

**First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 03-0139.03 Jason Gelender

HOUSE BILL 03-1161

HOUSE SPONSORSHIP

Rippy, Fritz, Cadman, Larson, and White

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON CLAIMS FOR DAMAGES FILED AGAINST**
102 **CONSTRUCTION PROFESSIONALS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals and reenacts the "Construction Defect Action Reform Act" (CDARA), with amendments as follows:

- Requires a claimant to serve a written notice of claim on any construction professional against whom the claimant asserts a CDARA construction defect claim within a specified number of days before the filing of an action in most cases and as a jurisdictional prerequisite.
- Prohibits an insurer from canceling, abrogating, refusing to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

renew, or otherwise invalidating or compromising insurance coverage provided by the insurer to a construction professional due to the receipt by the construction professional of a notice of claim.

- Requires a claimant to provide with a notice of claim served on a construction professional information in the claimant's possession regarding the claimed defect and the nature and extent of necessary repairs.
- Allows a construction professional to request, and upon request to be given, an opportunity to inspect or have inspected the property that is the subject of a notice of claim within a specified period from the date of the request.
- Specifies that a construction professional may make a written offer to repair a construction defect or settle a CDARA claim for money and specifies deadlines for accepting such an offer and for repairing a defect if an offer to repair is accepted.
- Allows a claimant to more quickly commence an action on a construction defect claim described in a notice of claim if necessary to prevent expiration of a statute of limitation or if the claim is a counterclaim, and specifies additional information to be included in a complaint filed in such an action.
- Limits the amount of damages that may be awarded in a CDARA action absent a showing of fraud or bad faith by a construction professional.
- Specifies that the making of an offer to settle a CDARA claim by a construction professional shall not be deemed an admission of liability in any subsequent proceeding and shall not be deemed admissible for purposes of establishing liability or an acknowledgment of liability.
- Specifies that the notice of claim requirement and other CDARA requirements do not alter any applicable statute of limitations, limit or bar any defense to a construction defect claim, or create any kind of strict liability claim, claim for a subsequent purchaser, or other new claim not previously recognized at common law.
- Prohibits any CDARA negligence claim that seeks damages for any construction defect that arises from failure to construct an improvement to real property in substantial compliance with a building code or industry standard, unless the failure resulted in actual property damage, loss of property use, or a risk of bodily injury or death to, or a threat to the life, health, or safety of, occupants of the

1 HEREBY FINDS, DECLARES, AND DETERMINES THAT LIMITED CHANGES IN
2 THE LAW ARE NECESSARY AND APPROPRIATE CONCERNING ACTIONS
3 CLAIMING DAMAGES, INDEMNITY, OR CONTRIBUTION IN CONNECTION WITH
4 ALLEGED CONSTRUCTION DEFECTS RESULTING IN PROPERTY LOSS OR
5 DAMAGE. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS PART 8
6 APPLY TO THESE TYPES OF CIVIL ACTIONS WHILE PRESERVING RIGHTS AND
7 REMEDIES FOR PROPERTY OWNERS WHO BRING AND MAINTAIN SUCH
8 ACTIONS.

9 **13-20-803. Definitions.** AS USED IN THIS PART 8, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ACTION" MEANS ANY CIVIL ACTION OR ARBITRATION
12 PROCEEDING FOR DAMAGES, INDEMNITY, OR CONTRIBUTION ASSERTING A
13 CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR
14 INJURY OR LOSS TO, OR THE LOSS OF USE OF, ANY REAL PROPERTY CAUSED
15 BY AN ALLEGED DEFECT IN THE CONSTRUCTION OF AN IMPROVEMENT TO
16 THE REAL PROPERTY.

17 (2) "CONSTRUCTION PROFESSIONAL" MEANS ANY ARCHITECT,
18 CONTRACTOR, SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR,
19 ENGINEER, OR INSPECTOR PERFORMING OR FURNISHING THE DESIGN,
20 SUPERVISION, INSPECTION, CONSTRUCTION, OR OBSERVATION OF THE
21 CONSTRUCTION OF ANY IMPROVEMENT TO REAL PROPERTY.

22 (3) "NOTICE OF CLAIM" MEANS A WRITTEN NOTICE SERVED BY A
23 CLAIMANT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY
24 PERSONAL SERVICE ON A CONSTRUCTION PROFESSIONAL AGAINST WHOM
25 THE CLAIMANT ASSERTS A CONSTRUCTION DEFECT CLAIM THAT DESCRIBES
26 THE CLAIM IN REASONABLE DETAIL, INCLUDING THE SPECIFIC TYPE AND
27 LOCATION OF THE CONSTRUCTION THAT THE CLAIMANT ALLEGES TO BE

1 DEFECTIVE.

2 **13-20-804. Jurisdictional prerequisite for actions against**
3 **construction professionals - notice of claim.** (1) (a) EXCEPT AS
4 OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS SECTION, NO LATER
5 THAN NINETY DAYS BEFORE FILING ANY ACTION ASSERTING A
6 CONSTRUCTION DEFECT AGAINST A CONSTRUCTION PROFESSIONAL, THE
7 CLAIMANT SHALL SERVE A NOTICE OF CLAIM ON THE CONSTRUCTION
8 PROFESSIONAL. SERVICE OF THE NOTICE OF CLAIM SHALL BE A
9 JURISDICTIONAL PREREQUISITE FOR FILING A CIVIL ACTION OR
10 ARBITRATION ASSERTING A CONSTRUCTION DEFECT CLAIM.

11 (b) AN INSURER MAY NOT CANCEL, ABROGATE, REFUSE TO RENEW,
12 OR OTHERWISE INVALIDATE OR COMPROMISE INSURANCE COVERAGE
13 PROVIDED BY THE INSURER TO A CONSTRUCTION PROFESSIONAL DUE TO
14 THE RECEIPT BY THE CONSTRUCTION PROFESSIONAL OF A NOTICE OF CLAIM
15 REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (1).

16 (c) AT THE TIME A CLAIMANT SERVES A CONSTRUCTION
17 PROFESSIONAL WITH A NOTICE OF CLAIM, THE CLAIMANT SHALL PROVIDE
18 TO THE CONSTRUCTION PROFESSIONAL ANY INFORMATION ALREADY IN THE
19 CLAIMANT'S POSSESSION OR IN THE POSSESSION OF THE CLAIMANT'S
20 AGENTS THAT DEPICTS THE NATURE AND CAUSE OF THE CLAIMED DEFECT
21 AND THE NATURE AND EXTENT OF REPAIRS NECESSARY TO REMEDY THE
22 DEFECT, INCLUDING, BUT NOT LIMITED TO, EXPERT REPORTS,
23 PHOTOGRAPHS, VIDEOTAPES, AND ANY SIMILAR INFORMATION RELATING
24 TO THE DEFECT. HOWEVER, NOTHING IN THIS PARAGRAPH (c) SHALL BE
25 CONSTRUED TO REQUIRE A CLAIMANT TO OBTAIN ANY SUCH INFORMATION.

26 (2) AFTER BEING SERVED WITH A NOTICE OF CLAIM, A
27 CONSTRUCTION PROFESSIONAL MAY REQUEST, AND UPON REQUEST SHALL

1 BE GIVEN, REASONABLE OPPORTUNITY TO INSPECT OR HAVE INSPECTED,
2 WITHIN SIXTY DAYS FROM THE DATE OF THE REQUEST, THE PROPERTY THAT
3 IS THE SUBJECT OF THE NOTICE OF CLAIM TO DETERMINE THE NATURE,
4 CAUSE, AND EXTENT OF THE CLAIMED DEFECT AND THE NATURE AND
5 EXTENT OF REPAIRS NECESSARY TO REMEDY THE DEFECT. THE
6 CONSTRUCTION PROFESSIONAL SHALL BE ENTITLED, UPON REQUEST, TO
7 HAVE PHYSICAL ACCESS TO THE PREMISES UPON SUCH OCCASIONS AS ARE
8 REASONABLY NECESSARY TO PERFORM THE INSPECTION AND TO EVALUATE
9 THE CLAIM. THE CONSTRUCTION PROFESSIONAL MAY TAKE REASONABLE
10 STEPS TO DOCUMENT THE DEFECT.

11 (3) (a) NO LATER THAN FORTY-FIVE DAYS AFTER A CONSTRUCTION
12 PROFESSIONAL HAS MADE AN INSPECTION OF THE PROPERTY PURSUANT TO
13 SUBSECTION (2) OF THIS SECTION, THE CONSTRUCTION PROFESSIONAL MAY
14 MAKE A WRITTEN OFFER OF SETTLEMENT TO THE CLAIMANT. THE OFFER
15 OF SETTLEMENT SHALL BE SENT TO THE CLAIMANT AT THE ADDRESS
16 PROVIDED BY THE CLAIMANT OR TO THE CLAIMANT'S ATTORNEY BY
17 CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE OFFER MAY INCLUDE
18 AN AGREEMENT BY THE CONSTRUCTION PROFESSIONAL TO REPAIR OR TO
19 HAVE REPAIRED, AT THE CONSTRUCTION PROFESSIONAL'S EXPENSE, ANY
20 CONSTRUCTION DEFECT DESCRIBED IN THE NOTICE OF CLAIM OR
21 REASONABLY INDICATED BY THE INSPECTION OF THE PREMISES AND SHALL
22 DESCRIBE IN REASONABLE DETAIL THE REPAIRS THAT WILL BE MADE. THE
23 OFFER MAY INCLUDE AN OFFER TO REPAIR, A MONETARY SETTLEMENT
24 OFFER, OR A COMBINATION OF AN OFFER TO REPAIR AND A MONETARY
25 SETTLEMENT OFFER.

26 (b) IF AN OFFER TO REPAIR IS MADE AND ACCEPTED BY THE
27 CLAIMANT, ANY REPAIRS SHALL BE COMMENCED WITHIN THIRTY DAYS

1 AFTER THE CONSTRUCTION PROFESSIONAL RECEIVES WRITTEN NOTICE OF
2 ACCEPTANCE OF THE OFFER AND SHALL BE DILIGENTLY PURSUED UNTIL
3 COMPLETION, UNLESS COMPLETION IS DELAYED BY THE CLAIMANT OR BY
4 OTHER EVENTS BEYOND THE CONTROL OF THE CONSTRUCTION
5 PROFESSIONAL.

6 (c) IF AN OFFER TO REPAIR, A MONETARY SETTLEMENT OFFER, OR
7 A COMBINATION OF AN OFFER TO REPAIR AND A MONETARY SETTLEMENT
8 OFFER IS NOT ACCEPTED BY THE CLAIMANT WITHIN NINETY DAYS, IT SHALL
9 BE DEEMED REJECTED.

10 (4) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
11 SUBSECTION (1) OF THIS SECTION, A CLAIMANT MAY FILE AN ACTION
12 WITHIN THE NINETY DAYS FOLLOWING SERVICE OF A NOTICE OF CLAIM ON
13 A CONSTRUCTION PROFESSIONAL IF THE FILING IS NECESSARY TO PREVENT
14 EXPIRATION OF A STATUTE OF LIMITATION OR IF A COMPLAINT ALLEGING
15 A CONSTRUCTION DEFECT IS ASSERTED AS A COUNTERCLAIM. IN SUCH
16 EVENT, THE COMPLAINT OR OTHER INITIAL FILING SHALL IDENTIFY IN
17 REASONABLE DETAIL EVERY ALLEGED CONSTRUCTION DEFECT, SHALL
18 SPECIFY THAT THE INSPECTION PROVIDED FOR IN SUBSECTION (2) OF THIS
19 SECTION MAY BE MADE DURING THE SIXTY-DAY PERIOD FOLLOWING THE
20 DATE OF SERVICE OF THE CLAIM ON THE CONSTRUCTION PROFESSIONAL,
21 AND SHALL SPECIFY THAT THE OFFER PROVIDED FOR IN SUBSECTION (3) OF
22 THIS SECTION MAY BE MADE WITHIN THE TIME PERIOD SET FORTH IN
23 SUBSECTION (3) OF THIS SECTION. IF AN ACTION IS INITIATED PURSUANT TO
24 THIS SUBSECTION (4) AND IT IS DETERMINED THAT THE PROVISIONS OF THIS
25 SECTION WERE NOT PROPERLY FOLLOWED, THE COURT, UPON APPLICATION
26 OF THE CONSTRUCTION PROFESSIONAL, SHALL STAY THE ACTION UNTIL THE
27 PROVISIONS OF THIS SECTION HAVE BEEN COMPLIED WITH.

1 (5) (a) IN ANY ACTION BROUGHT BY A CLAIMANT, IF IT IS
2 DETERMINED THAT THE CLAIMANT UNREASONABLY REJECTED AN OFFER
3 MADE BY A CONSTRUCTION PROFESSIONAL PURSUANT SUBSECTION (3) OF
4 THIS SECTION OR DID NOT PERMIT THE CONSTRUCTION PROFESSIONAL A
5 REASONABLE OPPORTUNITY TO REPAIR A CONSTRUCTION DEFECT, THE
6 CLAIMANT:

7 (I) MAY NOT RECOVER ANY AMOUNT IN EXCESS OF THE GREATER
8 OF:

9 (A) THE REASONABLE COSTS OF THE OFFERED REPAIRS THAT ARE
10 NECESSARY TO REPAIR THE CONSTRUCTION DEFECT AND THAT ARE
11 DETERMINED TO HAVE BEEN CAUSED BY THE ACTS OR OMISSIONS OF THE
12 CONSTRUCTION PROFESSIONAL; OR

13 (B) THE AMOUNT OF A REASONABLE MONETARY SETTLEMENT
14 OFFER MADE PURSUANT TO THIS SECTION; AND

15 (II) MAY NOT RECOVER ATTORNEY FEES OR COSTS INCURRED, IF
16 ANY, IN EXCESS OF THOSE REASONABLY AND NECESSARILY INCURRED
17 BEFORE THE OFFER WAS REJECTED.

18 (b) IF AN ACTION IS FILED ASSERTING A CONSTRUCTION DEFECT BY
19 A CLAIMANT AGAINST A CONSTRUCTION PROFESSIONAL AND THE CLAIMANT
20 ASSERTS THAT THE CONSTRUCTION PROFESSIONAL FAILED TO MAKE A
21 REASONABLE OFFER OF SETTLEMENT PURSUANT TO SUBSECTION (3) OF THIS
22 SECTION, FAILED TO MAKE A REASONABLE ATTEMPT TO COMPLETE REPAIRS
23 SPECIFIED IN AN ACCEPTED OFFER OF SETTLEMENT MADE PURSUANT TO
24 SUBSECTION (3) OF THIS SECTION, OR FAILED TO COMPLETE, IN A GOOD AND
25 WORKMANLIKE MANNER, THE REPAIRS SPECIFIED IN AN ACCEPTED OFFER
26 OF SETTLEMENT MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE
27 TRIAL COURT JUDGE OR ARBITRATOR, AS THE CASE MAY BE, SHALL

1 CONDUCT A HEARING TO DETERMINE WHETHER SUCH FAILURE BY THE
2 CONSTRUCTION PROFESSIONAL WAS FRAUDULENT. IF THE TRIAL JUDGE OR
3 ARBITRATOR FINDS THAT SUCH FAILURE WAS FRAUDULENT BEYOND A
4 REASONABLE DOUBT, THE LIMITATIONS ON DAMAGES AND DEFENSES TO
5 LIABILITY PROVIDED FOR IN THIS SUBSECTION (5) OR SUBSECTION (6) OF
6 THIS SECTION SHALL NOT APPLY.

7 (6) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, UNLESS A
8 JUDGE OR ARBITRATOR HAS MADE A FINDING THAT A CONSTRUCTION
9 PROFESSIONAL ENGAGED IN FRAUDULENT CONDUCT UNDER PARAGRAPH (b)
10 OF SUBSECTION (5) OF THIS SECTION OR OTHERWISE FINDS BEYOND A
11 REASONABLE DOUBT THAT A CONSTRUCTION PROFESSIONAL ACTED
12 FRAUDULENTLY AND IN BAD FAITH IN THE CONSTRUCTION OF
13 IMPROVEMENTS TO REAL PROPERTY AND SUCH CONDUCT RESULTED IN
14 PROPERTY LOSS OR DAMAGE, A CLAIMANT MAY RECOVER ONLY AN
15 AMOUNT NO GREATER THAN THE ACTUAL DAMAGES CAUSED BY THE
16 CONSTRUCTION DEFECT AND SUCH COSTS OF SUIT AND REASONABLE
17 ATTORNEY FEES AS MAY BE AWARDED PURSUANT TO CONTRACT OR
18 APPLICABLE LAW.

19 (7) (a) NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT OR
20 PRECLUDE A CONSTRUCTION PROFESSIONAL FROM MAKING A MONETARY
21 SETTLEMENT OFFER AT ANY TIME BEFORE OR DURING A PROCEEDING
22 ALLEGING A CONSTRUCTION DEFECT.

23 (b) THE MAKING OF AN OFFER OF SETTLEMENT AS DESCRIBED IN
24 PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL NOT BE DEEMED AN
25 ADMISSION OF LIABILITY IN ANY SUBSEQUENT PROCEEDING AND SHALL NOT
26 BE DEEMED ADMISSIBLE FOR PURPOSES OF ESTABLISHING LIABILITY OR AN
27 ACKNOWLEDGMENT OF LIABILITY.

1 (c) NOTHING IN THIS PART 8 SHALL BE CONSTRUED TO ALTER OR
2 AMEND THE APPLICABLE TIME PERIODS SET FORTH IN ARTICLE 80 OF THIS
3 TITLE FOR THE COMMENCEMENT OF ACTIONS.

4 (d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, THIS PART 8 DOES
5 NOT LIMIT OR BAR ANY OTHER DEFENSE OR AFFIRMATIVE DEFENSE
6 APPLICABLE TO A CONSTRUCTION DEFECT CLAIM.

7 (e) NOTHING CONTAINED IN THIS PART 8 SHALL BE DEEMED TO
8 CREATE A CLAIM FOR STRICT LIABILITY IN CONNECTION WITH THE
9 CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY, NOR SHALL
10 ANYTHING IN THIS PART 8 BE DEEMED TO CREATE A CLAIM FOR RELIEF NOT
11 PREVIOUSLY RECOGNIZED AT COMMON LAW. FURTHER, THIS PART 8 SHALL
12 NOT CREATE A CLAIM FOR A SUBSEQUENT PURCHASER.

13 (8) IN AN ACTION TO RECOVER DAMAGES RESULTING FROM A
14 CONSTRUCTION DEFECT, A CONSTRUCTION PROFESSIONAL IS NOT LIABLE
15 FOR ANY PERCENTAGE OF DAMAGES CAUSED BY FAILURE OF THE
16 CLAIMANT:

17 (a) TO TAKE REASONABLE ACTION TO MITIGATE DAMAGES; OR

18 (b) TO TAKE REASONABLE ACTION TO MAINTAIN THE PROPERTY.

19 (9) THE INSPECTION AND REPAIR PROVISIONS OF THIS SECTION ARE
20 IN ADDITION TO ANY RIGHTS OF INSPECTION OR SETTLEMENT PROVIDED BY
21 COMMON LAW, ANY OTHER STATUTE, OR CONTRACT OR OTHER WRITING.

22 **13-20-805. Restriction on construction defect claims.** (1) NO
23 CLAIM SEEKING DAMAGES FOR A CONSTRUCTION DEFECT MAY BE
24 ASSERTED IN AN ACTION IF THE CLAIM ARISES FROM THE FAILURE TO
25 CONSTRUCT AN IMPROVEMENT TO REAL PROPERTY IN SUBSTANTIAL
26 COMPLIANCE WITH AN APPLICABLE BUILDING CODE OR INDUSTRY
27 STANDARD; EXCEPT THAT SUCH A CLAIM MAY BE ASSERTED IF THE FAILURE

1 RESULTS IN ONE OR MORE OF THE FOLLOWING:

2 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;

3 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;

4 (c) BODILY INJURY OR WRONGFUL DEATH; OR

5 (d) A RISK OF BODILY INJURY OR DEATH TO, OR A THREAT TO THE
6 LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE REAL PROPERTY.

7 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT,
8 LIMIT, OR IMPAIR THE FOLLOWING:

9 (a) THE ASSERTION OF TORT CLAIMS OTHER THAN CLAIMS FOR
10 NEGLIGENCE;

11 (b) THE ASSERTION OF CONTRACT OR WARRANTY CLAIMS; OR

12 (c) THE ASSERTION OF CLAIMS THAT ARISE FROM THE VIOLATION
13 OF ANY STATUTE OR ORDINANCE OTHER THAN CLAIMS FOR VIOLATION OF
14 A BUILDING CODE.

15 (3) WITH RESPECT TO ANY CLAIM IN WHICH PERSONAL INJURY,
16 BODILY INJURY, OR EMOTIONAL INJURY DAMAGE IS ALLEGED AS HAVING
17 BEEN CAUSED BY A CONSTRUCTION DEFECT, PRIOR TO THE FACT FINDER
18 DETERMINING ANY ISSUE OF LIABILITY, THE TRIAL COURT JUDGE OR
19 ARBITRATOR, AS THE CASE MAY BE, SHALL CONDUCT AN IN LIMINE
20 HEARING TO DETERMINE WHETHER THE PROBATIVE VALUE OF THE
21 EVIDENCE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR
22 PREJUDICE AND CONFUSION OF THE ISSUE AND WHETHER THE DAMAGES
23 THAT ARE SOUGHT ARE SCIENTIFICALLY VALID AND CAUSED BY THE
24 ALLEGED DEFECT. THE JUDGE OR ARBITRATOR SHALL EXCLUDE ALL
25 EVIDENCE OF DAMAGES AND ALL EXPERT EVIDENCE RELATING TO THE
26 CAUSE OF SUCH INJURIES ABSENT A SPECIFIC FINDING THAT:

27 (a) THE REASONING AND METHODOLOGY UNDERLYING THE

1 SCIENTIFIC THEORY AND TECHNIQUE ARE SCIENTIFICALLY VALID AND HAVE
2 BEEN GENERALLY ACCEPTED BY THE RELEVANT SCIENTIFIC COMMUNITY;
3 AND

4 (b) THE SCIENTIFIC THEORY AND TECHNIQUE CAN BE RELIABLY
5 APPLIED TO THE FACTS AT ISSUE IN THE ACTION.

6 **13-20-806. Contractual waiver of construction defects**
7 **claims.** A CONTRACTUAL PROVISION THAT WAIVES OR LIMITS A CLAIM FOR
8 DEFECTS IN THE CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY
9 SHALL NOT BE DEEMED UNCONSCIONABLE FOR PURPOSES OF ARTICLE 33.3
10 OF TITLE 38, C.R.S., OR FOR ANY OTHER PURPOSE.

11 **13-20-807. List of defects required.** (1) IN ADDITION TO THE
12 NOTICE OF CLAIM REQUIRED BY SECTION 13-20-804, IN EVERY ACTION
13 BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL, THE CLAIMANT SHALL
14 FILE WITH THE COURT OR ARBITRATOR AND SERVE ON THE DEFENDANT A
15 LIST OF CONSTRUCTION DEFECTS.

16 (2) A LIST OF CONSTRUCTION DEFECTS SHALL CONTAIN A
17 DESCRIPTION, BY SPECIFIC TYPE AND LOCATION, OF THE CONSTRUCTION
18 THAT THE CLAIMANT ALLEGES TO BE DEFECTIVE.

19 (3) IN NO EVENT SHALL A COURT ALLOW A CASE TO BE SET FOR
20 TRIAL BEFORE THE LIST OF CONSTRUCTION DEFECTS REQUIRED BY THIS
21 SECTION IS FILED AND SERVED.

22 (4) IF A SUBCONTRACTOR OR SUPPLIER IS ADDED AS A PARTY TO AN
23 ACTION UNDER THIS SECTION, THE CLAIMANT MAKING THE CLAIM AGAINST
24 SUCH SUBCONTRACTOR OR SUPPLIER SHALL FILE WITH THE COURT AND
25 SERVE ON THE DEFENDANT A LIST OF CONSTRUCTION DEFECTS IN
26 ACCORDANCE WITH THIS SECTION WITHIN SIXTY DAYS AFTER SERVICE OF
27 THE COMPLAINT AGAINST THE SUBCONTRACTOR OR SUPPLIER OR WITHIN

1 SUCH LONGER PERIOD AS THE COURT IN ITS DISCRETION MAY ALLOW. IN
2 NO EVENT SHALL THE FILING OF A DEFECT LIST UNDER THIS SUBSECTION (4)
3 DELAY THE SETTING OF THE TRIAL.

4 **SECTION 2. Applicability.** This act shall apply to notices of
5 claim served on or after the effective date of this act.

6 **SECTION 3. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.