

REFERENCE TITLE: purchaser dwelling actions; notice; complaints

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1271

Introduced by
Senator Fann

AN ACT

AMENDING SECTIONS 12-1362 AND 12-1363, ARIZONA REVISED STATUTES; 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)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-1362, Arizona Revised Statutes, is amended to
3 read:

4 12-1362. Dwelling action; notice of intent to repair or
5 replace; jurisdictional prerequisite; insurance;
6 bifurcated trial; legislative intent

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

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

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

37 D. **SUBJECT TO ARIZONA RULES OF COURT, FOR EACH CONSTRUCTION DEFECT**
38 **FOUND TO EXIST, THE TRIER OF FACT IN ANY DWELLING ACTION FILED PURSUANT TO**
39 **THIS ARTICLE SHALL FIRST DETERMINE AND IDENTIFY EACH PARTY OR THIRD-PARTY**
40 **DEFENDANT WHOSE CONDUCT, WHETHER BY ACTION OR OMISSION, HAS CAUSED, IN**
41 **WHOLE OR IN PART, THE CONSTRUCTION DEFECT. IF THE TRIER OF FACT,**
42 **DETERMINES THAT A THIRD-PARTY DEFENDANT CAUSED, IN WHOLE OR IN PART, A**
43 **CONSTRUCTION DEFECT, THE TRIER OF FACT SHALL THEREAFTER DETERMINE THE**
44 **RELATIVE DEGREE OF FAULT OF ANY PARTY OR OF ANY NONPARTIES, IF THE**
45 **THIRD-PARTY DEFENDANT GAVE NOTICE BEFORE THE TRIAL OR ALTERNATIVE DISPUTE**
46 **RESOLUTION PROCESS, IN ACCORDANCE WITH REQUIREMENTS ESTABLISHED BY COURT**

1 RULE, THAT A NONPARTY WAS WHOLLY OR PARTIALLY AT FAULT. THE TRIER OF FACT
2 SHALL ALLOCATE THE PRO RATA SHARE OF LIABILITY BASED ON RELATIVE DEGREE OF
3 FAULT. THE DETERMINATION OF WHETHER A CONSTRUCTION DEFECT EXISTS AND
4 WHICH PARTY OR THIRD-PARTY DEFENDANT HAS CAUSED, IN WHOLE OR IN PART, THE
5 CONSTRUCTION DEFECT SHALL BE BIFURCATED FROM AND TAKE PLACE IN A SEPARATE
6 PHASE OF THE TRIAL OR ALTERNATIVE DISPUTE RESOLUTION PROCESS FROM THE
7 DETERMINATION OF THE RELATIVE DEGREE OF FAULT OF ANY PARTY OR OF ANY
8 NONPARTIES, UNLESS THE COURT FOR GOOD CAUSE FINDS THAT BIFURCATION IS NOT
9 APPROPRIATE.

10 E. THE LEGISLATURE FINDS AND DETERMINES THAT GIVEN THE COMPLEXITY
11 AND MULTI-PARTY NATURE OF DWELLING ACTIONS, IT IS IMPORTANT TO PROVIDE A
12 STREAMLINED PROCESS FOR THE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS THAT
13 IS EFFICIENT, ECONOMICAL AND CONVENIENT FOR THE PARTIES INVOLVED. THE
14 LEGISLATURE FURTHER FINDS AND DETERMINES THAT FOR THE MAJORITY OF DWELLING
15 ACTIONS, BIFURCATION OF THE ISSUES OF THE EXISTENCE OF A DEFECT AND
16 CAUSATION FROM THE ISSUE OF APPORTIONMENT OF FAULT IS MORE EFFICIENT, FAIR
17 AND CONVENIENT FOR THE PARTIES. IT IS THE LEGISLATURE'S INTENT THAT THE
18 BIFURCATION PROCESS INCLUDED IN SUBSECTION D OF THIS SECTION BE USED
19 UNLESS THE COURT FINDS THAT THE CIRCUMSTANCES OF THE PARTICULAR CASE AT
20 ISSUE RENDER BIFURCATION INAPPROPRIATE.

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

23 **12-1363. Notice and right to repair or replace; tolling of**
24 **time limits; admissible evidence; definition**

25 A. Before filing a dwelling action, the purchaser shall give
26 written notice by certified mail, return receipt requested, to the seller
27 specifying in reasonable detail the basis of the dwelling action. A
28 SELLER WHO RECEIVES NOTICE UNDER THIS SUBSECTION SHALL FORWARD A COPY OF
29 THE NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN
30 ADDRESS OF EACH CONSTRUCTION PROFESSIONAL WHO THE SELLER REASONABLY
31 BELIEVES IS RESPONSIBLE FOR AN ALLEGED DEFECT THAT IS SPECIFIED IN THE
32 NOTICE.

33 B. After receipt of the notice described in subsection A of this
34 section, the seller **AND THE SELLER'S CONSTRUCTION PROFESSIONAL** may inspect
35 the dwelling to determine the nature and cause of the alleged construction
36 defects and the nature and extent of any repairs or replacements necessary
37 to remedy the alleged construction defects. The purchaser shall ensure
38 that the dwelling is made available for inspection ~~to~~ NOT later than ten
39 days after the purchaser receives the seller's **AND THE SELLER'S**
40 **CONSTRUCTION PROFESSIONAL'S** request for an inspection. The seller **AND THE**
41 **SELLER'S CONSTRUCTION PROFESSIONAL** shall provide reasonable notice to the
42 purchaser before conducting the inspection. The inspection shall be
43 conducted at a reasonable time. The seller **AND THE SELLER'S CONSTRUCTION**
44 **PROFESSIONAL** may use reasonable measures, including testing, to determine
45 the nature and cause of the alleged construction defects and the nature
46 and extent of any repairs or replacements necessary to remedy the alleged

1 construction defects. If the seller ~~conducts~~ AND THE SELLER'S
2 CONSTRUCTION PROFESSIONAL CONDUCT testing pursuant to this subsection, the
3 seller AND THE SELLER'S CONSTRUCTION PROFESSIONAL shall restore the
4 dwelling to its condition before the testing.

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

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

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

35 1. The purchaser and the seller or the seller's construction
36 ~~professionals~~ PROFESSIONAL shall coordinate repairs or replacements within
37 thirty days after the seller's notice of intent to repair or replace was
38 sent pursuant to subsection C of this section. If requested by the
39 purchaser IN AN AFFIDAVIT, UNDER PENALTY OF PERJURY, THAT THE PURCHASER,
40 AND NOT THE PURCHASER'S ATTORNEY, DOES NOT CONSENT TO HAVE THE
41 SUBCONTRACTOR THAT WAS INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE
42 DWELLING PERFORM THE REPAIRS, repair or replacement of alleged
43 construction defects undertaken by the seller shall be performed by a
44 construction professional selected by the seller and consented to by the
45 purchaser, whose consent shall not be unreasonably withheld, that was not
46 involved in the construction or design of the dwelling. A CONTRACTOR OR

1 SUBCONTRACTOR THAT WAS NOT INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE
2 DWELLING AND THAT PERFORMS ANY REPAIR OR REPLACEMENT OF THE ALLEGED
3 CONSTRUCTION DEFECT PURSUANT TO THIS SECTION IS LIABLE ONLY TO THE SELLER
4 OR PURCHASER WHO CONTRACTED FOR THE CONTRACTOR'S OR SUBCONTRACTOR'S
5 SERVICES FOR THE CONTRACTOR'S OR SUBCONTRACTOR'S SCOPE OF WORK AND THAT
6 CONTRACTOR OR SUBCONTRACTOR MAY NOT BE NAMED IN AN AMENDED NOTICE PURSUANT
7 TO SUBSECTION I OF THIS SECTION OR IN THE CORRESPONDING DWELLING ACTION.

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

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

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

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

29 6. At the conclusion of any repairs or replacements, the purchaser
30 may commence a dwelling action or, if the contract for the sale of the
31 dwelling or the community documents contain a commercially reasonable
32 alternative dispute resolution procedure that complies with section
33 12-1366, subsection C, may initiate the dispute resolution process
34 including any claim for inadequate repair or replacement.

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

44 G. THE STATUTE OF LIMITATIONS AND STATUTE OF REPOSE, INCLUDING
45 SECTION 12-552, THAT APPLY TO THE SELLER'S CLAIM FOR INDEMNITY OR
46 CONTRIBUTION AGAINST ANY CONSTRUCTION PROFESSIONAL IS TOLLED FROM THE DATE

1 THE SELLER RECEIVES THE NOTICE REQUIRED BY THIS SECTION UNTIL ONE YEAR
2 AFTER THE PURCHASER'S SERVICE OF THE CIVIL COMPLAINT OR ARBITRATION DEMAND
3 ON THE SELLER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 32-1159.01. Indemnity agreements in construction and
35 architect-engineer dwelling contracts void:
36 definitions

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

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

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

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

17 E. THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

30 6. AN AGREEMENT BETWEEN AN INSURER AND ITS INSUREDS UNDER A SINGLE
31 INSURANCE POLICY OR CONTRACT FOR A DEFINED PROJECT OR WORKPLACE, EXCEPT
32 THAT SUCH AGREEMENT MAY NOT REQUIRE OR ALLOW ONE OR MORE INSUREDS UNDER
33 THE AGREEMENT TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND ANY OTHER
34 INSURED UNDER THE AGREEMENT BEYOND THE LIMITATIONS OF SUBSECTIONS A AND B
35 OF THIS SECTION AND THE INSURER MAY NOT BE EXCUSED FROM ITS DUTY UNDER THE
36 AGREEMENT TO DEFEND, INDEMNIFY AND PAY ON BEHALF OF ITS INSUREDS.

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

39 F. FOR THE PURPOSES OF THIS SECTION:

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

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

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

Sec. 4. Laws 2018, chapter 336, section 1 is amended to read:

Section 1. Construction liability apportionment study committee: membership: duties: delayed repeal

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~~
44 SEPTEMBER 30, 2020.

1 Sec. 5. Retroactivity

2 Laws 2018, chapter 336, section 1, as amended by this act applies
3 retroactively to from and after June 30, 2019.