

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 03-0139.03 Jason Gelender

HOUSE BILL 03-1161

HOUSE SPONSORSHIP

Rippy, Fritz, Cadman, and White

SENATE SPONSORSHIP

McElhany,

House Committees

Business Affairs & Labor

Senate Committees

Business Affairs & Labor

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.

SENATE
Amended 2nd Reading
February 19, 2003

HOUSE
3rd Reading Unamended
January 27, 2003

HOUSE
Amended 2nd Reading
January 24, 2003

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

- property.
- Requires a court or arbitrator hearing a claim for personal injury alleged to have been caused by a construction defect to conduct a hearing on the scientific validity and probative value of the evidence linking the injury to the defect, and prohibits the submission of the evidence to the jury absent a specific finding of validity and probative value.
 - Specifies that a contractual provision that waives or limits a construction defects claim shall not be deemed unconscionable.
 - Requires the list of construction defects that must currently be served on any defendant architect, contractor, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property under CDARA to also be served on any defendant construction professional who is a subcontractor or developer.
 - Requires the list to describe the construction that the claimant alleges to be defective by specific type and location and allows the list to be amended only once and only to identify additional construction defects that, with reasonable diligence, were not discovered or could not have been discovered at the time the list was first filed.

Makes legislative findings and declarations. Defines terms. Makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*
 2 **SECTION 1. 13-20-802, Colorado Revised Statutes, is amended**
 3 **to read:**
 4 **13-20-802. Legislative declaration.** The general assembly
 5 hereby finds, declares, and determines that ~~limited~~ changes in the law are
 6 necessary and appropriate concerning actions claiming damages,
 7 indemnity, or contribution in connection with alleged construction
 8 defects. ~~resulting in property loss or damage.~~ It is the intent of the
 9 general assembly that this part 8 apply to these types of civil actions
 10 while preserving adequate rights and remedies for property owners who

1 bring and maintain such actions.

2 SECTION 2. Part 8 of article 20 of title 13, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 13-20-802.5. Definitions. AS USED IN THIS PART 8, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "ACTION" MEANS A CIVIL ACTION OR AN ARBITRATION
8 PROCEEDING FOR DAMAGES, INDEMNITY, OR CONTRIBUTION BROUGHT
9 AGAINST A CONSTRUCTION PROFESSIONAL TO ASSERT A CLAIM,
10 COUNTERCLAIM, CROSS-CLAIM, OR THIRD PARTY CLAIM FOR DAMAGES OR
11 LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL PROPERTY CAUSED
12 BY A DEFECT IN THE CONSTRUCTION OF AN IMPROVEMENT TO REAL
13 PROPERTY. "ACTION" DOES NOT INCLUDE ANY CIVIL ACTION IN TORT
14 ALLEGING PERSONAL INJURY OR WRONGFUL DEATH TO A PERSON OR
15 PERSONS RESULTING FROM A CONSTRUCTION DEFECT.

16 (2) "CLAIMANT" MEANS A PERSON OTHER THAN THE ATTORNEY
17 GENERAL OR THE DISTRICT ATTORNEYS OF THE SEVERAL JUDICIAL
18 DISTRICTS OF THE STATE WHO ASSERTS A CLAIM AGAINST A CONSTRUCTION
19 PROFESSIONAL THAT ALLEGES A DEFECT IN THE CONSTRUCTION OF AN
20 IMPROVEMENT TO REAL PROPERTY.

21 (3) "CONSTRUCTION PROFESSIONAL" MEANS AN ARCHITECT,
22 CONTRACTOR, SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR,
23 ENGINEER, OR INSPECTOR PERFORMING OR FURNISHING THE DESIGN,
24 SUPERVISION, INSPECTION, CONSTRUCTION, OR OBSERVATION OF THE
25 CONSTRUCTION OF ANY IMPROVEMENT TO REAL PROPERTY. IF THE
26 IMPROVEMENT TO REAL PROPERTY IS TO A COMMERCIAL PROPERTY, THE
27 TERM "CONSTRUCTION PROFESSIONAL" SHALL ALSO INCLUDE ANY PRIOR

1 OWNER OF THE COMMERCIAL PROPERTY, OTHER THAN THE CLAIMANT, AT
2 THE TIME THE WORK WAS PERFORMED. AS USED IN THIS SUBSECTION (3),
3 THE TERM "COMMERCIAL PROPERTY" MEANS PROPERTY THAT IS ZONED TO
4 EXCLUDE RESIDENTIAL OCCUPANCY.

5 (4) "NOTICE OF CLAIM" MEANS A WRITTEN NOTICE SENT BY A
6 CLAIMANT TO THE LAST KNOWN ADDRESS OF A CONSTRUCTION
7 PROFESSIONAL AGAINST WHOM THE CLAIMANT ASSERTS A CONSTRUCTION
8 DEFECT CLAIM THAT DESCRIBES THE CLAIM IN REASONABLE DETAIL
9 SUFFICIENT TO DETERMINE THE GENERAL NATURE OF THE DEFECT AND ANY
10 DAMAGES CLAIMED TO HAVE BEEN CAUSED BY THE DEFECT.

11 **SECTION 3.** 13-20-803 (1), Colorado Revised Statutes, is
12 amended to read:

13 **13-20-803. List of defects required.** (1) IN ADDITION TO THE
14 NOTICE OF CLAIM REQUIRED BY SECTION 13-20-803.5, in every action
15 brought against any architect, contractor, builder, builder vendor,
16 engineer, or inspector performing or furnishing the design, supervision,
17 inspection, construction, or observation of the construction of any
18 improvement to real property, A CONSTRUCTION PROFESSIONAL, the
19 claimant shall file with the court OR ARBITRATOR and serve on the
20 defendant CONSTRUCTION PROFESSIONAL an initial list of construction
21 defects in accordance with this section. As used in this part 8, "action"
22 means any civil action or arbitration proceeding for damages, indemnity,
23 or contribution asserting a claim, counterclaim, cross-claim, or third-party
24 claim for injury or loss to, or the loss of use of, any real property caused
25 by an alleged defect in the construction of an improvement to the real
26 property.

27 **SECTION 4.** Part 8 of article 20 of title 13, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
2 SECTIONS to read:

3 **13-20-803.5. Notice of claim process.** (1) NOLATER THAN SIXTY
4 DAYS BEFORE FILING AN ACTION AGAINST A CONSTRUCTION
5 PROFESSIONAL, A CLAIMANT SHALL SEND OR DELIVER A WRITTEN NOTICE
6 OF CLAIM TO THE CONSTRUCTION PROFESSIONAL BY CERTIFIED MAIL,
7 RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE.

8 (2) FOLLOWING THE MAILING OR DELIVERY OF THE NOTICE OF
9 CLAIM, AT THE WRITTEN REQUEST OF THE CONSTRUCTION PROFESSIONAL,
10 THE CLAIMANT SHALL PROVIDE THE CONSTRUCTION PROFESSIONAL AND ITS
11 CONTRACTORS OR OTHER AGENTS REASONABLE ACCESS TO THE
12 CLAIMANT'S PROPERTY DURING NORMAL WORKING HOURS TO INSPECT THE
13 PROPERTY AND THE CLAIMED DEFECT. THE INSPECTION SHALL BE
14 COMPLETED WITHIN THIRTY DAYS OF SERVICE OF THE NOTICE OF CLAIM.

15 (3) WITHIN FIFTEEN DAYS FOLLOWING THE COMPLETION OF AN
16 INSPECTION CONDUCTED PURSUANT TO SUBSECTION (2) OF THIS SECTION,
17 A CONSTRUCTION PROFESSIONAL MAY SEND OR DELIVER TO THE
18 CLAIMANT, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR
19 PERSONAL SERVICE, AN OFFER TO SETTLE THE CLAIM BY PAYMENT OF A
20 SUM CERTAIN OR REMEDY THE CLAIMED DEFECT DESCRIBED IN THE NOTICE
21 OF CLAIM. A WRITTEN OFFER TO REMEDY THE CONSTRUCTION DEFECT
22 SHALL INCLUDE A REPORT OF THE SCOPE OF THE INSPECTION, THE FINDINGS
23 AND RESULTS OF THE INSPECTION, A DESCRIPTION OF THE ADDITIONAL
24 CONSTRUCTION WORK NECESSARY TO REMEDY THE DEFECT DESCRIBED IN
25 THE NOTICE OF CLAIM AND ALL DAMAGE TO THE IMPROVEMENT TO REAL
26 PROPERTY CAUSED BY THE DEFECT, AND A TIMETABLE FOR THE
27 COMPLETION OF THE REMEDIAL CONSTRUCTION WORK.

1 (4) UNLESS A CLAIMANT ACCEPTS AN OFFER MADE PURSUANT TO
2 SUBSECTION (3) OF THIS SECTION IN WRITING WITHIN FIFTEEN DAYS OF THE
3 DELIVERY OF THE OFFER, THE OFFER SHALL BE DEEMED TO HAVE BEEN
4 REJECTED.

5 (5) A CLAIMANT WHO ACCEPTS A CONSTRUCTION PROFESSIONAL'S
6 OFFER TO REMEDY OR SETTLE BY PAYMENT OF A SUM CERTAIN A
7 CONSTRUCTION DEFECT CLAIM SHALL DO SO BY SENDING THE
8 CONSTRUCTION PROFESSIONAL A WRITTEN NOTICE OF ACCEPTANCE NO
9 LATER THAN FIFTEEN DAYS AFTER RECEIPT OF THE OFFER. IF AN OFFER TO
10 SETTLE IS ACCEPTED, THEN THE MONETARY SETTLEMENT SHALL BE PAID IN
11 ACCORDANCE WITH THE OFFER. IF AN OFFER TO REMEDY IS ACCEPTED BY
12 THE CLAIMANT, THE REMEDIAL CONSTRUCTION WORK SHALL BE
13 COMPLETED IN ACCORDANCE WITH THE TIMETABLE SET FORTH IN THE
14 OFFER UNLESS THE DELAY IS CAUSED BY EVENTS BEYOND THE
15 REASONABLE CONTROL OF THE CONSTRUCTION PROFESSIONAL.

16 (6) IF NO OFFER IS MADE BY THE CONSTRUCTION PROFESSIONAL, OR
17 IF THE CLAIMANT REJECTS AN OFFER, THE CLAIMANT MAY BRING AN
18 ACTION AGAINST THE CONSTRUCTION PROFESSIONAL FOR THE
19 CONSTRUCTION DEFECT CLAIM DESCRIBED IN THE NOTICE OF CLAIM.

20 (7) IF AN OFFER BY A CONSTRUCTION PROFESSIONAL IS MADE AND
21 ACCEPTED, AND IF THEREAFTER THE CONSTRUCTION PROFESSIONAL DOES
22 NOT COMPLY WITH ITS OFFER TO REMEDY OR SETTLE A CLAIM FOR A
23 CONSTRUCTION DEFECT, THE CLAIMANT MAY FILE AN ACTION AGAINST THE
24 CONSTRUCTION PROFESSIONAL FOR CLAIMS ARISING OUT OF THE DEFECT
25 OR DAMAGE DESCRIBED IN THE NOTICE OF CLAIM WITHOUT FURTHER
26 NOTICE.

27 (8) AFTER THE SENDING OF A NOTICE OF CLAIM, A CLAIMANT AND

1 A CONSTRUCTION PROFESSIONAL MAY, BY WRITTEN MUTUAL AGREEMENT,
2 ALTER THE PROCEDURE FOR THE NOTICE OF CLAIM PROCESS DESCRIBED IN
3 THIS SECTION.

4 (9) ANY ACTION COMMENCED BY A CLAIMANT WHO FAILS TO
5 COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE STAYED,
6 WHICH STAY SHALL REMAIN IN EFFECT UNTIL THE CLAIMANT HAS
7 COMPLIED WITH THE REQUIREMENTS OF THIS SECTION.

8 (10) A CLAIMANT MAY AMEND A NOTICE OF CLAIM TO INCLUDE
9 CONSTRUCTION DEFECTS DISCOVERED AFTER THE SERVICE OF THE
10 ORIGINAL NOTICE OF CLAIM. HOWEVER, THE CLAIMANT MUST OTHERWISE
11 COMPLY WITH THE REQUIREMENTS OF THIS SECTION FOR THE ADDITIONAL
12 CLAIMS.

13 (11) FOR PURPOSES OF THIS SECTION, ACTUAL RECEIPT BY ANY
14 MEANS OF A WRITTEN NOTICE, OFFER, OR RESPONSE PREPARED PURSUANT
15 TO THIS SECTION WITHIN THE TIME PRESCRIBED FOR DELIVERY OR SERVICE
16 OF THE NOTICE, OFFER, OR RESPONSE SHALL BE DEEMED TO BE SUFFICIENT
17 DELIVERY OR SERVICE.

18 **13-20-805. Tolling of statutes of limitation.** IF A NOTICE OF
19 CLAIM IS SENT TO A CONSTRUCTION PROFESSIONAL IN ACCORDANCE WITH
20 SECTION 13-20-803.5 WITHIN THE TIME PRESCRIBED FOR THE FILING OF AN
21 ACTION UNDER ANY APPLICABLE STATUTE OF LIMITATIONS OR REPOSE,
22 THEN THE STATUTE OF LIMITATIONS OR REPOSE IS TOLLED UNTIL SIXTY
23 DAYS AFTER THE COMPLETION OF THE NOTICE OF CLAIM PROCESS
24 DESCRIBED IN SECTION 13-20-803.5.

25 **13-20-806. Limitation of treble damages pursuant to the**
26 **"Colorado Consumer Protection Act".** (1) A CONSTRUCTION
27 PROFESSIONAL SHALL NOT BE LIABLE FOR TREBLE DAMAGES UNDER

1 SECTION 6-1-113 (2) (a) (III), C.R.S., WITH RESPECT TO ANY ACTION IF:

2 (a) THE CONSTRUCTION PROFESSIONAL'S MONETARY OFFER, MADE
3 PURSUANT TO SECTION 13-20-803.5 (3), TO SETTLE FOR A SUM CERTAIN A
4 CONSTRUCTION DEFECT CLAIM DESCRIBED IN A NOTICE OF CLAIM IS EQUAL
5 TO OR GREATER THAN THE AMOUNT AWARDED TO THE CLAIMANT AS
6 ACTUAL DAMAGES SUSTAINED; OR

7 (b) THE REASONABLE COST, AS DETERMINED BY THE TRIER OF
8 FACT, TO COMPLETE THE CONSTRUCTION PROFESSIONAL'S OFFER, MADE
9 PURSUANT TO SECTION 13-20-803.5, TO REMEDY THE CONSTRUCTION
10 DEFECT DESCRIBED IN THE NOTICE OF CLAIM IS EQUAL TO OR GREATER
11 THAN THE AMOUNT AWARDED TO THE CLAIMANT AS ACTUAL DAMAGES
12 SUSTAINED.

13 (2) IF A CONSTRUCTION PROFESSIONAL DOES NOT COMPLY WITH
14 THE TERMS OF AN OFFER TO REMEDY OR SETTLE A CLAIM FOR A
15 CONSTRUCTION DEFECT MADE PURSUANT TO SECTION 13-20-803.5 AND
16 ACCEPTED BY THE CLAIMANT, OR IF A CONSTRUCTION PROFESSIONAL FAILS
17 TO MAKE SUCH AN OFFER, THE CONSTRUCTION PROFESSIONAL SHALL BE
18 SUBJECT TO THE TREBLE DAMAGES PROVISION OF SECTION 6-1-113 (2) (a)
19 (III), C.R.S.

20 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
21 AGGREGATE AMOUNT OF TREBLE DAMAGES AWARDED TO A CLAIMANT
22 UNDER SECTION 6-1-113 (2) (a) (III), C.R.S., AND ATTORNEY FEES
23 AWARDED TO A CLAIMANT UNDER SECTION 6-1-113 (2) (b), C.R.S., SHALL
24 NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS IN ANY ACTION
25 BROUGHT BY A CLAIMANT AGAINST A CONSTRUCTION PROFESSIONAL.

26 **SECTION 5. Applicability.** This act shall apply to actions filed
27 on or after the effective date of this act.

1 **SECTION 6. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.
4