

# SENATE, No. 2370

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED APRIL 5, 2018

**Sponsored by:**

**Senator JEFF VAN DREW**

**District 1 (Atlantic, Cape May and Cumberland)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Expands new home warranty protections.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/26/2018)

1 AN ACT concerning new home warranties and amending and  
2 supplementing P.L.1977, c.467.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 2 of P.L.1977, c.467 (C.46:3B-1 et al.) is amended  
8 to read as follows:

9 As used in this act:

10 a. "Department" means the Department of Community Affairs.

11 b. "Commissioner" means the Commissioner of Community  
12 Affairs.

13 c. "Warranty" means the warranty prescribed by the  
14 commissioner pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.).

15 d. "New home" means any dwelling unit not previously  
16 occupied, excluding dwelling units constructed solely for lease.

17 e. "Owner" means any person for whom the new home is built  
18 or to whom the home is sold for occupation by him or his family as  
19 a home and his successors in title to the home or mortgagee in  
20 possession. Owner does not mean any development company,  
21 association or subsidiary company of the builder or any person or  
22 organization to whom the home may be sold or otherwise conveyed  
23 by the builder for subsequent resale, letting or other purpose.

24 f. "Builder" means any individual corporation, partnership or  
25 other business organizations engaged in the construction of new  
26 homes.

27 g. "Major construction defect" means:

28 (1) any actual damage to the load bearing portion of the home  
29 including damage due to subsidence, expansion or lateral movement  
30 of the soil (excluding movement caused by flood or earthquake)  
31 which affects its load bearing function and which vitally affects or  
32 is imminently likely to vitally affect use of the home for residential  
33 purposes; and

34 (2) a defect in residential construction subject to a warranty that  
35 affects its intended use as habitation, or will require the expenditure  
36 of funds for repair in order for its owners to restore the property to  
37 its condition as it existed at the time of the granting of the  
38 certificate of occupancy and which defect is a direct consequence of  
39 the violation by the builder of any portion or requirement of the  
40 "State Uniform Construction Code Act," P.L.1975, c.217  
41 (C.52:27D-119 et seq.), or regulations promulgated thereto.

42 h. "Warranty date" means the first occupation or settlement  
43 date, whichever is sooner.

44 i. "Approved claim" means, for the purposes of P.L.1991,  
45 c.202 (C.46:3B-13 et al.), a claim examined and approved by the

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 commissioner in accordance with section 3 of P.L.1991, c.202  
2 (C.46:3B-15).

3 j. "Approved method" means, for the purposes of P.L.1991,  
4 c.202 (C.46:3B-13 et al.), a method of remediation approved by the  
5 commissioner in accordance with section 3 of P.L.1991, c.202  
6 (C.46:3B-15).

7 k. "Fund" means the new home warranty security fund  
8 established in the department pursuant to section 7 of P.L.1977,  
9 c.467 (C.46:3B-7).

10 l. "Warranty guarantor" means, for the purposes of P.L.1991,  
11 c.202 (C.46:3B-13 et al.), (1) the new home warranty program  
12 established in the department pursuant to P.L.1977, c.467 (C.46:3B-  
13 1 et seq.) or (2) any alternate new home warranty security program  
14 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

15 m. "Board" means the Board of Trustees established pursuant to  
16 section 2 of P.L.2001, c.147 (C.46:3B-7.2).  
17 (cf: P.L.2001, c.147, s.4)

18

19 2. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read  
20 as follows:

21 7. a. There is hereby established a new home warranty security  
22 fund to be maintained by the State Treasurer in a trust account,  
23 separate and apart from other funds and administered by the  
24 commissioner. The purpose of the fund is (1) to provide moneys  
25 sufficient to pay claims by owners against builders participating in  
26 the fund for defects in new homes covered by the new home  
27 warranty; and (2) to pay the costs of administering the new home  
28 warranty program established in the department, including the costs  
29 of obtaining sufficient reinsurance to prudently protect the fund  
30 against unanticipated risks and costs incurred by the board in the  
31 discharge of its duties. The amounts payable by participating  
32 builders shall be established and may be changed from time to time,  
33 as the experience of the fund shall require, by the commissioner,  
34 and shall be sufficient to cover anticipated claims, to provide a  
35 reasonable reserve and to cover the costs of administering the fund.  
36 Amounts paid by participating builders shall be forwarded to the  
37 State Treasurer and shall be accounted for and credited by him to  
38 the new home warranty security fund.

39 b. The State Treasurer shall hold, manage and, through the  
40 Division of Investment, invest and reinvest moneys in the fund and  
41 credit all income earned thereon to the fund in the same manner as  
42 provided by law for the investment of pension and retirement funds  
43 administered by the State. The department shall keep the State  
44 Treasurer and the board advised of anticipated cash demands for  
45 payment of claims against the fund. No funds shall be spent,  
46 appropriated or transferred from the fund other than for the express  
47 purposes of paying claims or costs related to administering the  
48 program or the fund as enumerated in subsection a, c, or e of this

1 section. In the event funds are spent, appropriated or transferred  
2 from the fund for other purposes in violation of this subsection, the  
3 obligation of participating builders to contribute to the fund shall be  
4 suspended until such time as the funds are replenished, and if the  
5 amount in the fund shall become insufficient thereafter to pay  
6 claims or make awards, the payment of claims and making of  
7 awards shall be made from the General Fund. The Joint Budget  
8 Oversight Committee, or its successor, shall have the authority to  
9 investigate complaints of violative fund transfers under this section,  
10 and shall order the Commissioner of Community Affairs to suspend  
11 collection from participating builders if it determines that the  
12 provisions of this subsection have been violated.

13 c. (1) Prior to making a claim against the fund for defects  
14 covered by the warranty, an owner shall notify the builder of such  
15 defects and allow a reasonable time period for their repair. If the  
16 repairs are not made within a reasonable time or are not satisfactory  
17 to the owner, he may file a claim against the fund in the form and  
18 manner prescribed by the commissioner. The commissioner shall  
19 investigate each claim to determine the validity thereof, and the  
20 amount of the award that shall be made thereon, and shall hold a  
21 hearing if requested by either party, in accordance with the  
22 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
23 (C.52:14B-1 et seq.) applicable to contested cases. Reasonable  
24 hearing fees shall be assessed against the unsuccessful party. The  
25 amount of the award shall be sufficient to cover the reasonable  
26 costs necessary to correct any defect or defects covered under the  
27 warranty, but the total amount of awards from the fund for any new  
28 home shall not exceed the purchase price of the home in the first  
29 good faith sale thereof or the fair market value on the home on its  
30 completion date if there is no good faith sale. All claims submitted  
31 by an owner shall first be reviewed through a conciliation or  
32 arbitration procedure by the department, and in the event that the  
33 owner is found to be in the right, then the builder shall be required  
34 to correct such claims as determined through the conciliation or  
35 arbitration procedure.

36 If a builder is unable or willfully refuses to correct such  
37 deficiency, then an amount sufficient to cure the problem shall be  
38 paid from the fund to the owner. In such cases, the commissioner  
39 may then proceed against the builder in accordance with subsection  
40 b. of section 6 of P.L.1977, c.467 (C.46:3B-6). Upon certification  
41 from the commissioner of the amount of an award, the State  
42 Treasurer shall make payment to the claimant from the fund.

43 (2) Notwithstanding the provisions of paragraph (1) of this  
44 subsection, once a claim has been filed, an owner shall be permitted  
45 to repair a defect included in the claim, prior to the conciliation or  
46 arbitration procedure, if the defect requires immediate repair to  
47 prevent further damage or poses a serious safety hazard. The  
48 commissioner shall establish standards for determining whether a

1 defect requires immediate repair. Prior to making the repair, the  
2 owner shall notify the commissioner of the defect and reason for  
3 repair. The commissioner shall establish standards for determining  
4 whether a defect requires immediate repair, and a process by which  
5 an owner with a successful claim shall be reimbursed the reasonable  
6 costs necessary to correct the defect.

7 d. (Deleted by amendment, P.L.2001, c.147).

8 e. If the board determines that fund reserves and reinsurance  
9 may be insufficient to cover anticipated claims, the board shall  
10 recommend steps to the commissioner to restore fund resources to  
11 sufficiency, which may include increases in premiums and fees,  
12 expanded reinsurance and changes in standards and claims  
13 adjudication procedures.

14 f. The commissioner may provide for surcharges against those  
15 builders who are responsible for a significant number of awards  
16 against the fund and may discontinue the participation in the fund  
17 of any builder who is responsible for an excessive number of  
18 awards against the fund after a hearing in accordance with the  
19 provisions of the "Administrative Procedure Act," P.L.1968, c. 410  
20 (C.52:14B-1 et seq.) applicable to contested cases. At no time shall  
21 the State be required to contribute any moneys to the fund, nor shall  
22 the State have any liability to any person having any right to or  
23 claim against the fund over and above the amount therein except in  
24 those instances where it is determined by the Joint Budget  
25 Oversight Committee that the provisions of subsection b. of this  
26 section have been violated concerning amounts spent, appropriated  
27 or transferred from the fund.

28 g. The commissioner may order the return of funds to owners  
29 of enrolled homes as may be recommended by the board pursuant to  
30 section 3 of P.L.2001, c.147 (C.46:3B-7.3).  
31 (cf: P.L.2001, c.147, s.5)

32  
33 3. Section 8 of P.L.1977, c.467 (C.46:3B-8) is amended to read  
34 as follows:

35 a. The commissioner is authorized and directed to review and  
36 approve alternate new home warranty security programs which  
37 provide for payment of claims against builders for defects covered  
38 under the new home warranty and financial security adequate to  
39 cover the total amount of claims that may be reasonably anticipated  
40 against participating builders at least equivalent to that provided by  
41 the new home warranty security fund. However, any new home  
42 warranty insurance program approved by the Commissioner of  
43 Insurance prior to the adoption of this act shall: (1) Constitute an  
44 approved alternate new home warranty security program and shall  
45 be deemed in accordance with this section and in compliance with  
46 this act in the form and substance heretofore approved by the  
47 Commissioner of Insurance, (2) not be subject to any rules and  
48 regulations adopted by the Commissioner of the Department of

1 Community Affairs pursuant to this act when such rules and  
2 regulations are in conflict with said previously approved new home  
3 warranty program. Any person desiring approval of a new home  
4 warranty security program shall make application to the  
5 commissioner in such form and manner as he shall prescribe. He  
6 may establish and charge reasonable fees to cover the costs incurred  
7 in reviewing and approving such applications. The commissioner  
8 shall review each application and conduct any investigation he  
9 deems necessary with respect to an application. The commissioner  
10 may, and if an applicant so requests, he shall, hold a hearing on an  
11 application in accordance with the provisions of the Administrative  
12 Procedures Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to  
13 contested cases. If the commissioner finds that a new home  
14 warranty security program provides coverage and financial security  
15 at least equivalent to the new home warranty security fund, he shall  
16 approve the program, provided that it meets the criteria set forth in  
17 subsection b. and c. of this section. The commissioner may revoke  
18 or suspend the approval for such a program after a hearing in  
19 accordance with the same procedures applicable to hearings on  
20 applications if he finds that the program no longer provides  
21 coverage and financial security equivalent to the new home  
22 warranty security fund, or if the program violates any of the  
23 provisions of subsection b. or c. of this section.

24 b. An alternate new home warranty security program shall  
25 include a complaint, claims, and payment procedure, which:

26 (1) provides an attempt at informal settlement of any claim  
27 arising out of the warranty between the builder and the owner and  
28 requires that any owner desiring to make a claim provide written  
29 notice of the complaint to the builder;

30 (2) provides conciliation, arbitration, or both, of any warranty  
31 claim dispute by an independent third party selected and appointed  
32 in a manner approved by the department and disclosed to the owner  
33 on or before the warranty date;

34 (3) provides the owner with an opportunity to accept or reject a  
35 conciliation decision in satisfaction of the claim and notice of the  
36 opportunity to appeal that decision to a court of competent  
37 jurisdiction and to request a review of the decision by the  
38 department;

39 (4) permits an owner to repair a defect included in a claim under  
40 the warranty, after an unsuccessful informal settlement, but prior to  
41 the conciliation or arbitration procedure, if the defect requires  
42 immediate repair to prevent further damage or poses a serious  
43 safety hazard;

44 (5) provides that a determination as to whether a defect required  
45 immediate repair, pursuant to subparagraph (d) of this paragraph,  
46 shall be made in accordance with the standards established by the  
47 commissioner pursuant to paragraph (2) of subsection c. of section

1 7 of P.L.1977, c.467, and that an owner may file an appeal of the  
2 determination to the commissioner;

3 (6) provides a process by which a successful owner shall be  
4 reimbursed the reasonable costs necessary to correct the defect  
5 requiring immediate repair; and

6 (7) provides fixed periods of time for action by either party  
7 pursuant to the arbitration or conciliation decision.

8 c. In accordance with section 9 of P.L.1977, c.467 (C.463B-9),  
9 an alternate new home warrant security program shall not:

10 (1) restrict the right of an owner to seek any remedies available  
11 under the law, including, but not limited to, mandating arbitration  
12 as the exclusive remedy for a claim of a defect; and

13 (2) restrict the right of an owner to file an appeal, as applicable  
14 to the remedy elected.

15 (cf: P.L.1977, c.467, s.8)

16

17 4. Section 9 of P.L.1977, c.467 (C.46:3B-9) is amended to read  
18 as follows:

19 9. Nothing contained herein shall affect other rights and  
20 remedies available to the owner. The owner shall have the  
21 opportunity to pursue any remedy legally available to the owner.  
22 However, initiation of procedures to enforce a remedy [shall  
23 constitute an election which shall bar the owner from all other  
24 remedies] under P.L.1977, c.467 (C.46:3B-1 et seq.) shall require  
25 the court to stay any decision concerning claims pending before it  
26 regarding the same defect, pending the outcome of the  
27 administrative procedure. Nothing contained herein shall be  
28 deemed to limit the owner's right of appeal as applicable to the  
29 remedy elected.

30 (cf: P.L.1977, c.467, s.9)

31

32 5. (New section) a. Any person serving as an arbitrator for a  
33 dispute under the "New Home Warranty and Builders' Registration  
34 Act," P.L.1977, c.467 (C.46:3B-1 et seq.), whether under the plan  
35 created by the Commissioner of Community Affairs pursuant to the  
36 provisions of section 3 of P.L.1977, c.467 (C.46:3B-3), or any  
37 private plan for that same purpose approved by the commissioner,  
38 shall: possess proof of satisfactorily passing the course of study for  
39 building inspector certified by the department; be licensed as a  
40 professional engineer or registered or licensed as an architect in  
41 New Jersey or in any other state; or hold a license as a State  
42 subcode official; provided, however, that no person shall serve as  
43 an arbitrator in any matter involving a major structural defect claim  
44 who is not either a licensed professional engineer or a registered or  
45 licensed architect.

46 b. (1) In addition to the requirements of subsection a. of this  
47 section, as a condition of serving as an arbitrator for a dispute under  
48 P.L.1977, c.467 (C.46:3B-1 et seq.), a person shall be required to

1 complete a training program, created by or approved by the  
2 commissioner, of not less than eight hours in length, that is  
3 designed to clarify the role, and the duties, of an arbitrator under  
4 P.L.1977, c.467 (C.46:3B-1 et seq.), and to develop standards for  
5 the arbitration of warranty claims under P.L.1977, c.467 (C.46:3B-1  
6 et seq.).

7 (2) The training program shall be established not later than the  
8 90th day next following the enactment of P.L. , c. (C. )  
9 (pending before the Legislature as this bill). The training program  
10 shall be provided by the Department of Community Affairs or  
11 Rutgers, The State University, with the approval of the  
12 commissioner.

13 (3) A person who has served as an arbitrator under P.L.1977,  
14 c.467 (C.46:3B-1 et seq.) prior to the effective date of P.L. ,  
15 c. (C. ) (pending before the Legislature as this bill) shall  
16 complete the training program not later than the first day of the  
17 seventh month next following the enactment of P.L. , c. (C. )  
18 (pending before the Legislature as this bill).

19 (4) Any person who does not complete the training program  
20 required under this subsection shall be prohibited from serving as  
21 an arbitrator for disputes under P.L.1977, c.467 (C.46:3B-1 et seq.)  
22 until they have completed the training program required by this  
23 subsection.

24 c. The commissioner shall adopt a written policy and  
25 procedures governing conflicts of interest on the part of arbitrators  
26 for disputes under the "New Home Warranty and Builders'  
27 Registration Act." The written policy and procedures adopted  
28 pursuant to this subsection shall include, at a minimum,  
29 requirements for:

30 (1) the disclosure by an arbitrator of any perceived or actual  
31 conflict of interest on the arbitrator's part with respect to any  
32 dispute under P.L.1977, c.467 (C.46:3B-1 et seq.) for which they  
33 have been appointed the arbitrator;

34 (2) the lodging of a complaint by any owner of any perceived or  
35 actual conflict of interest on an arbitrator's part with respect to any  
36 dispute under P.L.1977, c.467 (C.46:3B-1 et seq.);

37 (3) the disclosure of any arbitrator's previous employment or  
38 affiliation with a builder or an owner who may be party to a dispute  
39 under P.L.1977, c.467 (C.46:3B-1 et seq.);

40 (4) the maintenance by the department of a record of any claim  
41 by any party to a dispute under P.L.1977, c.467 (C.46:3B-1 et seq.)  
42 of a perceived or actual conflict of interest; and

43 (5) the procedure for granting a second arbitration of a dispute  
44 under P.L.1977, c.467 (C.46:3B-1 et seq.) if a conflict of interest  
45 has been verified.

46 d. The commissioner shall disseminate the written policy  
47 developed pursuant to subsection c. of this section to all active  
48 arbitrators upon its adoption.



1 e. The commissioner shall establish a reporting requirement for  
2 any arbitrator or business entity arbitration organization that  
3 administers or otherwise is involved in arbitration of new home  
4 warranty claims under P.L.1977, c.467 (C.46:3B-1 et seq.). The  
5 commissioner shall collect, publish at least quarterly, and make  
6 available to the public on the department's Internet website, all of  
7 the following information regarding each new home warranty  
8 arbitration within the preceding five years:

9 (1) the name of any corporation or other business entity that is  
10 party to the arbitration;

11 (2) whether the consumer was the prevailing party;

12 (3) the number of occasions, if any, a business entity which is a  
13 party to an arbitration, has previously been a party in an arbitration  
14 or mediation administered by the arbitration organization;

15 (4) whether the consumer was represented by an attorney;

16 (5) the date the arbitration organization received the demand for  
17 arbitration, the date the arbitrator was appointed, and the date of  
18 disposition by the arbitrator or arbitration organization;

19 (6) the type of disposition of the dispute, if known;

20 (7) the amount of the claim, the amount of the award, and any  
21 other relief granted, if any; and

22 (8) the name of the arbitrator, his or her total fee for the case,  
23 and the percentage of the arbitrator's fee allocated to each party.  
24

25 6. (New section) a. The Bureau of Homeowner Protection,  
26 Division of Codes and Standards in the Department of Community  
27 Affairs shall create a "New Home Buyer's Bill of Rights" which  
28 shall include an overview of all the rights afforded to homeowners  
29 under the "New Home Warranty and Builders' Registration Act,"  
30 P.L.1977, c.467 (C.46:3B-1 et seq.), as well as a guide to warranty  
31 coverage and claim filing, a guide to State building codes, a list of  
32 approved warranty plans, an explanation of the builder registration  
33 process, and a detailed discussion of the dispute process, including  
34 the arbitration of disputes.

35 b. The Bureau of Homeowner Protection, Division of Codes  
36 and Standards in the department shall publish the "New Home  
37 Buyer's Bill of Rights" on the department's Internet website.  
38

39 7. This act shall take effect on the first day of the seventh  
40 month next following enactment, except the commissioner may take  
41 any anticipatory administrative action in advance as shall be  
42 necessary for the implementation of this act.

## STATEMENT

This bill expands protections for owners of new homes under the "New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.).

Under current law, a new home warranty only provides 10 years' worth of coverage for a "major construction defect," which is limited to "actual damage to the load bearing portion of the home on of the home including damage due to subsidence, expansion or lateral movement of the soil affecting the load bearing function and which vitally affects or is imminently likely to vitally affect use of the home for residential purposes." The bill expands the definition to include, "a defect in residential construction subject to a warranty that affects its intended use of habitation, or will require the expenditure of funds for repair in order for its owners to restore the property to its condition as it existed at the time of the granting of the certificate of occupancy and which defect is a direct consequence of the violation by the builder of the residential construction of any portion or requirement of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or regulations promulgated thereto."

Current law requires every builder of new homes to be registered and enrolled in either the State warranty plan, established by the Commissioner of Community Affairs or an alternate new home warranty security program, approved by the commissioner. The bill expands current law to provide that in order to qualify for approval, an alternate program is required to include a complaint, claims, and payment procedure, which:

(1) provides an attempt at informal settlement of any claim arising out of the warranty;

(2) provides conciliation, arbitration, or both, of any warranty claim dispute by an independent third party selected and appointed in a manner approved by the department;

(3) provides the owner with an opportunity to accept or reject a conciliation decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction and to request a review of the decision by the department;

(4) permits an owner to repair a defect included in a claim under the warranty, if the defect requires immediate repair to prevent further damage or poses a serious safety hazard;

(5) provides that a determination as to whether a defect required immediate repair, will be made in accordance with standards to be established by the commissioner, and that an owner may file an appeal of the determination to the commissioner;

(6) provides a process by which a successful owner will be reimbursed the reasonable costs necessary to correct the defect requiring immediate repair; and

1       (7) provides fixed periods of time for action by either party  
2 pursuant to the arbitration or conciliation decision.

3       Additionally, the bill specifies that an alternate new home  
4 warrant security program will not be approved if it:

5       (1) restricts the right of an owner to seek any remedies available  
6 under the law, including, but not limited to, mandating arbitration  
7 as the exclusive remedy for a claim of a defect; and

8       (2) restricts the right of an owner to file an appeal, as applicable  
9 to the remedy elected.

10       The bill also establishes qualifications for any person serving as  
11 an arbitrator for a dispute under the “New Home Warranty and  
12 Builders’ Registration Act,” whether under the State warranty plan  
13 or an approved private warranty plan. Under the bill, an arbitrator  
14 is required to complete a training program, created by or approved  
15 by the commissioner, of not less than eight hours in length, that is  
16 designed to clarify the role, and the duties, of an arbitrator under the  
17 “New Home Warranty and Builders’ Registration Act,” and  
18 establishes deadlines for its completion. The bill also requires the  
19 commissioner to develop standards for the arbitration of warranty  
20 claims under that law. Additionally, the bill provides that the  
21 commissioner will establish a reporting requirement for arbitrators  
22 and the information collected will be made available to the public  
23 on the department’s Internet website.

24       Finally, the bill requires the Bureau of Homeowner Protection,  
25 Division of Codes and Standards in the Department of Community  
26 Affairs to create a “New Home Buyer’s Bill of Rights” which will  
27 include an overview of all the rights afforded to owners under the  
28 “New Home Warranty and Builders’ Registration Act,” as well as a  
29 guide to warranty coverage and claim filing, a guide to State  
30 building codes, a list of approved warranty plans acceptable in the  
31 State, an explanation of builder registration, and a detailed  
32 discussion of the dispute process, including the arbitration of  
33 disputes. The department must publish the “New Home Buyer’s  
34 Bill of Rights” on the department’s Internet website.