

Regular Session, 2014

HOUSE BILL NO. 529

BY REPRESENTATIVE PUGH

CONTRACTORS: Requires contractors performing elevation, re-elevation, or restoration services due to a flood or hurricane; to provide third-party insurance backed warranties on each such project

1 AN ACT

2 To enact Chapter 8 of Code Title IV of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:2790.1.1 through 2790.1.11, relative to
4 warranties required of contractors for elevation, re-elevation, or restoration services;
5 to enact the Elevation, Re-elevation, or Restoration Warranty Act; to provide for
6 warranties by contractors for certain elevation, re-elevation, or restoration work; to
7 require insurance against certain defects; to provide for warranty periods; to provide
8 for notice requirements; to provide definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 8 of Code Title IV of Code Book III of Title 9 of the Louisiana
11 Revised Statutes of 1950, comprised of R.S. 9:2790.1.1 through 2790.1.11, is hereby enacted
12 to read as follows:

13 CHAPTER 8. ELEVATION, RE-ELEVATION, OR RESTORATION WORK

14 WARRANTY ACT

15 §2790.1.1. Purpose

16 A. The legislature finds a need to protect property owners in Louisiana from
17 economic loss due to defective workmanship on structures that are elevated, re-
18 elevated, or restored. Many of these economic losses are caused by contractors

1 performing these improvements and not providing an enforceable warranty to the
2 owners of the structures to pay for the damages and defects caused to their property
3 arising from the work of the contractor.

4 B. The legislature finds that these economic losses can be minimized by
5 requiring an insured warranty on each such improvement required because of
6 elevation, re-elevation, hurricane, or flood.

7 C. This warranty shall define the responsibility of the contractor to the owner
8 and subsequent purchasers during the warranty period. The warranty, which is
9 mandatory, shall apply whether or not building code regulations are in effect in the
10 location of the structure, thereby promoting uniformity of defined building standards.

11 §2790.1.2. Definitions

12 For purposes of this Chapter, the following words, phrases, and terms shall
13 be defined and construed as follows:

14 (1) "Contractor" means any person, natural or juridical, who undertakes, or
15 attempts to undertake, on any elevation, re-elevation, or restoration to any pre-
16 existing structure, or to structures which are adjacent to such structure. The term
17 "contractor" shall include but not be limited to contractors, general contractors,
18 residential building contractors, and home improvement contractors as defined by
19 R.S. 37:2150.1.

20 (2) "Flood" means water intrusion caused by wind driven water, rising tides,
21 or wind produced surge, or any combination thereof.

22 (3) "Hurricane" means any storm named by the National Weather Service.

23 (4) "Improvement" means the elevation, re-elevation, or restoration, or any
24 combination thereof, by a contractor to any residential or commercial structure
25 damaged by a hurricane or flood. This definition shall include but not be limited to
26 improvements undertaken pursuant to a government program, improvements paid for
27 within proceeds of insurance, and improvements paid for by the owner of the
28 structure on which the improvement is being made.

1 (5) "Insurer" shall mean an insurance company licensed to conduct business
2 in the state of Louisiana.

3 (6) "Major structural defects" means any actual physical damage to the
4 following load-bearing portions of the building caused by failure of the load-bearing
5 portions which affects their load-bearing functions to the extent that the structure
6 becomes unsafe, unsanitary, and unliveable:

7 (a) Foundation systems and footings.

8 (b) Beams.

9 (c) Girders.

10 (d) Lintels.

11 (e) Columns.

12 (f) Walls and partitions.

13 (g) Floor systems.

14 (h) Roof framing systems.

15 (7) "Owner" means the person or persons, natural or juridical, who held title
16 to the structure at the time the original elevation, re-elevation, or restoration project
17 was undertaken, or any successors in title.

18 (8) "Structure" means a structure which is designed and used for residential
19 or commercial use, or both, together with all attached and unattached structures and
20 which was elevated, re-elevated, or restored.

21 (9) "Warranty commencement date" means the date that the improvements
22 are substantially complete, have been accepted by the owner, and the contractor has
23 been paid in full.

24 (10) "Workmanship" means the standard and quality of the work of the
25 contractor or the skills used in the elevation, re-elevation, or restoration of the
26 structure.

27 §2790.1.3. Warranties; exclusions

28 A. Subject to the exclusions provided in Subsection B of this Section and
29 notwithstanding any provision to the contrary, every contractor shall warrant the

1 following to the owner of a structure for which an improvement is contracted for and
2 described in the scope of work between the contractor and the owner:

3 (1) One year following the warranty commencement date, the improvement
4 will be free from any defect due to substandard workmanship.

5 (2) Two years following the warranty commencement date, the improvement
6 will be free from major structural defects due to substandard workmanship.

7 B. The contractor's warranty shall exclude the following:

8 (1) Any damage to the extent that it is caused or made worse by any of the
9 following:

10 (a) Negligence, improper maintenance, neglect, or improper operation by
11 anyone other than the contractor or any employee, agent, or subcontractor of the
12 contractor.

13 (b) Failure by anyone other than the contractor or any employee, agent, or
14 subcontractor of the contractor to comply with the warranty requirements of
15 manufacturers of appliances, equipment, or fixtures.

16 (c) Dampness, condensation, or other damages due to the failure of the
17 owner to maintain adequate ventilation or drainage.

18 (2) Any loss or damage which the owner has not taken timely action to
19 minimize.

20 (3) Any defect in, or any defect caused by, materials or work supplied by
21 anyone other than the contractor, or any employee, agent, or subcontractor of the
22 contractor.

23 (4) Loss or damage resulting from war, accident, riot and civil commotion,
24 water escape, falling objects, aircraft, vehicles, acts of God following the act of God
25 which caused the damage originally contracted to be repaired, lightning, windstorm,
26 hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes
27 in the level of the underground water table.

28 (5) Any damage caused by soil movement.

29 (6) Insect damage.

1 ~~(7) Any condition which does not result in actual physical damage to the~~
2 ~~improvement.~~

3 ~~(8) Any cost of transportation, food, moving, storage, or other incidental~~
4 ~~expense related to relocation during the repair.~~

5 ~~(9) Any defect not reported in writing by registered or certified mail to the~~
6 ~~contractor and insurer, as appropriate, prior to the expiration period specified in this~~
7 ~~Chapter for such defects plus thirty days.~~

8 ~~(10) Consequential damages including attorney's fees.~~

9 ~~(11) Mold and mold damage to the completed improvement.~~

10 §2790.1.4. Warranty required in writing; implied warranty; waiver

11 The warranty required by R.S. 9:2790.1.3 and the information regarding the
12 insurance required by R.S. 9:2790.1.5 shall be set forth in writing in the contract
13 between the owner and the contractor.

14 §2790.1.5. Insurance backed warranty; requirement

15 A. All of the contractor's obligations under the warranty required by this
16 Chapter shall be insured by the contractor for the benefit of the owner through a third
17 party insurance or bond company, referred to herein as "insurer", authorized and
18 properly licensed to transact business in this state and that meets the following
19 minimum qualifications:

20 ~~(1) Has been in business at least ten years and is in good standing in the state~~
21 ~~in which it is incorporated.~~

22 ~~(2) Has at least two years experience in furnishing warranties for elevation~~
23 ~~or re-elevation projects, or both, in Louisiana.~~

24 ~~(3) Be duly licensed to transact business in Louisiana.~~

25 ~~(4) Has a Louisiana licensed professional engineer registered in civil~~
26 ~~engineering on staff or on contract to perform inspections as needed.~~

27 ~~(5) Has a mandatory dispute resolution process in place which includes~~
28 ~~mediation and arbitration.~~

29 ~~(6) Has a rating of "B" or higher by A.M. Best.~~

1 (7) Holds a license issued by the Louisiana Department of Insurance for
2 providing the type of insurance required to insure warranties.

3 §2790.1.6. Required notice; owner

4 A. Before undertaking any repair himself or instituting any arbitration action
5 for breach of warranty, the owner shall give the contractor and insurer written notice,
6 by registered or certified mail, within thirty days of knowledge of the defect. The
7 notice to the contractor shall be sent to the contractor's last known address as
8 registered with the secretary of state's office or to the last known address if the
9 contractor is not registered with the secretary of state's office.

10 B. The notice shall advise the contractor and insurer of all defects and give
11 the contractor sixty days to repair, replace, or pay the owner the reasonable cost of
12 repairing or replacing any defective improvement.

13 §2790.1.7. Required response; insurer to owner; insurer to contractor

14 A. The insurer shall provide the owner whom it receives notice from
15 pursuant to R.S. 2790.1.6 with an inspection report of the alleged warranty defects
16 prepared by a Louisiana licensed engineer registered in civil engineering.

17 B. The insurer shall provide the contractor and the owner with a letter, by
18 registered or certified mail, informing both whether the alleged defects are or are not
19 warranted. If the defects are warranted, the letter shall detail which defects require
20 repair pursuant to the warranty and the scope of the repair work. If the defects are
21 not warranted, the letter shall specify reasons for making that determination.

22 §2790.1.8. Procedure following response of insurer

23 A. The owner shall notify the contractor and the insurer, by registered or
24 certified mail, whether or not he accepts the scope of repair work stated in the letter
25 required by R.S. 9:2790.1.7.

26 B. Should the owner accept the scope of repair work stated in the letter,
27 repair work shall begin within thirty days of receipt by the contractor.

1 §2790.1.9. Peremption

2 Any action to enforce any warranty provided for in this Chapter shall be
3 subject to a peremptive period of thirty days after the expiration of the appropriate
4 time period provided in R.S. 9:2790.1.3.

5 §2790.1.10. Transfer of warranty and insurance

6 Any warranty imposed pursuant to this Chapter and any insurance benefit
7 shall automatically transfer, without charge, to a subsequent owner who acquires title
8 of the structure containing the improvement. Any transfer of the structure shall not
9 extend the duration of any warranty or insurance coverage.

10 §2790.1.11. Violations; limitations

11 A. If a contractor or insurer violates this Chapter by failing to perform as
12 required by the warranties and procedures provided in this Chapter, any affected
13 owner shall have a cause of action against the contractor or insurer, or both, for
14 actual damages arising out of the violation. The damages with respect to a single
15 defect shall not exceed the reasonable cost of repair or replacement necessary to cure
16 the defect and any damage determined to be caused by the defect.

17 B. The parties shall provide for the arbitration of any claim in dispute. Any
18 arbitration shall comply with and may be binding only to the extent provided for in
19 this Chapter.

20 Section 2. The provisions of this Act shall apply to contracts entered into after
21 January 1, 2015.

22 Section 3. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Pugh

HB No. 529

Abstract: Requires contractors to offer third party insurance backed warranties for elevation, re-elevation, or restoration work made necessary following a flood or a hurricane.

Proposed law provides that the legislature finds economic losses caused by contractors not offering enforceable warranties on elevation, re-elevation, or restoration work performed on structures following a hurricane or flood can be minimized by requiring an insured warranty.

Proposed law provides for definitions.

Proposed law requires that every elevation, re-elevation, or restoration contract for improvement to a structure damaged by a flood or hurricane be warranted and that the warranty be backed by a third party insurer for the benefit of the owner of the structure improved.

Proposed law provides that the warranty times shall run as follows:

- (1) One year following the warranty commencement date, the improvement will be free from any defect due to substandard workmanship.
- (2) Two years following the warranty commencement date, the improvement will be free from major structural defects due to substandard workmanship.

Proposed law excludes the following from the warranty required by proposed law:

- (1) Any damage to the extent that it is caused or made worse by negligence, improper maintenance, neglect, or improper operation by anyone other than the contractor or any employee, agent, or subcontractor of the contractor, failure by anyone other than the contractor or any employee, agent, or subcontractor of the contractor to comply with the warranty requirements of manufacturers of appliances, equipment, or fixtures, dampness, condensation, or other damages due to the failure of the owner to maintain adequate ventilation or drainage.
- (2) Any loss or damage which the owner has not taken timely action to minimize.
- (3) Any defect in, or any defect caused by, materials or work supplied by anyone other than the contractor, or any employee, agent, or subcontractor of the contractor.
- (4) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God following the act of God which caused the damage originally contracted to be repaired, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes in the level of the underground water table.
- (5) Any damage caused by soil movement.
- (6) Insect damage.
- (7) Any condition which does not result in actual physical damage to the improvement.

(8) Any cost of transportation, food, moving, storage, or other incidental expense related to relocation during the repair.

(9) Any defect not reported in writing by registered or certified mail to the contractor and insurer, as appropriate, prior to the expiration period specified in proposed law for such defects plus 30 days.

(10) Consequential damages including attorneys fees.

(11) Mold and mold damage to the completed improvement.

Proposed law requires the warranty and insurance requirements be set forth in writing between the owner and contractor.

Proposed law requires all of the contractor's obligations under the warranty required by proposed law be insured by the contractor for the benefit of the owner through a third party insurance or bond company.

Proposed law provides for qualification of a third party insurance or bond company.

Proposed law provides that the owner shall notify the contractor and insurer of any knowledge of a defect and give the contractor 60 days to repair, replace, or pay the owner the reasonable cost of repairing or replacing any defective improvement.

Proposed law provides that the insurer shall provide the owner with an inspection report prepared by a LA licensed engineer registered in civil engineering.

Proposed law provides that the insurer shall provide the contractor and the owner with a letter informing both whether the alleged defects are or are not warranted. If the defects are warranted, the letter will detail which defects require repair pursuant to the warranty and the scope of the repair work. If the defects are not warranted, the letter shall specify reasons for making that determination.

Proposed law provides that the owner shall notify the contractor and the insurer whether or not he accepts the scope of repair work. Should the owner accept the scope of repair work stated in the letter, repair work shall begin within 30 days of receipt by the contractor.

Proposed law provides that any action to enforce any warranty provided for in proposed law shall be subject to a peremptive period of 30 days after the expiration of the appropriate time period.

Proposed law provides that any warranty imposed pursuant to proposed law and any insurance benefit shall automatically transfer without charge, to a subsequent owner who acquires title of the structure containing the improvement. Any transfer of the structure will not extend the duration of any warranty or insurance coverage.

Proposed law provides that if a contractor or insurer violates proposed law by failing to perform as required by the warranties and procedures provided in proposed law, any affected owner shall have a cause of action against the contractor or insurer, or both, for actual damages arising out of the violation. The damages with respect to a single defect will not exceed the reasonable cost of repair or replacement necessary to cure the defect and any damage determined to be caused by the defect.

Proposed law provides that the parties shall provide for the arbitration of any claim in dispute. Any arbitration shall comply with and may be binding only to the extent provided for in proposed law.

Provisions of proposed law shall apply to contracts entered into after Jan. 1, 2015.

Effective upon signature of the governor or up lapse of time for gubernatorial action.

(Adds R.S. 9:2790.1.1-2790.1.11)