

A bill for an act

relating to real property; statutory warranties; providing for notice and opportunity to repair with certain conditions; providing remedies; amending Minnesota Statutes 2008, sections 327A.01, subdivision 7, by adding subdivisions; 327A.02, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 327A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 327A.01, subdivision 7, is amended to read:

Subd. 7. **Vendor.** "Vendor" means any person, firm, or corporation ~~which~~ that constructs dwellings for the purpose of sale, including the construction of dwellings on land owned by vendees. Vendor does not include a vendor's subcontractor or material supplier.

Sec. 2. Minnesota Statutes 2008, section 327A.01, is amended by adding a subdivision to read:

Subd. 12. **Inspection.** "Inspection" means either or both of the following: (1) a visual inspection; or (2) an invasive inspection if any damage caused to the property during the invasive inspection is patched or repaired so as to prevent further damage.

Sec. 3. Minnesota Statutes 2008, section 327A.01, is amended by adding a subdivision to read:

Subd. 13. **Insurer.** "Insurer" means an insurance company with a duty to defend the vendor against general or specific liability for the alleged damage, notwithstanding the theory of liability.

Sec. 4. Minnesota Statutes 2008, section 327A.02, subdivision 4, is amended to read:

Subd. 4. **Response from vendor to notice of claim.** ~~(a) Following notice under section 327A.03, The vendee must allow an inspection and opportunity to for purposes of the preparation of an offer to repair the known alleged loss or damage pursuant to section 327A.09. Upon request of the vendee, a court may order the vendor to conduct the inspection. The inspection must be performed by the vendor or a designee or designees and any an offer to repair must be made in writing to the vendee within 30 45 days of the vendor's receipt of the written notice required under section 327A.03, clause (a), alleging loss or damage the notification required by section 327A.03, clause (a), or commencement of suit, whichever occurs first. The vendor's insurer may also participate in the inspection for purposes of preparing an independent offer of repair. The applicable statute of limitations is tolled from the date the written notice provided by the vendee is postmarked, or if not sent through the mail, received by the vendor until the earliest of the following:~~

(1) ~~the date the vendee rejects~~ vendor gives written notice to the vendee of the
vendor's offer to repair;

(2) ~~the date the vendor rejects the vendee's claim in writing~~ rejection of the claim;

(3) failure by the vendor to make an offer to repair within the ~~30-day~~ time period described in this subdivision; or

(4) 180 days.

For purposes of this subdivision, "vendor" includes a home improvement contractor.

(b) Upon completion of repairs as described in an offer to repair, the vendor must provide the vendee with a list of the repairs made ~~and a notice that the vendee may have a right to pursue a warranty claim under this chapter.~~ Provision of this statement is not an admission of liability. ~~Compliance with this subdivision does not affect any rights of the vendee under this chapter.~~

(c) Within 45 days of notice of injury or commencement of suit, the vendor must give written notice of the claim to its insurer. The vendor is liable to the insurer in the amount of \$50 for every business day this notice is not given unless the vendor has more than one insurer and at least one of the insurers received the written notice required by this subdivision.

Sec. 5. **[327A.09] RIGHT TO REPAIR.**

Subdivision 1. Scope and cost of repair. (a) Within 15 days of the inspection authorized by section 327A.02, subdivision 4, the vendor must provide to the vendee and the vendor's insurer an offer of repair. The offer of repair must include, at a minimum:

(1) the scope of the proposed repair work;

(2) the proposed date on which the repair work would begin and the estimated date of completion; and

(3) the estimated cost of the repair, including the amounts of the specific bids from subcontractors the vendor intends to use, if any, and the amounts included in the estimated cost for overhead and profit.

(b) Nothing in this subdivision prevents the vendee from obtaining the information in paragraph (a) from another contractor or from negotiating with the vendor for a different scope of work provided that the negotiation does not extend the time for notifying the insurer.

(c) If the vendee and vendor agree to a scope of work and no objection is received pursuant to paragraph (d), the vendor must begin the repair work in accordance with the offer of repair, and the vendor's insurer must pay for this work subject to a right of subrogation.

(d) If the vendee accepts the vendor's offer of repair, but the insurer objects to the scope of the proposed repair work, the insurer must complete the inspection required by subdivision 2 within 30 days of receipt of a copy of the vendor's offer of repair.

(e) If the vendee accepts the vendor's offer of repair, but the insurer objects to the vendor's estimated cost of repair, the insurer must:

(1) hire a contractor and subcontractors, subject to the approval of the vendee which shall not be unreasonably withheld, to repair the loss or damage at the insurer's expense subject to the insurer's right of subrogation; or

(2) pay the insurer's estimated cost of repair directly to the vendee, in which event the vendee shall have a direct cause of action against the insurer for any additional damages.

Subd. 2. Failure to agree. (a) If the vendor and the vendee cannot agree on the scope of work within 15 days after the offer of repair is presented to the vendee, the vendee must allow an inspection of the loss or damage by the vendor's insurer for purposes of preparing an independent offer of repair. The vendor's insurer must complete its inspection no later than 30 days after receiving notice of an impasse between the vendor and vendee. The vendor's insurer has 15 days after an inspection to present the vendee with an offer of repair containing the information in subdivision 1, paragraph (a).

(b) If the vendee accepts the insurer's offer of repair, the insurer must pay for all work done pursuant to this scope of work, subject to the insurer's right of subrogation. The insurer may select a new contractor to complete the repair work if it determines, in good faith, that the vendor is incapable of completing the work or if the insurer determines in good faith that the vendor is responsible for the loss or damage.

4.1 (c) If the vendee rejects the insurer's offer of repair, the insurer must pay the insurer's
4.2 estimated cost of repair directly to the vendee, in which event the vendee shall have a
4.3 direct cause of action against the insurer for any additional damages.

4.4 (d) In the event the insurer fails to comply with its obligations under paragraph (a),
4.5 the insurer is liable for a civil penalty of \$500 in addition to actual damages.

4.6 Subd. 3. **Recovery.** (a) If the vendee commences an action pursuant to subdivision
4.7 1, paragraph (e), clause (2), or 2, paragraph (c), and prevails in the action, the vendee
4.8 must, in addition to the other costs and disbursements awarded, recover reasonable
4.9 attorney fees from the insurer. For purposes of this subdivision, a vendee prevails in the
4.10 action if the vendee proves damages existed at the time of the insurer's offer of repair that
4.11 exceeded 110 percent of the insurer's estimated cost of repair and proves that the insurer
4.12 acted in bad faith.

4.13 (b) If the vendee commences an action pursuant to subdivision 1, paragraph (e),
4.14 clause (2), or 2, paragraph (c), and the vendor's insurer prevails in such action and the
4.15 court determines that the vendee acted in bad faith, the insurer must be awarded reasonable
4.16 attorney fees, in addition to other costs and disbursements rewarded. For purposes of
4.17 this subdivision, an insurer prevails in the action if the vendee proves damages existed
4.18 at the time of the insurer's offer of repair that are less than 90 percent of the insurer's
4.19 estimated cost of repair.

4.20 (c) If the vendor fails to perform the inspection required by section 327A.02,
4.21 subdivision 4, the vendor is deemed to have breached the warranty provided in this
4.22 section. In that event, the vendor's insurer may cure the breach by completing the
4.23 inspection and providing the offer of repair required by subdivision 2.

4.24 (d) An insurer may not refuse to insure the vendor or substantially raise the vendor's
4.25 insurance premiums solely as a result of the insurer having to pay for repairs pursuant
4.26 to this section. An insurer may not avoid its duty to defend or its duty to indemnify
4.27 solely as a result of the vendor's failure to timely provide the notice required by section
4.28 327A.02, subdivision 4, paragraph (b). Nothing in this section precludes an insurer from
4.29 maintaining an action in subrogation or to recover damages from the vendor as a result of
4.30 the vendor's conduct or lack of conduct.

4.31 Subd. 4. **Stay.** If a suit is commenced on a claim for an injury arising from an
4.32 improvement to residential real property, the suit is stayed until the process required by
4.33 this section has been complied with or breached.

4.34 Subd. 5. **Effect of certain actions.** (a) Nothing in this section shall be construed
4.35 to make an insurer that pays for repair work pursuant to this section a vendor or home
4.36 improvement contractor.

5.1 (b) Nothing in this section shall be construed to make a subcontractor or material
5.2 supplier retained by the vendor or vendor's insurer a home improvement contractor.

5.3 (c) A vendor does not become a home improvement contractor by complying with
5.4 its obligations under this section.

5.5 Sec. 6. **EFFECTIVE DATE; APPLICATION.**

5.6 Sections 1 to 5 are effective the day following final enactment and apply to notices
5.7 of injury given, and actions commenced, on or after that date.

5.8 Nothing in this section shall be construed to revive claims already barred or to
5.9 extend any applicable statute of limitations or repose.