

1 DRAFT PREPARED BY LEGISLATIVE COUNCIL
2 For: Rep. Joe Jefferson
3 Attorney: Cushman
4 Stenographer: Downey
5 Date: October 1, 1807
6 DOC. I.D.: L:\COUNCIL\BILLS\NBD\11851AC08.DOC
7
8

9 **A BILL**

10
11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, TO ENACT THE "SOUTH CAROLINA HOME LEMON
13 LAW" SO AS TO ADD CHAPTER 18 TO TITLE 37 TO
14 ESTABLISH REMEDIES FOR HOME WARRANTY DEFECTS,
15 INCLUDING REPAIR, HOME REPLACEMENT, OR REFUND
16 OF HOME PURCHASE PRICE, TO ESTABLISH
17 PROCEDURES FOR PURSUING SUCH REMEDIES, TO
18 REQUIRE THE DEPARTMENT OF CONSUMER AFFAIRS TO
19 CONDUCT CONTESTED CASE HEARINGS ON ANY
20 DEFECT ISSUES NOT RESOLVED BY THE PARTIES, TO
21 PROVIDE AFFIRMATIVE DEFENSES, TO REQUIRE A
22 HOMEOWNER TO EXHAUST THESE REMEDIES BEFORE
23 BRINGING A CIVIL ACTION, TO REQUIRE WARRANTIES
24 AND DISCLOSURE OF REPLACEMENT OR REFUND OF
25 THE HOME, TO REQUIRE THE DEPARTMENT OT
26 ESTABLISH A TOLL-FREE NUMBER TO PROVIDE
27 INFORMATION CONCERNING REMEDIES UNDER THIS
28 CHAPTER, AND TO REQUIRE THE DEPARTMENT TO
29 PUBLISH AN ANNUAL REPORT IDENTIFYING HOMES
30 REQUIRED TO BE REPLACE OR REFUNDED, AND TO
31 AUTHORIZE ADMINISTRATIVE PENALTIES FOR
32 VIOLATIONS OF THE CHAPTER; AND TO REPEAL
33 ARTICLE 5, CHAPTER 59. TITLE 40 RELATING TO THE
34 SOUTH CAROLINA NOTICE AND OPPORTUNITY TO CURE
35 CONSTRUCTION DWELLING DEFECTS ACT.
36

37
38 Be it enacted by the General Assembly of the State of South
39 Carolina:

40
41 SECTION 1. Chapter 37 of the 1976 Code is amended by adding:
42

[]

1 “Section 37-18-10. This chapter may be cited as the ‘South
2 Carolina Home Lemon Law’.

3
4 Section 37-18-20. As used in this chapter:

5 (1) ‘Department’ means the Department of Consumer Affairs.

6 (2) ‘Contractor’ means a person who, for compensation,
7 engages in the construction, remodeling, repair, modification, or
8 improvement of a building or a portion of a building used
9 primarily for residential purposes.

10 (3) ‘Defect’ means a condition that prevents a home from
11 conforming to a contractor’s warranty, including the implied
12 warranty that the home will conform to each applicable building
13 code.

14 (4) ‘Home’ means a single-family house, duplex, triplex, or
15 quadruplex or a unit in a multiunit structure used for residential
16 purposes that is used or intended to be used as a dwelling by one of
17 the owners.

18 (5) ‘Homeowner’ means a person who:

19 (a) purchased a home from a contractor and is entitled to
20 enforce the terms of a contractor’s warranty with respect to the
21 home;

22 (b) is a lessor or lessee, other than a sublessee, who
23 purchased or leased the home from a contractor; or

24 (c) is a transferee or assignee of a person described by
25 subitem (a) or (b) if the transferee or assignee is a resident of this
26 State and entitled to enforce the terms of a contractor’s warranty.

27 (6) ‘Serious safety hazard’ means a life-threatening
28 malfunction, installation defect, or nonconformity that
29 substantially impedes a person’s ability to live in or use a home or
30 that creates a substantial risk of fire, explosion, or exposure to a
31 toxic substance.

32 (7) ‘Warranty’ means an express or implied warranty.

33

34 Section 37-18-30. (A) This chapter supersedes any other law
35 or contract provision that conflicts with this chapter.

36 (B) Except as provided by this section, this chapter does not
37 limit the rights or remedies otherwise available to a homeowner
38 under any other law.

39 (C) A contract provision that excludes or modifies the remedies
40 provided by this chapter is prohibited and is void as against public
41 policy unless the exclusion or modification is included in a
42 settlement agreement between a homeowner and a contractor.

43

1 Section 37-18-40. A homeowner may seek a remedy provided
2 by this chapter by:

3 (1) providing to the contractor written notice identifying each
4 defect in the home that is covered by the contractor's warranty;
5 and

6 (2) filing a complaint with the department that includes a copy
7 of the written notice provided under item (1) on or before the
8 thirtieth day after the date the notice is provided to the contractor.
9

10 Section 37-18-50. (A) The department may set a hearing on
11 any allegation in a complaint that is not privately resolved between
12 the homeowner and the contractor.

13 (B) The contested case provisions of the Administrative
14 Procedures Act apply to a hearing conducted under this chapter.
15

16 Section 37-18-60. A homeowner must file a complaint under
17 this chapter before the earlier of:

- 18 (1) the date the express warranty period expires; or
19 (2) the tenth anniversary of the closing date.
20

21 Section 37-18-70. In a hearing before the department under this
22 chapter, a contractor may assert as an affirmative defense to an
23 allegation of a defect made in a complaint filed under this chapter
24 that the defect is the result of abuse, neglect, or modifications or
25 alterations of the home made by a person other than the contractor.
26

27 Section 37-18-80. (A) If a defect exists, the contractor shall
28 make the repairs necessary to conform the home to the contractor's
29 warranties if:

30 (1) the homeowner or the homeowner's designated agent
31 reported the defect to the contractor or the contractor's agent
32 before the expiration of the applicable time limit under Section
33 37-18-60; or

34 (2) a breach of an implied warranty on the home is
35 established under subsection (C).

36 (B) The contractor must make the repairs required under
37 subsection (A) not later than the one hundred twentieth day after
38 the date the notice of the defect required by Section 37-18-40 is
39 received by the department.

40 (C) There is a presumption that a breach of an implied warranty
41 on a home exists if the home does not comply with:

- 42 (1) a building code applicable to the home;

1 (2) the latest edition, published before the construction of the
2 home, of:
3 (a) the International Building Code for One- and
4 Two-Family Dwellings;
5 (b) the National Electric Code; or
6 (c) the manufacturer's specific installation instructions for
7 the part or component used in construction of the home; or
8 (3) structural engineering standards or practices intended to
9 prevent structural damage or a decrease in the market value of the
10 home resulting from the failure of the foundation or other
11 load-bearing portions of the home, including standards or practices
12 used to ensure that a foundation is structurally sufficient without
13 artificial moisture controls or other extraordinary maintenance by
14 the homeowner.

15
16 Section 37-18-90. (A) If the contractor is unable to cure a
17 defect within the one hundred twenty-day period prescribed by
18 Section 37-18-80(B) and the defect creates a serious safety hazard,
19 substantially impairs the use of the home, or decreases the home's
20 market value by more than five percent, the contractor shall at the
21 homeowner's option:

22 (1) replace the home with a comparable home in the same
23 neighborhood; or

24 (2) accept return of the home from the homeowner and
25 refund to the homeowner the full purchase price and any closing
26 costs and reasonable moving costs.

27 (B) The department may not order a remedy under this section
28 unless the contractor has been provided at least 118 calendar days
29 to cure the defect that is subject to the remedy provided by this
30 section. The one hundred twenty-day period required by this
31 subsection is extended by the amount of time during which repair
32 services are not available to a homeowner because of a war,
33 invasion, strike, or fire, flood, or other natural disaster.

34
35 Section 37-18-100. (A) If a contractor is ordered to replace a
36 home or refund the purchase price pursuant to Section 37-18-90,
37 the contractor shall reimburse the homeowner for reasonable
38 incidental costs resulting from the loss of the use of the home
39 because of the defect.

40 (B) As necessary to promote the public interest, the department
41 by regulation:

1 (1) shall define the incidental costs that are eligible for
2 reimbursement under subsection (A) and specify other
3 requirements necessary to determine an eligible cost; and

4 (2) may set a maximum amount that is eligible for
5 reimbursement, either by type of eligible cost or by a total for all
6 costs.

7 (C) Refunds must be made to the homeowner and primary
8 lienholder, as applicable.

9
10 Section 37-18-110. This chapter does not prevent a homeowner
11 from obtaining a remedy available to the homeowner under a new
12 home warranty that provides remedies in addition to those
13 provided by this chapter.

14
15 Section 37-18-120. (A) Except as provided by this section, a
16 homeowner may not seek the remedies provided by this chapter in
17 a civil action unless the homeowner files a complaint against the
18 contractor under this chapter and exhausts the administrative
19 proceedings provided by this chapter. A court shall dismiss an
20 action filed in violation of this section.

21 (B) If the department does not issue a final order on or before
22 the one hundred fiftieth day after the date a complaint is filed
23 pursuant to Section 37-18-40, the department shall provide written
24 notice, by certified mail, to the complainant and the contractor.

25 (C) The notice must inform the recipient of:

26 (1) the date, as established by the department, that the period
27 for issuing a final order under this chapter expires; and

28 (2) the complainant's right to file an action under this
29 section.

30 (D) After receiving a notice of the right to file an action, a
31 complainant may file an action against a contractor named in the
32 complaint. The department's failure to issue a notice of the right
33 to file an action does not affect a complainant's right to bring an
34 action under this section after one hundred and fifty days have
35 elapsed since the homeowner filed the complaint with the
36 department pursuant to Section 37-18-40.

37
38 Section 37-18-130. A final order of the department issued under
39 this chapter is subject to review by an Administrative Law Judge
40 as provided for in the Administrative Procedures Act.

41
42 Section 37-18-140. (A) A contractor who is ordered to refund
43 the purchase price of or replace a home under this chapter shall

1 provide to the first retail purchaser of the home after the home was
2 repurchased or replaced by the contractor a disclosure statement
3 stating that the home was repurchased or replaced by the
4 contractor pursuant to this chapter.

5 (B) The disclosure statement must include the toll-free
6 telephone number established by the department under Section
7 37-18-160.

8 (C) Before a home repurchased or replaced pursuant to this
9 chapter may be sold again, the deed that transfers title to the home
10 must be marked with a clear statement that indicates that the home
11 was repurchased or replaced pursuant to this chapter.

12
13 Section 37-18-150. A contractor who sells a home after
14 repurchasing or replacing the home pursuant to this chapter shall:

15 (1) restore the home in a manner that conforms with applicable
16 building codes; and

17 (2) issue an express warranty for the home.

18
19 Section 37-18-160. The department shall establish a toll-free
20 telephone number for providing information concerning remedies
21 available under this chapter and information about a defect that
22 was the basis for ordering a remedy under this chapter. The
23 department shall maintain an effective method of providing
24 information to persons who make these requests.

25
26 Section 37-18-170. (A) The department shall publish and make
27 available to the public an annual report relating to homes ordered
28 repurchased or replaced by contractors pursuant to this chapter.

29 (B) The report must:

30 (1) list the number of homes by subdivision name, if any;

31 (2) identify the contractor; and

32 (3) include a brief description of each defect that was the
33 subject of a remedy provided by this chapter.

34 (C) The department may charge a reasonable fee to recover the
35 cost of publishing the report.

36
37 Section 37-18-180. The department may impose an
38 administrative penalty on a person who violates this chapter, a
39 regulation promulgated pursuant to this chapter, or an order issued
40 pursuant to this chapter.

41
42 Section 37-18-190. The department, in consultation with the
43 South Carolina Residential Builders Commission, shall promulgate

1 regulations necessary for the administration and enforcement of
2 this chapter.”

3

4 SECTION 2. Article 5, Chapter 59, Title 40 of the 1976 Code is
5 repealed.

6

7 SECTION 3. This act takes effect upon approval by the Governor.

8

----XX----