

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 03-0139.03 Jason Gelender

**HOUSE BILL 03-1161**

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**HOUSE SPONSORSHIP**

**Rippy**, Fritz, Cadman, Larson, and White

**SENATE SPONSORSHIP**

(None),

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**House Committees**

Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**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 ALL ACTIONS  
3       CLAIMING DAMAGES, INDEMNITY, OR CONTRIBUTION IN CONNECTION WITH  
4       ALLEGED CONSTRUCTION DEFECTS RESULTING IN PERSONAL INJURY,  
5       PROPERTY LOSS, OR DAMAGE. IT IS THE INTENT OF THE GENERAL  
6       ASSEMBLY THAT THIS PART 8 SETS FORTH THE EXCLUSIVE PROCEDURE  
7       THAT SHALL APPLY TO THESE TYPES OF CIVIL ACTIONS WHILE PRESERVING  
8       RIGHTS AND REMEDIES FOR PROPERTY OWNERS WHO BRING AND MAINTAIN  
9       SUCH ACTIONS.

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

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

18               (2) "CONSTRUCTION PROFESSIONAL" MEANS ANY ARCHITECT,  
19       CONTRACTOR, SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR,  
20       ENGINEER, OR INSPECTOR PERFORMING OR FURNISHING THE DESIGN,  
21       SUPERVISION, INSPECTION, CONSTRUCTION, OR OBSERVATION OF THE  
22       CONSTRUCTION OF ANY IMPROVEMENT TO REAL PROPERTY, AND ANY PRIOR  
23       OWNER OF REAL PROPERTY, OTHER THAN A CLAIMANT, AT THE TIME THE  
24       DESCRIBED WORK WAS PERFORMED.

25               (3) "NOTICE OF CLAIM" MEANS A WRITTEN NOTICE SERVED BY A  
26       CLAIMANT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY  
27       PERSONAL SERVICE ON A CONSTRUCTION PROFESSIONAL AGAINST WHOM

1 THE CLAIMANT ASSERTS A CONSTRUCTION DEFECT CLAIM THAT DESCRIBES  
2 THE CLAIM IN REASONABLE DETAIL, INCLUDING THE SPECIFIC TYPE AND  
3 LOCATION OF THE CONSTRUCTION THAT THE CLAIMANT ALLEGES TO BE  
4 DEFECTIVE AND THE DAMAGES CLAIMED TO HAVE BEEN CAUSED BY THE  
5 CONSTRUCTION DEFECT.

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

15 [REDACTED]

16 (b) 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 AND THE NATURE AND EXTENT OF THE DAMAGES CLAIMED  
25 TO HAVE BEEN CAUSED BY THE DEFECT. HOWEVER, NOTHING IN THIS  
26 PARAGRAPH (b) SHALL BE CONSTRUED TO REQUIRE A CLAIMANT TO OBTAIN  
27 ANY SUCH INFORMATION.

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

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

1 (b) IF AN OFFER TO REPAIR IS MADE AND ACCEPTED BY THE  
2 CLAIMANT, ANY REPAIRS SHALL BE COMMENCED WITHIN THIRTY DAYS  
3 AFTER THE CONSTRUCTION PROFESSIONAL RECEIVES WRITTEN NOTICE OF  
4 ACCEPTANCE OF THE OFFER AND SHALL BE DILIGENTLY PURSUED UNTIL  
5 COMPLETION, UNLESS COMPLETION IS DELAYED BY THE CLAIMANT OR BY  
6 OTHER EVENTS BEYOND THE CONTROL OF THE CONSTRUCTION  
7 PROFESSIONAL.

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

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

1 OF THE CONSTRUCTION PROFESSIONAL, SHALL STAY THE ACTION UNTIL THE  
2 PROVISIONS OF THIS SECTION HAVE BEEN COMPLIED WITH.

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

9 (I) MAY NOT RECOVER ANY AMOUNT IN EXCESS OF THE GREATER  
10 OF:

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

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

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

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

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

9 [REDACTED]

10 (6) IN ANY CLAIM ALLEGING A CONSTRUCTION DEFECT, A  
11 CLAIMANT SHALL IN NO CIRCUMSTANCE RECOVER DAMAGES, INCLUDING  
12 DAMAGES THAT MAY OTHERWISE BE AWARDED UNDER THE PROVISIONS OF  
13 THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6,  
14 C.R.S., OR DAMAGES FOR NONECONOMIC LOSS OR INJURY AS DEFINED IN  
15 SECTION 13-21-102.5, GREATER THAN THE ACTUAL ECONOMIC DAMAGES  
16 CAUSED BY THE CONSTRUCTION DEFECT, RELOCATION COSTS, INTEREST,  
17 AND SUCH COSTS OF SUIT AND REASONABLE ATTORNEY FEES AS MAY BE  
18 AWARDED PURSUANT TO CONTRACT OR APPLICABLE LAW UNLESS A  
19 JUDGE OR ARBITRATOR FINDS BEYOND A REASONABLE DOUBT IN AN  
20 EVIDENTIARY HEARING HELD PRIOR TO A JURY'S DETERMINATION OF ANY  
21 ISSUE RELATING TO LIABILITY OR DAMAGES THAT A CONSTRUCTION  
22 PROFESSIONAL ACTED FRAUDULENTLY AND IN BAD FAITH IN THE  
23 CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY AND THAT SUCH  
24 CONDUCT RESULTED IN PROPERTY LOSS OR DAMAGE. AS USED IN THIS  
25 SUBSECTION (6), "ACTUAL ECONOMIC DAMAGES" MEANS THE DIMINUTION  
26 IN VALUE OF REAL PROPERTY AS A RESULT OF THE ALLEGED CONSTRUCTION  
27 DEFECT OR THE REASONABLE COST TO REPAIR THE ALLEGED

1     CONSTRUCTION DEFECT, WHICHEVER IS LESS.

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

6             (b) THE MAKING OF AN OFFER OF SETTLEMENT AS DESCRIBED IN  
7     PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL NOT BE DEEMED AN  
8     ADMISSION OF LIABILITY IN ANY SUBSEQUENT PROCEEDING AND SHALL NOT  
9     BE DEEMED ADMISSIBLE FOR PURPOSES OF ESTABLISHING LIABILITY OR AN  
10    ACKNOWLEDGMENT OF LIABILITY.

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

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

17            (e) NOTHING CONTAINED IN THIS PART 8 SHALL BE DEEMED TO  
18    CREATE A CLAIM FOR STRICT LIABILITY IN CONNECTION WITH THE  
19    CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY, NOR SHALL  
20    ANYTHING IN THIS PART 8 BE DEEMED TO CREATE A CLAIM FOR RELIEF NOT  
21    PREVIOUSLY RECOGNIZED AT COMMON LAW. FURTHER, THIS PART 8 SHALL  
22    NOT CREATE A CLAIM FOR A SUBSEQUENT PURCHASER.

23            (8) IN AN ACTION TO RECOVER DAMAGES RESULTING FROM A  
24    CONSTRUCTION DEFECT, A CONSTRUCTION PROFESSIONAL IS NOT LIABLE  
25    FOR ANY PERCENTAGE OF DAMAGES CAUSED BY FAILURE OF THE  
26    CLAIMANT:

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

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

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

5 **13-20-805. Restriction on construction defect claims.** (1) NO  
6 CLAIM SEEKING DAMAGES FOR A CONSTRUCTION DEFECT MAY BE  
7 ASSERTED IN AN ACTION IF THE CLAIM ARISES FROM THE FAILURE TO  
8 CONSTRUCT AN IMPROVEMENT TO REAL PROPERTY IN SUBSTANTIAL  
9 COMPLIANCE WITH AN APPLICABLE BUILDING CODE OR INDUSTRY  
10 STANDARD; EXCEPT THAT SUCH A CLAIM MAY BE ASSERTED IF THE FAILURE  
11 RESULTS IN ONE OR MORE OF THE FOLLOWING:

- 12 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;
- 13 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;
- 14 (c) BODILY INJURY OR WRONGFUL DEATH; OR
- 15 (d) A RISK OF BODILY INJURY OR DEATH TO, OR A THREAT TO THE  
16 LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE REAL PROPERTY.

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

- 19 (a) THE ASSERTION OF TORT CLAIMS OTHER THAN CLAIMS FOR  
20 NEGLIGENCE;
- 21 (b) THE ASSERTION OF CONTRACT OR WARRANTY CLAIMS; OR
- 22 (c) THE ASSERTION OF CLAIMS THAT ARISE FROM THE VIOLATION  
23 OF ANY STATUTE OR ORDINANCE OTHER THAN CLAIMS FOR VIOLATION OF  
24 A BUILDING CODE.

25 (3) WITH RESPECT TO ANY CLAIM IN WHICH PERSONAL INJURY,  
26 BODILY INJURY, OR EMOTIONAL INJURY DAMAGE IS ALLEGED AS HAVING  
27 BEEN CAUSED BY A CONSTRUCTION DEFECT, PRIOR TO THE FACT FINDER

1 DETERMINING ANY ISSUE OF LIABILITY, THE TRIAL COURT JUDGE OR  
2 ARBITRATOR, AS THE CASE MAY BE, SHALL CONDUCT AN IN LIMINE  
3 HEARING TO DETERMINE WHETHER THE PROBATIVE VALUE OF THE  
4 EVIDENCE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR  
5 PREJUDICE AND CONFUSION OF THE ISSUE AND WHETHER THE DAMAGES  
6 THAT ARE SOUGHT ARE SCIENTIFICALLY VALID AND CAUSED BY THE  
7 ALLEGED DEFECT. THE JUDGE OR ARBITRATOR SHALL EXCLUDE ALL  
8 EVIDENCE OF DAMAGES AND ALL EXPERT EVIDENCE RELATING TO THE  
9 CAUSE OF SUCH INJURIES ABSENT A SPECIFIC FINDING THAT:

10 (a) THE REASONING AND METHODOLOGY UNDERLYING THE  
11 SCIENTIFIC THEORY AND TECHNIQUE ARE SCIENTIFICALLY VALID AND HAVE  
12 BEEN GENERALLY ACCEPTED BY THE RELEVANT SCIENTIFIC COMMUNITY;  
13 AND

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

16 **13-20-806. Contractual waiver of construction defects**  
17 **claims.** A CONTRACTUAL PROVISION THAT WAIVES OR LIMITS A CLAIM FOR  
18 DEFECTS IN THE CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY  
19 SHALL NOT BE DEEMED UNCONSCIONABLE FOR PURPOSES OF ARTICLE 33.3  
20 OF TITLE 38, C.R.S., OR FOR ANY OTHER PURPOSE.

21 **13-20-807. List of defects required.** (1) IN ADDITION TO THE  
22 NOTICE OF CLAIM REQUIRED BY SECTION 13-20-804, IN EVERY ACTION  
23 BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL, THE CLAIMANT SHALL  
24 FILE WITH THE COURT OR ARBITRATOR AND SERVE ON THE DEFENDANT A  
25 LIST OF CONSTRUCTION DEFECTS.

26 (2) A LIST OF CONSTRUCTION DEFECTS SHALL CONTAIN A  
27 DESCRIPTION, BY SPECIFIC TYPE AND LOCATION, OF THE CONSTRUCTION

1 THAT THE CLAIMANT ALLEGES TO BE DEFECTIVE.

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

5 (4) IF A SUBCONTRACTOR OR SUPPLIER IS ADDED AS A PARTY TO AN  
6 ACTION UNDER THIS SECTION, THE CLAIMANT MAKING THE CLAIM AGAINST  
7 SUCH SUBCONTRACTOR OR SUPPLIER SHALL FILE WITH THE COURT AND  
8 SERVE ON THE DEFENDANT A LIST OF CONSTRUCTION DEFECTS IN  
9 ACCORDANCE WITH THIS SECTION WITHIN SIXTY DAYS AFTER SERVICE OF  
10 THE COMPLAINT AGAINST THE SUBCONTRACTOR OR SUPPLIER OR WITHIN  
11 SUCH LONGER PERIOD AS THE COURT IN ITS DISCRETION MAY ALLOW. IN  
12 NO EVENT SHALL THE FILING OF A DEFECT LIST UNDER THIS SUBSECTION (4)  
13 DELAY THE SETTING OF THE TRIAL.

14 **SECTION 2.** 6-1-105, Colorado Revised Statutes, is amended  
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **6-1-105. Deceptive trade practices.** (2.5) IT SHALL NOT BE A  
17 DECEPTIVE TRADE PRACTICE TO REPRESENT THAT AN IMPROVEMENT TO  
18 REAL PROPERTY COMPLIES WITH THE APPLICABLE BUILDING CODE OR  
19 INDUSTRY STANDARD IF DURING THE COURSE OF CONSTRUCTION OF SUCH  
20 IMPROVEMENT THE GOVERNING BUILDING DEPARTMENT OR EQUIVALENT  
21 GOVERNMENTAL AGENCY ISSUES A BUILDING PERMIT OR CERTIFICATE OF  
22 OCCUPANCY, OR ITS EQUIVALENT, AS ESTABLISHED BY THE LAW OF THE  
23 GOVERNING JURISDICTION THAT HAS AUTHORITY OVER THE CONSTRUCTION  
24 OF THE IMPROVEMENT. A TECHNICAL VIOLATION OF AN APPLICABLE  
25 BUILDING CODE SHALL NOT GIVE RISE TO A DECEPTIVE TRADE PRACTICE  
26 CLAIM UNDER THIS ARTICLE. NOTHING IN THIS SECTION SHALL BE  
27 CONSTRUED TO CREATE AN ADDITIONAL OR SEPARATE CAUSE OF ACTION

1 AGAINST A GOVERNING JURISDICTION OR ITS AUTHORIZED AGENTS  
2 RELATED TO ITS ACTIONS UNDER THIS SECTION.

3 **SECTION 3.** The introductory portion to 13-80-104 (1) (c),  
4 Colorado Revised Statutes, is amended to read:

5 **13-80-104. Limitation of actions against architects,**  
6 **contractors, builders or builder vendors, engineers, inspectors, and**  
7 **others.** (1) (c) Such actions shall include any and all actions in tort,  
8 contract, indemnity, WARRANTY, INCLUDING, BUT NOT LIMITED TO,  
9 WARRANTY TO REPAIR OR REPLACE DEFECTIVE GOODS OR SERVICES, or  
10 contribution, or other actions for the recovery of damages for:

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

13 **SECTION 5. Safety clause.** The general assembly hereby finds,  
14 determines, and declares that this act is necessary for the immediate  
15 preservation of the public peace, health, and safety.