

## HOUSE BILL No. 2784

By Representative Welshimer

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AN ACT concerning residential building contractors; creating an implied warranty of habitability.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) When used in this act:

(1) "Residence" means any: (A) Single family house; or (B) unit in a building containing living quarters occupied or intended to be occupied by not more than four families living independently of each other; or (C) unit in a multiunit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative agreement. Such term shall include the foundation and necessary soil preparation underneath a residence. Except as provided herein, such term shall not include mobile or manufactured homes, appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the residence, landscaping, fences, nonpermanent construction materials, off-site improvements and all similar items. Such term shall include mobile or manufactured homes only for the purposes of the foundation and necessary soil preparation underneath the mobile or manufactured home.

(2) "Contractor" means any person who undertakes, with or for another, to build or construct a new residence or alter, repair, remodel or renovate an existing residence.

(3) "Person" means any individual, corporation, partnership, association or other legal entity.

(b) (1) An implied warranty of habitability shall attach to every contract or agreement for the sale or construction of a new residence or the alteration, repair, remodeling or renovation of an existing residence in this state.

(c) Under the implied warranty of habitability, the contractor represents and warrants each of the following:

(1) The work performed and materials used comply with any architectural or other plans and specifications contained in or incorporated into the contract or agreement;

(2) the work performed and materials used comply in all material

1 respects with applicable building codes and other public requirements or  
2 regulations establishing standards of quality and safety which have been  
3 adopted by statute, city ordinance or county resolution or by rule or reg-  
4 ulation adopted to implement such statute, ordinance or resolution; and

5 (3) the roof, supporting walls, floors, windows, doors, insulation and  
6 foundation of the residence shall be in safe working order and structurally  
7 sound.

8 (d) No civil action directed to a breach of any warranty contained in  
9 this section shall be commenced until after the contractor has been rea-  
10 sonably notified in writing of the breach or defect and the contractor (1)  
11 denies the claim or (2) fails to cure, correct or remedy the breach or  
12 defect in a timely manner. The contractor shall have 30 days after receipt  
13 of the notice to cure, correct or remedy any breach of warranty or defect  
14 that has made the residence unsafe to occupy, and 90 days after receipt  
15 of the notice to cure, correct or remedy any other breach of warranty or  
16 defect. If the contractor is not reasonably available to notify as required  
17 by this subsection, a civil action directed to a breach of any warranty  
18 contained in this section may be commenced at any time. Any action  
19 brought pursuant to subsection (c) shall be commenced within five years  
20 of the date of closing in the case of a new residence or five years from  
21 the date of final payment to the contractor in the case of alteration, repair,  
22 remodeling or renovation of an existing residence or it shall be forever  
23 barred. If compliance with the notice provisions of this subsection would  
24 result in the barring of an action, such time shall be extended by the time  
25 period required for compliance with the provisions of this subsection.

26 (e) Any disclaimer or limitation of any warranty contained in this sec-  
27 tion shall be void.

28 (f) In any action brought under this section, the court may award to  
29 the prevailing party costs and reasonable attorney fees, including those  
30 on appeal.

31 (g) The remedies provided in this section shall not be construed to  
32 limit, impair or exclude any other common law or statutory remedies or  
33 claims for relief.

34 (h) Any warranty created by this section shall not supersede any ex-  
35 press warranty and shall be in addition to any express or other implied  
36 warranty provided by law.

37 Sec. 2. This act shall take effect and be in force from and after its  
38 publication in the statute book.

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