STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

April 10, 2019

The Honorable Katie Hobbs
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Hobbs:

I am transmitting to you the following bills from the Fifty-fourth Legislature, 1st Regular Session, which I signed on April 10th, 2019:

H.B. 2569 occupational licensing; reciprocity (Petersen)
S.B. 1030 remote online notarization; registration (Leach)
S.B. 1069 postsecondary institutions; free expression policies (Boyer)
S.B. 1180 department of revenue; applicants; fingerprinting (Boyer)
S.B. 1258 class M driver licenses; applicability (Pratt)
S.B. 1271 purchaser dwelling actions; notice; complaints (Fann)
S.B. 1299 state warrants; substitute checks (Brophy McGee)
S.B. 1312 bad checks; restitution payments (Farnsworth E)
S.B. 1314 death penalty; aggravating circumstances (Farnsworth E)
S.B. 1338 veteran special plates; branch seal (Carter)
S.B. 1347 luxury tax; cavendish; definition (Gowan)
S.B. 1351 peace officers memorial board; continuation (Borrelli)
S.B. 1448 alarm systems; low-voltage electric fences (Farnsworth E)
S.B. 1529 agriculture advisory council; membership (Pratt)
S.B. 1530 task force; towing safety; extension (Pratt)

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

1700 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007
602-542-4331 • www.azgovernor.gov

House Engrossed Senate Bill

**FILED**
**KATIE HOBBS**
**SECRETARY OF STATE**

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)

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

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

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

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

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

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

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

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

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

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

12-1363. <u>Notice and right to repair or replace; tolling of time limits; admissible evidence; definition</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. FOR THE PURPOSES OF THIS SECTION:

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

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

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

32-1159.01. <u>Indemnity agreements in construction and architect-engineer dwelling contracts void; definitions</u>

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

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

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

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

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

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

F. THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

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

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

G. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

Section 1. <u>Construction liability apportionment study committee; membership; duties; delayed repeal</u>

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

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

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

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

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

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

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

3. The assignment of financial responsibility to negligent parties.

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

5. The frequency of construction defect litigation.

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

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

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

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

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

Sec. 6. Retroactivity

Laws 2018, chapter 336, section 1, as amended by this act applies 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.**

Passed the House April 3, 2019,

by the following vote: 48 Ayes,

11 Nays, 1 Not Voting

Speaker of the House
Pro Tempore

Jim Drake
Chief Clerk of the House

Passed the Senate March 7, 2019,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Karen Fann
President of the Senate

Susan Aceves
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1271

**SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE**

Passed the Senate April 4, 20 19

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

4th day of April, 20 19

at 2:51 o'clock P M.

Secretary to the Governor

Approved this 10th day of

April 2019

at 2:24 o'clock P M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this 10 day of April, 20 19

at 4:29 o'clock P. M.

Secretary of State

S.B. 1271