

**Representative Stephen H. Urquhart** proposes the following substitute bill:

**CAUSE OF ACTION FOR DEFECTIVE  
CONSTRUCTION**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill creates limitations on a cause of action for defective construction.

**Highlighted Provisions:**

This bill:

- ▶ limits a cause of action for defective construction to a breach of contract action, unless there is certain other property damage, personal injury, or an intentional or willful breach of a legal duty; and
- ▶ addresses who may bring an action for defective construction.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-4-512**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*



26 Section 1. Section 78B-4-512 is enacted to read:

27 **78B-4-512. Cause of action for defective construction.**

28 (1) Except as provided in Subsection (2), an action for defective design or construction  
29 is limited to breach of the contract ~~H→~~ , whether written or otherwise, including both express  
30a and implied warranties ~~←H~~ .

31 (2) An action for defective design or construction may include damage to other  
32 property or physical personal injury if the damage or injury is caused by the defective design or  
33 construction.

34 (3) For purposes of ~~H→~~ [this section] Subsection (2) ~~←H~~ , property damage does not  
35a include:

36 (a) the failure of construction to function as designed; or

37 (b) diminution of the value of the constructed property because of the defective design  
38 or construction.

39 (4) Except as provided in Subsection (2) ~~H→~~ and (6) ~~←H~~ , an action for defective design  
37a or construction  
38 may be brought only by a person in privity of contract with the original contractor, architect,  
39 engineer, or the real estate developer.

40 (5) If a person in privity of contract sues for defective design or construction under this  
41 section, nothing in this section precludes the person from bringing, in the same suit, another  
42 cause of action to which the person is entitled based on an intentional or willful breach of a  
43 duty existing in law.

44 (6) Nothing in this section precludes a person from assigning a right under a contract to  
45 another person, including to a subsequent owner or a homeowners association.

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**S.B. 220 1st Sub. (Green) - Cause of Action for Defective Construction**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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