

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 60
SENATE BILL 1271

AN ACT

AMENDING SECTIONS 12-1362 AND 12-1363, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 8, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-1364; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1159.01; AMENDING LAWS 2018, CHAPTER 336, SECTION 1; RELATING TO PURCHASER DWELLING ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1362, Arizona Revised Statutes, is amended to
3 read:

4 12-1362. Dwelling action; notice of intent to repair or
5 replace; jurisdictional prerequisite; insurance;
6 bifurcated trial; legislative intent

7 A. Except with respect to claims for alleged construction defects
8 involving an immediate threat to the life or safety of persons occupying
9 or visiting the dwelling, a purchaser must first comply with this article
10 before filing a dwelling action.

11 B. A seller **AND THE SELLER'S CONSTRUCTION PROFESSIONAL** who ~~receives~~
12 **RECEIVE** a written notice of claim pursuant to section 12-1363 ~~has~~ **HAVE** a
13 right pursuant to section 12-1363 to repair or replace any alleged
14 construction defects after sending or delivering to the purchaser a
15 written notice of intent to repair or replace the alleged construction
16 defects. The seller ~~does~~ **AND THE SELLER'S CONSTRUCTION PROFESSIONAL DO**
17 not need to repair or replace all of the alleged construction defects. A
18 purchaser may not file a dwelling action until the seller ~~has~~ **AND THE**
19 **SELLER'S CONSTRUCTION PROFESSIONAL HAVE** completed all intended repairs and
20 replacements of the alleged construction defects.

21 C. If a seller **OR A SELLER'S CONSTRUCTION PROFESSIONAL** presents a
22 notice received pursuant to section 12-1363 to an insurer that has issued
23 an insurance policy to the seller **OR THE SELLER'S CONSTRUCTION**
24 **PROFESSIONAL** that covers the seller's **OR THE SELLER'S CONSTRUCTION**
25 **PROFESSIONAL'S** liability arising out of a construction defect or the
26 design, construction or sale of the property that is the subject of the
27 notice, the insurer must treat the notice as a notice of a claim subject
28 to the terms and conditions of the policy of insurance. An insurer ~~is~~
29 ~~obliged to~~ **MUST** work cooperatively and in good faith with the insured
30 seller **OR THE SELLER'S CONSTRUCTION PROFESSIONAL** within the time frames
31 specified in this article to effectuate the purpose of this article.
32 ~~Nothing in~~ This subsection ~~otherwise affects~~ **DOES NOT AFFECT** the coverage
33 available under the policy of insurance or ~~creates~~ **CREATE** a cause of
34 action against an insurer whose actions were reasonable under the
35 circumstances, notwithstanding its inability to comply with the time
36 frames specified in section 12-1363.

37 D. **SUBJECT TO ARIZONA RULES OF COURT, THE IDENTIFIED CONSTRUCTION**
38 **PROFESSIONALS SHALL BE JOINED AS THIRD-PARTY DEFENDANTS, IF FEASIBLE.**
39 **SUBJECT TO ARIZONA RULES OF COURT, FOR EACH CONSTRUCTION DEFECT FOUND TO**
40 **EXIST, THE TRIER OF FACT IN ANY DWELLING ACTION FILED PURSUANT TO THIS**
41 **ARTICLE SHALL FIRST DETERMINE IF A CONSTRUCTION DEFECT EXISTS AND THE**
42 **AMOUNT OF DAMAGES CAUSED BY THE DEFECT AND IDENTIFY EACH SELLER OR**
43 **CONSTRUCTION PROFESSIONAL WHOSE CONDUCT, WHETHER BY ACTION OR OMISSION,**
44 **MAY HAVE CAUSED, IN WHOLE OR IN PART, ANY CONSTRUCTION DEFECT. THE**
45 **PURCHASER HAS THE BURDEN OF PROOF TO DEMONSTRATE THE EXISTENCE OF A**

1 CONSTRUCTION DEFECT AND THE AMOUNT OF THE DAMAGES CAUSED BY THE
2 CONSTRUCTION DEFECT. THE TRIER OF FACT SHALL THEREAFTER DETERMINE THE
3 RELATIVE DEGREE OF FAULT OF ANY DEFENDANT OR THIRD-PARTY DEFENDANT. THE
4 TRIER OF FACT SHALL ALLOCATE THE PRO RATA SHARE OF LIABILITY BASED ON
5 RELATIVE DEGREE OF FAULT. THE SELLER HAS THE BURDEN TO PROVE THE PRO RATA
6 SHARE OF LIABILITY OF ANY THIRD-PARTY DEFENDANT. THE DETERMINATION OF
7 WHETHER A CONSTRUCTION DEFECT EXISTS, THE AMOUNT OF DAMAGES CAUSED BY THE
8 CONSTRUCTION DEFECT AND WHO MAY HAVE CAUSED, IN WHOLE OR IN PART, THE
9 CONSTRUCTION DEFECT SHALL BE BIFURCATED FROM AND TAKE PLACE IN A SEPARATE
10 PHASE OF THE TRIAL OR ALTERNATIVE DISPUTE RESOLUTION PROCESS FROM THE
11 DETERMINATION OF THE RELATIVE DEGREE OF FAULT OF ANY DEFENDANT OR
12 THIRD-PARTY DEFENDANT, UNLESS THE COURT FINDS THAT BIFURCATION IS NOT
13 APPROPRIATE.

14 E. THE LEGISLATURE FINDS AND DETERMINES THAT GIVEN THE COMPLEXITY
15 AND MULTIPARTY NATURE OF DWELLING ACTIONS, IT IS IMPORTANT TO PROVIDE A
16 STREAMLINED PROCESS FOR THE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS AND
17 INDEMNIFICATION CLAIMS BETWEEN THE SELLER AND THE CONSTRUCTION
18 PROFESSIONALS THAT IS EFFICIENT, ECONOMICAL AND CONVENIENT FOR THE PARTIES
19 INVOLVED. THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT FOR THE
20 MAJORITY OF DWELLING ACTIONS, BIFURCATION OF THE ISSUES OF THE EXISTENCE
21 OF A DEFECT AND CAUSATION FROM THE ISSUE OF APPORTIONMENT OF FAULT IS MORE
22 EFFICIENT, FAIR AND CONVENIENT FOR THE PARTIES. IT IS THE LEGISLATURE'S
23 INTENT THAT THE BIFURCATION PROCESS PRESCRIBED IN SUBSECTION D OF THIS
24 SECTION DOES NOT ALTER THE SELLER'S LIABILITY UNDER THE SELLER'S IMPLIED
25 WARRANTY TO THE PURCHASER. IT IS THE LEGISLATURE'S INTENT THAT THE
26 BIFURCATION PROCESS PRESCRIBED IN SUBSECTION D OF THIS SECTION BE USED AND
27 THAT THE ISSUES OF EXISTENCE OF A CONSTRUCTION DEFECT, DAMAGES, CAUSATION
28 AND APPORTIONMENT OF FAULT BE TRIED IN ONE TRIAL UNLESS THE COURT FINDS
29 THAT THE CIRCUMSTANCES OF THE PARTICULAR CASE AT ISSUE RENDER BIFURCATION
30 INAPPROPRIATE.

31 Sec. 2. Section 12-1363, Arizona Revised Statutes, is amended to
32 read:

33 12-1363. Notice and right to repair or replace; tolling of
34 time limits; admissible evidence; definition

35 A. Before filing a dwelling action, the purchaser shall give
36 written notice by certified mail, return receipt requested, to the seller
37 specifying in reasonable detail the basis of the dwelling action. A
38 SELLER WHO RECEIVES NOTICE UNDER THIS SUBSECTION SHALL PROMPTLY FORWARD A
39 COPY OF THE NOTICE TO THE LAST KNOWN ADDRESS OF EACH CONSTRUCTION
40 PROFESSIONAL WHO THE SELLER REASONABLY BELIEVES IS RESPONSIBLE FOR AN
41 ALLEGED DEFECT THAT IS SPECIFIED IN THE NOTICE. THE SELLER'S NOTICE TO
42 EACH CONSTRUCTION PROFESSIONAL MAY BE DELIVERED BY ELECTRONIC MEANS.

43 B. After receipt of the notice described in subsection A of this
44 section, the seller AND THE SELLER'S CONSTRUCTION PROFESSIONAL may inspect
45 the dwelling to determine the nature and cause of the alleged construction

1 defects and the nature and extent of any repairs or replacements necessary
2 to remedy the alleged construction defects. The purchaser shall ensure
3 that the dwelling is made available for inspection ~~no~~ NOT later than ten
4 days after the purchaser receives the seller's AND THE SELLER'S
5 CONSTRUCTION PROFESSIONAL'S request for an inspection. The seller AND THE
6 SELLER'S CONSTRUCTION PROFESSIONAL shall provide reasonable notice to the
7 purchaser before conducting the inspection. The inspection shall be
8 conducted at a reasonable time. The seller AND THE SELLER'S CONSTRUCTION
9 PROFESSIONAL may use reasonable measures, including testing, to determine
10 the nature and cause of the alleged construction defects and the nature
11 and extent of any repairs or replacements necessary to remedy the alleged
12 construction defects. If the seller ~~conducts~~ OR THE SELLER'S CONSTRUCTION
13 PROFESSIONAL CONDUCT testing pursuant to this subsection, the seller OR
14 THE SELLER'S CONSTRUCTION PROFESSIONAL shall restore the dwelling to its
15 condition before the testing.

16 C. Within sixty days after receipt of the notice described in
17 subsection A of this section, the seller shall send to the purchaser a
18 good faith written response to the purchaser's notice by certified mail,
19 return receipt requested. The response may include the seller's AND THE
20 SELLER'S CONSTRUCTION PROFESSIONAL'S notice of intent to repair or replace
21 any alleged construction defects, to have the alleged construction defects
22 repaired or replaced at the seller's OR SELLER'S CONSTRUCTION
23 PROFESSIONAL'S expense or to provide monetary compensation to the
24 purchaser. The written notice of intent to repair or replace shall
25 describe in reasonable detail all repairs or replacements that the seller
26 ~~intends~~ AND THE SELLER'S CONSTRUCTION PROFESSIONAL INTEND to make or
27 provide to the dwelling and a reasonable estimate of the date by which the
28 repairs or replacements will be made. This subsection does not prohibit
29 the seller from offering monetary compensation or other consideration
30 instead of or in addition to a repair or replacement. The purchaser may
31 accept or reject an offer of monetary compensation or other consideration,
32 other than repair or replacement and, if rejected, may proceed with a
33 dwelling action on completion of any repairs or replacements the seller
34 ~~intends~~ AND THE SELLER'S CONSTRUCTION PROFESSIONAL INTEND to make or
35 provide. The parties may negotiate for a release if an offer involving
36 monetary compensation or other consideration is accepted.

37 D. If the seller does not provide a written response to the
38 purchaser's notice within sixty days, the purchaser may file a dwelling
39 action.

40 E. If the response provided pursuant to subsection C of this
41 section includes a notice of intent to repair or replace the alleged
42 construction defects, the purchaser shall allow the seller AND THE
43 SELLER'S CONSTRUCTION PROFESSIONAL a reasonable opportunity to repair or
44 replace the ALLEGED construction defects or cause the ALLEGED construction
45 defects to be repaired or replaced pursuant to the following:

1 1. The purchaser and the seller or the seller's construction
2 ~~professionals~~ PROFESSIONAL shall coordinate repairs or replacements within
3 thirty days after the seller's notice of intent to repair or replace was
4 sent pursuant to subsection C of this section. If requested by the
5 purchaser, repair or replacement of alleged construction defects
6 undertaken by the seller shall be performed by a construction professional
7 selected by the seller and consented to by the purchaser, whose consent
8 shall not be unreasonably withheld, that was not involved in the
9 construction or design of the dwelling. A CONTRACTOR OR SUBCONTRACTOR
10 THAT WAS NOT INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE DWELLING AND
11 THAT PERFORMS ANY REPAIR OR REPLACEMENT OF THE ALLEGED CONSTRUCTION DEFECT
12 PURSUANT TO THIS SECTION IS LIABLE ONLY TO THE SELLER OR PURCHASER WHO
13 CONTRACTED FOR THE CONTRACTOR'S OR SUBCONTRACTOR'S SERVICES FOR THE
14 CONTRACTOR'S OR SUBCONTRACTOR'S SCOPE OF WORK AND THAT CONTRACTOR OR
15 SUBCONTRACTOR MAY BE NAMED IN AN AMENDED NOTICE PURSUANT TO SUBSECTION I
16 OF THIS SECTION OR IN THE CORRESPONDING DWELLING ACTION.

17 2. Repairs or replacements shall begin as agreed by the purchaser
18 and the seller or the seller's construction ~~professionals~~ PROFESSIONAL,
19 with reasonable efforts to begin repairs or replacements within
20 thirty-five days after the seller's notice of intent to repair or replace
21 was sent pursuant to subsection C of this section. If a permit is
22 required to perform the repair or replacement, reasonable efforts shall be
23 made to begin repairs or replacements within ten days after receipt of the
24 permit or thirty-five days after the seller's notice of intent to repair
25 or replace was sent pursuant to subsection C of this section, whichever is
26 later.

27 3. All repairs or replacements shall be completed using reasonable
28 care under the circumstances and within a commercially reasonable time
29 frame considering the nature of the repair or replacement, any access
30 issues or unforeseen events that are not caused by the seller or the
31 seller's construction ~~professionals~~ PROFESSIONAL.

32 4. The purchaser shall provide reasonable access for the repairs or
33 replacements.

34 5. The seller is not entitled to a release or waiver solely in
35 exchange for any repair or replacement made pursuant to this subsection,
36 except that the purchaser and seller may negotiate a release or waiver in
37 exchange for monetary compensation or other consideration.

38 6. At the conclusion of any repairs or replacements, the purchaser
39 may commence a dwelling action or, if the contract for the sale of the
40 dwelling or the community documents contain a commercially reasonable
41 alternative dispute resolution procedure that complies with section
42 12-1366, subsection C, may initiate the dispute resolution process
43 including any claim for inadequate repair or replacement.

1 F. During the notice and repair or replacement process, and for
2 thirty days after substantial completion of the repair or replacement, the
3 statute of limitations and statute of repose, including section 12-552,
4 applicable to the purchaser, including any construction ~~professionals~~
5 PROFESSIONAL involved in the construction or design, are tolled as to the
6 seller and the seller's construction ~~professionals~~ PROFESSIONAL who were
7 involved in the construction or design of the dwelling for all alleged
8 construction defects described in reasonable detail in the written notice
9 sent to the seller pursuant to subsection A of this section.

10 G. THE STATUTE OF LIMITATIONS AND STATUTE OF REPOSE, INCLUDING
11 SECTION 12-552, THAT APPLY TO THE SELLER'S CLAIM FOR INDEMNITY OR
12 CONTRIBUTION AGAINST ANY CONSTRUCTION PROFESSIONAL IS TOLLED FROM THE DATE
13 THE SELLER RECEIVES THE NOTICE REQUIRED BY THIS SECTION UNTIL NINE MONTHS
14 AFTER THE PURCHASER'S SERVICE OF THE CIVIL COMPLAINT OR ARBITRATION DEMAND
15 ON THE SELLER.

16 ~~H.~~ H. ~~Both~~ ALL parties' conduct during the repair or replacement
17 process prescribed in subsections B, C, D and E of this section may be
18 introduced in any subsequent dwelling action. Any repair or replacement
19 efforts undertaken by the seller OR THE SELLER'S CONSTRUCTION PROFESSIONAL
20 are not considered settlement communications or offers of settlement and
21 are admissible in evidence.

22 ~~H.~~ I. A purchaser may amend the notice provided pursuant to
23 subsection A of this section to include alleged construction defects
24 identified in good faith after submission of the original notice. The
25 seller AND THE SELLER'S CONSTRUCTION PROFESSIONAL shall have a reasonable
26 period of time to conduct an inspection, if requested, and thereafter the
27 parties shall comply with the requirements of subsections B, C, D and E of
28 this section for the additional alleged construction defects identified in
29 reasonable detail in the notice.

30 ~~I.~~ J. Subject to Arizona rules of court, during the pendency of a
31 dwelling action the purchaser may supplement the list of alleged
32 construction defects to include additional alleged construction defects
33 identified in good faith after filing of the original dwelling action that
34 have been identified in reasonable detail as required by this section.
35 The court shall provide the seller AND THE SELLER'S CONSTRUCTION
36 PROFESSIONAL a reasonable amount of time to inspect the dwelling to
37 determine the nature and cause of the additional alleged construction
38 defects, AND the nature and extent of any repairs or replacements
39 necessary to remedy the additional alleged construction defects and, on
40 request of the seller OR THE SELLER'S CONSTRUCTION PROFESSIONAL,
41 sufficient time to repair or replace the additional alleged construction
42 defects. The parties shall comply with the requirements of subsections B,
43 C, D and E of this section for the additional alleged construction defects
44 identified in reasonable detail in the notice.

1 ~~J.~~ K. The service of an amended notice identifying in reasonable
2 detail the alleged construction defects during the pendency of a dwelling
3 action shall relate back to the original notice of alleged construction
4 defects for the purpose of tolling applicable statutes of limitations and
5 statutes of repose, including section 12-552.

6 ~~K.~~ L. By written agreement of the seller and purchaser, the time
7 periods provided in this section may be extended.

8 ~~L.~~ M. For the sale of a dwelling that occurs within the statutory
9 period set forth in section 12-552, the escrow agent, as defined in
10 section 6-801, shall provide notice to the purchaser of the provisions of
11 this section and sections 12-1361 and 12-1362. ~~Nothing in~~ This subsection
12 ~~creates~~ DOES NOT CREATE a fiduciary duty or ~~provides~~ PROVIDE any person or
13 entity with a private right or cause of action or administrative action.

14 N. A PURCHASER WHO FILES A CONTESTED DWELLING ACTION UNDER THIS
15 ARTICLE MUST FILE AN AFFIDAVIT WITH THE PURCHASER'S COMPLAINT, UNDER
16 PENALTY OF PERJURY, THAT THE PURCHASER HAS READ THE ENTIRE COMPLAINT,
17 AGREES WITH ALL OF THE ALLEGATIONS AND FACTS CONTAINED IN THE COMPLAINT
18 AND, UNLESS AUTHORIZED BY STATUTE OR RULE, IS NOT RECEIVING AND HAS NOT
19 BEEN PROMISED ANYTHING OF VALUE IN EXCHANGE FOR FILING THE DWELLING
20 ACTION.

21 ~~M.~~ O. If the seller does not comply with the requirements of this
22 section and the failure is not due to any fault of the purchaser or as a
23 result of an unforeseen condition, including an unforeseen weather
24 condition or government delay, the purchaser may commence a dwelling
25 action.

26 ~~N.~~ P. If the purchaser fails to comply with the requirements of
27 this section before bringing a dwelling action, the dwelling action shall
28 be dismissed. If the dwelling action is dismissed after the statute of
29 limitations or statute of repose, including section 12-552, applicable to
30 the purchaser, any subsequent dwelling action brought by the purchaser is
31 time barred as to the seller and the seller's construction ~~professionals~~
32 PROFESSIONAL involved in the construction or design of the dwelling.

33 ~~O.~~ Q. For the purposes of this section, "reasonable detail"
34 includes ALL OF THE FOLLOWING:

35 1. ~~A detailed and~~ AN itemized list that describes each alleged
36 construction defect, ~~WITH SUFFICIENT DETAIL TO ALLOW THE SELLER OR~~
37 SELLER'S CONSTRUCTION PROFESSIONAL TO IDENTIFY THE ALLEGED CONSTRUCTION
38 DEFECT.

39 2. The location that each alleged construction defect has been
40 observed by the purchaser in each dwelling that is the subject of the
41 notice. ~~and~~

42 3. The impairment to the dwelling that has occurred as a result of
43 each of the alleged construction defects or is reasonably likely to occur
44 if the alleged construction defects are not repaired or replaced.

1 4. THE STREET ADDRESS FOR EACH DWELLING THAT IS THE SUBJECT OF THE
2 NOTICE.

3 Sec. 3. Title 12, chapter 8, article 14, Arizona Revised Statutes,
4 is amended by adding section 12-1364, to read:

5 12-1364. Dwelling actions; contested issues; attorney fees
6 and taxable costs; expert witness fees;
7 definitions

8 A. IN A CONTESTED DWELLING ACTION, THE COURT OR TRIBUNAL MAY AWARD
9 THE PREVAILING PARTY WITH RESPECT TO A CONTESTED ISSUE REASONABLE ATTORNEY
10 FEES AND TAXABLE COSTS. A PURCHASER IS DEEMED THE PREVAILING PARTY WITH
11 RESPECT TO A CONTESTED ISSUE IF THE RELIEF OBTAINED BY THE PURCHASER FOR
12 THAT CONTESTED ISSUE, EXCLUSIVE OF ANY FEES AND TAXABLE COSTS, IS MORE
13 FAVORABLE THAN THE REPAIRS OR REPLACEMENTS AND OFFERS MADE BY THE SELLER
14 BEFORE THE PURCHASER FILED A DWELLING ACTION PURSUANT TO SECTION 12-1363.
15 THE SELLER IS DEEMED THE PREVAILING PARTY WITH RESPECT TO A CONTESTED
16 ISSUE IF THE RELIEF OBTAINED BY THE PURCHASER FOR THAT CONTESTED ISSUE,
17 EXCLUSIVE OF ANY FEES AND TAXABLE COSTS, IS NOT MORE FAVORABLE THAN THE
18 REPAIRS OR REPLACEMENTS AND OFFERS MADE BY THE SELLER BEFORE THE PURCHASER
19 FILED A DWELLING ACTION PURSUANT TO SECTION 12-1363.

20 B. AN AWARD OF ATTORNEY FEES PURSUANT TO THIS SECTION IS LIMITED TO
21 THE AMOUNT OF FEES ACTUALLY AND REASONABLY INCURRED WITH RESPECT TO THE
22 CONTESTED ISSUE FOR WHICH THE PARTY HAS BEEN DEEMED THE PREVAILING PARTY.
23 IN DETERMINING WHETHER THE FEES ACTUALLY INCURRED WITH RESPECT TO A
24 CONTESTED ISSUE ARE REASONABLE, THE COURT OR TRIBUNAL SHALL CONSIDER ALL
25 OF THE FOLLOWING:

26 1. THE REPAIRS, REPLACEMENTS OR OFFERS MADE BY THE SELLER, IF ANY,
27 BEFORE THE PURCHASER FILED THE DWELLING ACTION PURSUANT TO SECTION
28 12-1363.

29 2. THE PURCHASER'S RESPONSE TO THE SELLER'S REPAIRS, REPLACEMENTS
30 OR OFFERS MADE OR PROPOSED, IF ANY, BEFORE THE PURCHASER FILED THE
31 DWELLING ACTION PURSUANT TO SECTION 12-1363.

32 3. THE RELATION BETWEEN THE FEES INCURRED OVER THE DURATION OF THE
33 DWELLING ACTION AND THE VALUE OF THE RELIEF OBTAINED WITH RESPECT TO THE
34 CONTESTED ISSUE.

35 4. THE AMOUNT OF FEES INCURRED IN RESPONDING TO ANY UNSUCCESSFUL
36 MOTIONS, CLAIMS AND DEFENSES DURING THE DURATION OF THE DWELLING ACTION.

37 C. THIS SECTION DOES NOT ALTER, PROHIBIT OR RESTRICT PRESENT OR
38 FUTURE CONTRACTS THAT MAY PROVIDE FOR ATTORNEY FEES OR EXPERT WITNESS
39 FEES.

40 D. NOTWITHSTANDING ANY OTHER LAW, IN A CONTESTED DWELLING ACTION
41 THAT INVOLVES A SINGLE PURCHASER, THE COURT OR TRIBUNAL MAY AWARD THE
42 PREVAILING PARTY WITH RESPECT TO THE CONTESTED ISSUE REASONABLE EXPERT
43 WITNESS FEES. THE DETERMINATION OF THE PREVAILING PARTY AND THE
44 REASONABLENESS OF THE EXPERT WITNESS FEES SHALL BE MADE USING THE SAME
45 CRITERIA USED IN DETERMINING THE AWARD OF ATTORNEY FEES PURSUANT TO

1 SUBSECTIONS A AND B OF THIS SECTION. THIS SUBSECTION DOES NOT APPLY TO A
2 DWELLING ACTION THAT INVOLVES MORE THAN ONE PURCHASER OR AN ACTION THAT IS
3 CONSOLIDATED WITH ANY OTHER DWELLING ACTION. THE EXPERT WITNESS FEES
4 PRESCRIBED IN THIS SUBSECTION ARE IN ADDITION TO THE TAXABLE COSTS
5 AUTHORIZED BY SECTION 12-332.

6 E. FOR THE PURPOSES OF THIS SECTION:

7 1. "CONTESTED ISSUE" MEANS AN ISSUE THAT RELATES TO AN ALLEGED
8 CONSTRUCTION DEFECT AND THAT IS CONTESTED BY A PURCHASER FOLLOWING THE
9 CONCLUSION OF THE REPAIR AND REPLACEMENT PROCEDURES PRESCRIBED IN SECTION
10 12-1363.

11 2. "PURCHASER" MEANS ANY PERSON OR ENTITY, INCLUDING THE CURRENT
12 OWNER OF THE DWELLING, WHO FILES A DWELLING ACTION DURING THE TIME PERIOD
13 DESCRIBED IN SECTION 12-552.

14 Sec. 4. Title 32, chapter 10, article 3, Arizona Revised Statutes,
15 is amended by adding section 32-1159.01, to read:

16 32-1159.01. Indemnity agreements in construction and
17 architect-engineer dwelling contracts void;
18 definitions

19 A. NOTWITHSTANDING SECTION 32-1159, A COVENANT, CLAUSE OR
20 UNDERSTANDING IN, COLLATERAL TO OR AFFECTING A CONSTRUCTION CONTRACT OR
21 ARCHITECT-ENGINEER PROFESSIONAL SERVICE CONTRACT INVOLVING A DWELLING THAT
22 PURPORTS TO INSURE, TO INDEMNIFY OR TO HOLD HARMLESS THE PROMISEE FROM OR
23 AGAINST LIABILITY FOR LOSS OR DAMAGE IS AGAINST THE PUBLIC POLICY OF THIS
24 STATE AND IS VOID ONLY TO THE EXTENT THAT IT PURPORTS TO INSURE, TO
25 INDEMNIFY OR TO HOLD HARMLESS THE PROMISEE FROM OR AGAINST LIABILITY FOR
26 LOSS OR DAMAGE RESULTING FROM THE NEGLIGENCE OF THE PROMISEE OR THE
27 PROMISEE'S INDEMNITEES, EMPLOYEES, SUBCONTRACTORS, CONSULTANTS OR AGENTS
28 OTHER THAN THE PROMISOR.

29 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A CONTRACTOR WHO
30 IS RESPONSIBLE FOR THE PERFORMANCE OF A CONSTRUCTION CONTRACT MAY FULLY
31 INDEMNIFY A PERSON FOR WHOSE ACCOUNT THE CONSTRUCTION CONTRACT IS NOT
32 BEING PERFORMED AND WHO, AS AN ACCOMMODATION, ENTERS INTO AN AGREEMENT
33 WITH THE CONTRACTOR THAT ALLOWS THE CONTRACTOR TO ENTER ON OR ADJACENT TO
34 ITS PROPERTY TO PERFORM THE CONSTRUCTION CONTRACT FOR OTHERS.

35 C. ANY ADDITIONAL INSURED ENDORSEMENT FURNISHED PURSUANT TO AN
36 AGREEMENT OR COLLATERAL TO A CONSTRUCTION CONTRACT INVOLVING A DWELLING
37 DOES NOT OBLIGATE THE INSURER TO INDEMNIFY THE ADDITIONAL INSURED FOR THE
38 PERCENTAGE OF FAULT THAT IS ALLOCATED TO THE ADDITIONAL INSURED. THIS
39 SUBSECTION DOES NOT LIMIT AN INSURER'S DUTY TO DEFEND AN ADDITIONAL
40 INSURED PURSUANT TO THE TERMS AND CONDITIONS OF AN ADDITIONAL INSURED
41 ENDORSEMENT.

42 D. A COVENANT, CLAUSE OR UNDERSTANDING IN, COLLATERAL TO OR
43 AFFECTING A CONSTRUCTION CONTRACT OR ARCHITECT-ENGINEER PROFESSIONAL
44 SERVICE CONTRACT THAT REQUIRES THE PROMISOR TO DEFEND THE PROMISEE IS

1 LIMITED TO DEFENDING CLAIMS ARISING OUT OF OR RELATED TO THE PROMISOR'S
2 WORK OR OPERATIONS.

3 E. THIS SECTION APPLIES TO ALL CONSTRUCTION CONTRACTS AND
4 ARCHITECT-ENGINEER PROFESSIONAL SERVICE CONTRACTS INVOLVING A DWELLING
5 ENTERED INTO BETWEEN PRIVATE PARTIES.

6 F. THIS SECTION DOES NOT APPLY TO:

7 1. AN AGREEMENT TO WHICH THIS STATE OR A POLITICAL SUBDIVISION OF
8 THIS STATE IS A PARTY, INCLUDING AN INTERGOVERNMENTAL AGREEMENT AND AN
9 AGREEMENT GOVERNED BY SECTIONS 34-226 AND 41-2586.

10 2. AGREEMENTS ENTERED INTO BY AGRICULTURAL IMPROVEMENT DISTRICTS
11 UNDER TITLE 48, CHAPTER 17.

12 3. AN AGREEMENT FOR INDEMNIFICATION OF A SURETY ON A PAYMENT OR
13 PERFORMANCE BOND BY ITS PRINCIPAL OR INDEMNITORS.

14 4. AN AGREEMENT BETWEEN AN INSURER UNDER AN INSURANCE POLICY OR
15 CONTRACT AND ITS NAMED INSUREDS.

16 5. AN AGREEMENT BETWEEN AN INSURER UNDER AN INSURANCE POLICY OR
17 CONTRACT AND ITS ADDITIONAL INSUREDS, EXCEPT THAT THIS TYPE OF AGREEMENT
18 IS SUBJECT TO THE LIMITATIONS OF SUBSECTIONS A, B AND C OF THIS SECTION.

19 6. AN AGREEMENT BETWEEN AN INSURER AND ITS INSUREDS UNDER A SINGLE
20 INSURANCE POLICY OR CONTRACT FOR A DEFINED PROJECT OR WORKPLACE, EXCEPT
21 THAT SUCH AGREEMENT MAY NOT REQUIRE OR ALLOW ONE OR MORE INSUREDS UNDER
22 THE AGREEMENT TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND ANY OTHER
23 INSURED UNDER THE AGREEMENT BEYOND THE LIMITATIONS OF SUBSECTIONS A, B AND
24 C OF THIS SECTION.

25 7. A PUBLIC SERVICE CORPORATION'S RULES, REGULATIONS OR TARIFFS
26 THAT ARE APPROVED BY THE CORPORATION COMMISSION.

27 G. FOR THE PURPOSES OF THIS SECTION:

28 1. "ARCHITECT-ENGINEER PROFESSIONAL SERVICE CONTRACT" MEANS A
29 WRITTEN OR ORAL AGREEMENT RELATING TO THE SURVEY, DESIGN, DESIGN-BUILD,
30 CONSTRUCTION ADMINISTRATION, STUDY, EVALUATION OR OTHER PROFESSIONAL
31 SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED CONSTRUCTION,
32 ALTERATION, REPAIR, MAINTENANCE, MOVING, DEMOLITION OR EXCAVATION OF ANY
33 STRUCTURE, STREET OR ROADWAY, APPURTENANCE OR OTHER DEVELOPMENT OR
34 IMPROVEMENT TO LAND.

35 2. "CONSTRUCTION CONTRACT" MEANS A WRITTEN OR ORAL AGREEMENT
36 RELATING TO THE ACTUAL OR PROPOSED CONSTRUCTION, ALTERATION, REPAIR,
37 MAINTENANCE, MOVING, DEMOLITION OR EXCAVATION OF ANY STRUCTURE, STREET OR
38 ROADWAY, APPURTENANCE OR OTHER DEVELOPMENT OR IMPROVEMENT TO LAND.

39 3. "DWELLING" HAS THE SAME MEANING PRESCRIBED IN SECTION 12-1361.

40 Sec. 5. Laws 2018, chapter 336, section 1 is amended to read:

41 Section 1. Construction liability apportionment study
42 committee; membership; duties; delayed repeal

43 A. The construction liability apportionment study committee is
44 established consisting of the following members:

1 1. Three members of the senate who are appointed by the president
2 of the senate, not more than two of whom are members of the same political
3 party. The president of the senate shall designate one of these members
4 to serve as cochairperson of the committee.

5 2. Three members of the house of representatives who are appointed
6 by the speaker of the house of representatives, not more than two of whom
7 are members of the same political party. The speaker of the house of
8 representatives shall designate one of these members to serve as
9 cochairperson of the committee.

10 B. Committee members are not eligible to receive compensation, but
11 are eligible for reimbursement of expenses pursuant to title 38, chapter
12 4, article 2, Arizona Revised Statutes.

13 C. The study committee shall research and make recommendations for
14 the apportionment of liability in the construction industry, including:

15 1. The use of an indemnity provision in construction contracts.

16 2. The allocation of liability based on degrees of fault.

17 3. The assignment of financial responsibility to negligent parties.

18 4. The opportunity to address and remedy alleged construction
19 defects prior to litigation.

20 5. The frequency of construction defect litigation.

21 6. The affordability of insurance costs associated with
22 construction claims.

23 D. The study committee may hold hearings, conduct fact-finding
24 tours and take testimony from witnesses who may assist the study committee
25 in fulfilling its responsibilities. All hearings of the study committee
26 shall be open to the public.

27 E. The legislature shall provide staff and support services to the
28 study committee.

29 F. The study committee shall submit a report regarding its findings
30 and recommendations on or before December 15, 2018, to the governor, the
31 president of the senate and the speaker of the house of representatives
32 and provide a copy of this report to the secretary of state.

33 G. This section is repealed from and after ~~June 30, 2019~~
34 SEPTEMBER 30, 2020.

35 Sec. 6. Retroactivity

36 Laws 2018, chapter 336, section 1, as amended by this act applies
37 retroactively to from and after June 30, 2019.

APPROVED BY THE GOVERNOR APRIL 10, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2019.