Committee has amended the bill to add a definition of "major construction defect." The amendments also provide that the warranty would go into effect on the date that the house is first occupied, or on the settlement date, whichever is first. The amendments also give the commissioner of the Department of Community Affairs the authority to establish procedures for the implementation and processing of claims against the New Home Warranty Security Fund. Further amendments establish specific time periods for warranties established pursuant to the act; the bill originally provided that such time periods be established by the Commissioner of Community Affairs by regulation. The committee amendments also provide that if a new home warranty insurance program is approved by the Commisisoner of Insurance prior to the adoption of the act, the insurance program would then constitute an approved alternate new home warranty security program, and would not be subject to the rules and regulations promulgated by the Commissioner of Community Affairs pursuant to this act.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1892
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 2, 1977

This act provides for the establishment of a new home warranty program and the registration of home builders with the Department of Community Affairs. The bill authorizes the Commissioner of the Department of Community Affairs to prescribe a new home warranty program by regulation. The warranty would include standards for construction and for the quality of the structural elements and components of a new home. The bill would require the commissioner to indicate by regulation what would constitute a defect in construction. A hearing would be required to be held prior to the adoption, supplement, amendment, or repeal of such rules and regulations.

The bill would make the builder of a new home liable to the owner for any defect which exists during the period when the warranty is in effect. The liability of the builder to the owner would be limited to the purchase price or the fair market value of the home, depending upon the condition of sale.

Builders would be required to be registered with the Department of Community Affairs, pay a fee prescribed by the commissioner, and participate in a new home security fund created by the act or an alternate program approved by the commissioner. No corporation, partnership or other business organization would be entitled to registration under the act unless a stockholder, director, officer, partner, or employee is a registered builder. Each certificate of registration would be valid for 2 years. The bill also provides that the commissioner may conduct investigations into activities of any registered builder, hold hearings, deny, suspend, or revoke any certificate of registration if the builder has violated the provisions of the act.

The bill establishes a New Home Warranty Security Fund, which would be maintained by the State Treasurer. All registered builders would be required to pay an assessment established by the commissioner,

and the fund would be used to provide money sufficient to indemnify owners for claims which are not satisfied. The owner would be required to notify the builder of defects; if the builder does not make the necessary repairs, the owner of the house may file a claim against the fund. The commissioner would be required to investigate the validity of the claim, and could hold a hearing if such hearing was requested by either party. Upon certification of a claim by the commissioner, which may not exceed the cost of the home, the State Treasurer would pay the owner the sum due to him.

The commissioner would be permitted to provide for surcharges against those registered builders who are responsible for a significant number of awards against the fund, and would be permitted to discontinue registration of a builder who had a large number of claims against him.

The Assembly Commerce, Banking and Insurance Committee amended the bill to add a definition of "major construction defect." The amendments also provide that the warranty would go into effect on the date that the house is first occupied, or on the settlement date, whichever is first. The Commissioner of the Department of Community Affairs would have the authority to establish procedures for the implementation and processing of claims against the New Home Warranty Security Fund. Further amendments established specific time periods for warranties established pursuant to the act; the bill originally provided that such time periods be established by the Commissioner of Community Affairs by regulation. The committee also provided that if a new home warranty insurance program is approved by the Commissioner of Insurance prior to the adoption of the act, the insurance program would then constitute an approved alternate new home warranty security program, and would not be subject to the rules and regulations promulgated by the Commissioner of Community Affairs pursuant to this act.

The Senate Labor, Industry, and Professions Committee amended the bill in section 7c to provide that all claims submitted by an owner against the fund would first be reviewed through an arbitration procedure conducted by the department. The builder would be required to correct such claims as determined through such procedure. If a builder is unable or willfully refuses to correct the deficiency, then the owner would be paid an appropriate sum from the fund.