

**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

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.

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

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, PRESERVING RIGHTS
8 AND REMEDIES FOR PROPERTY OWNERS WHO BRING AND MAINTAIN SUCH
9 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 CAUSED BY AN ALLEGED DEFECT IN
16 THE CONSTRUCTION OF AN IMPROVEMENT TO 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, AND ANY PRIOR
22 OWNER OF REAL PROPERTY, OTHER THAN A CLAIMANT, AT THE TIME THE
23 DESCRIBED WORK WAS PERFORMED.

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

1 CONSTRUCTION DEFECT CLAIM THAT DESCRIBES THE CLAIM IN
2 REASONABLE DETAIL, INCLUDING THE SPECIFIC TYPE AND LOCATION OF
3 THE CONSTRUCTION THAT THE CLAIMANT ALLEGES TO BE DEFECTIVE AND
4 THE DAMAGES CLAIMED TO HAVE BEEN CAUSED BY THE CONSTRUCTION
5 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 SEND A NOTICE OF CLAIM TO THE CONSTRUCTION
12 PROFESSIONAL. MAILING OR PERSONAL SERVICE OF THE NOTICE OF CLAIM
13 SHALL BE A 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 TIMELY WORKMANLIKE MANNER, THE REPAIRS SPECIFIED IN AN ACCEPTED

1 OFFER OF SETTLEMENT MADE PURSUANT TO SUBSECTION (3) OF THIS
2 SECTION, THE TRIAL COURT JUDGE OR ARBITRATOR, AS THE CASE MAY BE,
3 SHALL CONDUCT A HEARING TO DETERMINE WHETHER SUCH FAILURE BY
4 THE CONSTRUCTION PROFESSIONAL WAS FRAUDULENT. IF THE TRIAL JUDGE
5 OR 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 (6) (a) IN ANY CLAIM ALLEGING A CONSTRUCTION DEFECT, A
10 CLAIMANT MAY RECOVER ONLY ACTUAL DAMAGES AND SHALL IN NO
11 CIRCUMSTANCES RECOVER DAMAGES THAT MAY OTHERWISE BE AWARDED
12 UNDER THE PROVISIONS OF THE "COLORADO CONSUMER PROTECTION
13 ACT", ARTICLE 1 OF TITLE 6, C.R.S., OR DAMAGES FOR NONECONOMIC
14 LOSS OR INJURY, AS DEFINED IN SECTION 13-21-102.5; EXCEPT THAT A
15 CLAIMANT MAY RECOVER SUCH DAMAGES UNDER THE PROVISIONS OF THE
16 "COLORADO CONSUMER PROTECTION ACT" IF A JUDGE OR ARBITRATOR
17 FINDS BEYOND A REASONABLE DOUBT IN AN EVIDENTIARY HEARING HELD
18 PRIOR TO A JURY'S DETERMINATION OF ANY ISSUE RELATING TO LIABILITY
19 OR DAMAGES THAT A CONSTRUCTION PROFESSIONAL ACTED
20 FRAUDULENTLY AND IN BAD FAITH IN THE CONSTRUCTION OF
21 IMPROVEMENTS TO REAL PROPERTY AND THAT SUCH CONDUCT RESULTED
22 IN PROPERTY LOSS OR DAMAGE.

23 (b) (I) FOR PURPOSES OF THIS SUBSECTION (6), "ACTUAL DAMAGES"
24 MEANS ECONOMIC DAMAGES CAUSED BY A CONSTRUCTION DEFECT,
25 RELOCATION COSTS, AND INTEREST AND SUCH COSTS OF SUIT AND
26 REASONABLE ATTORNEY FEES AS MAY BE AWARDBLE PURSUANT TO
27 CONTRACT OR APPLICABLE LAW.

1 (II) FOR PURPOSES OF THIS PARAGRAPH (b), "ECONOMIC DAMAGES"
2 MEANS THE DIMINUTION IN VALUE OF REAL PROPERTY AS A RESULT OF AN
3 ALLEGED CONSTRUCTION DEFECT OR THE REASONABLE COST TO REPAIR
4 THE ALLEGED CONSTRUCTION DEFECT, WHICHEVER IS LESS.

5 (c) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND
6 (b) OF THIS SUBSECTION (6), IN ANY CLAIM ALLEGING A CONSTRUCTION
7 DEFECT, A CLAIMANT MAY CLAIM DAMAGES FOR EXPENSES INCURRED AND
8 INCOME LOST AS A RESULT OF PERSONAL INJURY OR DEATH CAUSED BY THE
9 CONSTRUCTION DEFECT AND, SUBJECT TO THE LIMITATIONS SET FORTH IN
10 SECTIONS 13-21-102.5 AND 13-21-203, MAY ALSO CLAIM DAMAGES FOR
11 NONECONOMIC LOSS OR INJURY THAT RESULTS FROM PERSONAL INJURY OR
12 DEATH CAUSED BY THE CONSTRUCTION DEFECT.

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

17 (b) THE MAKING OF AN OFFER OF SETTLEMENT AS DESCRIBED IN
18 PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL NOT BE DEEMED AN
19 ADMISSION OF LIABILITY IN ANY SUBSEQUENT PROCEEDING AND SHALL NOT
20 BE DEEMED ADMISSIBLE FOR PURPOSES OF ESTABLISHING LIABILITY OR AN
21 ACKNOWLEDGMENT OF LIABILITY.

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

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

1 (e) NOTHING CONTAINED IN THIS PART 8 SHALL BE DEEMED TO
2 CREATE A CLAIM FOR STRICT LIABILITY IN CONNECTION WITH THE
3 CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY, NOR SHALL
4 ANYTHING IN THIS PART 8 BE DEEMED TO CREATE A CLAIM.

5 (8) EXCEPT FOR THE PROVISIONS OF SUBSECTION (6) OF THIS
6 SECTION, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CLAIMS
7 BY PUBLIC UTILITIES FOR LOSSES RELATED TO CONSTRUCTION DEFECTS.

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

- 15 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;
- 16 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;
- 17 (c) BODILY INJURY OR WRONGFUL DEATH; OR
- 18 (d) A RISK OF BODILY INJURY OR DEATH TO, OR AN OBSERVABLE OR
19 OTHERWISE VERIFIABLE THREAT TO THE LIFE, HEALTH, OR SAFETY OF, THE
20 OCCUPANTS OF THE REAL PROPERTY.

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

- 23 (a) THE ASSERTION OF TORT CLAIMS OTHER THAN CLAIMS FOR
24 NEGLIGENCE;
- 25 (b) THE ASSERTION OF CONTRACT OR WARRANTY CLAIMS; OR
- 26 (c) THE ASSERTION OF CLAIMS THAT ARISE FROM THE VIOLATION
27 OF ANY STATUTE OR ORDINANCE OTHER THAN CLAIMS FOR VIOLATION OF

1 A BUILDING CODE.

2 (3) WITH RESPECT TO ANY CLAIM IN WHICH PERSONAL INJURY,
3 BODILY INJURY, OR EMOTIONAL INJURY DAMAGE IS ALLEGED AS HAVING
4 BEEN CAUSED BY A CONSTRUCTION DEFECT, PRIOR TO THE FACT FINDER
5 DETERMINING ANY ISSUE OF LIABILITY, THE TRIAL COURT JUDGE OR
6 ARBITRATOR, AS THE CASE MAY BE, SHALL CONDUCT AN IN LIMINE
7 HEARING TO DETERMINE WHETHER THE PROBATIVE VALUE OF THE
8 EVIDENCE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR
9 PREJUDICE AND CONFUSION OF THE ISSUE AND WHETHER THE DAMAGES
10 THAT ARE SOUGHT ARE OF A TYPE THAT HAVE BEEN GENERALLY ACCEPTED
11 BY THE RELEVANT SCIENTIFIC COMMUNITY, VERIFIABLE, AND CAUSED BY
12 THE ALLEGED DEFECT. THE JUDGE OR ARBITRATOR SHALL EXCLUDE ALL
13 EVIDENCE OF DAMAGES AND ALL EXPERT EVIDENCE RELATING TO THE
14 CAUSE OF SUCH INJURIES ABSENT A SPECIFIC FINDING THAT:

15 (a) THE REASONING AND METHODOLOGY UNDERLYING THE
16 SCIENTIFIC THEORY AND TECHNIQUE [REDACTED] HAVE
17 BEEN GENERALLY ACCEPTED BY THE RELEVANT SCIENTIFIC COMMUNITY;
18 AND

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

21 **13-20-806. Contractual waiver - damages.** ANY WAIVER OR
22 LIMITATION OF DAMAGES OR CONTRACTUAL PROVISION THAT LIMITS OR
23 SPECIFIES THAT ONLY SPECIFIC DAMAGES MAY BE RECOVERED SHALL BE
24 CLEAR AND CONSPICUOUS. AS USED IN THIS SECTION, "CLEAR AND
25 CONSPICUOUS" MEANS A TERM OR CLAUSE IN WRITING IN A CONTRACT
26 THAT IS WRITTEN SO THAT A REASONABLE PERSON AGAINST WHOM THE
27 TERM OR CLAUSE IS TO OPERATE WOULD NOTICE IT. A PRINTED HEADING

1 IN CAPITAL LETTERS IS CLEAR AND CONSPICUOUS AND LANGUAGE IN THE
2 BODY OF A CONTRACT IS CLEAR AND CONSPICUOUS IF THE LANGUAGE IS IN
3 BOLD TYPE, LARGER TYPE, OR ANY OTHER CONTRASTING TYPE OR COLOR
4 FROM THE SURROUNDING LANGUAGE.

5 **13-20-807. List of defects required.** (1) IN ADDITION TO THE
6 NOTICE OF CLAIM REQUIRED BY SECTION 13-20-804, IN EVERY ACTION
7 BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL, THE CLAIMANT SHALL
8 FILE WITH THE COURT OR ARBITRATOR AND SERVE ON THE CONSTRUCTION
9 PROFESSIONAL A LIST OF CONSTRUCTION DEFECTS.

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

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

16 (4) IF A SUBCONTRACTOR OR SUPPLIER IS ADDED AS A PARTY TO AN
17 ACTION UNDER THIS SECTION, THE CLAIMANT MAKING THE CLAIM AGAINST
18 SUCH SUBCONTRACTOR OR SUPPLIER SHALL FILE WITH THE COURT AND
19 SERVE ON THE SUBCONTRACTOR OR SUPPLIER A LIST OF CONSTRUCTION
20 DEFECTS IN ACCORDANCE WITH THIS SECTION WITHIN SIXTY DAYS AFTER
21 SERVICE OF THE COMPLAINT AGAINST THE SUBCONTRACTOR OR SUPPLIER
22 OR WITHIN SUCH LONGER PERIOD AS THE COURT IN ITS DISCRETION MAY
23 ALLOW. IN NO EVENT SHALL THE FILING OF A DEFECT LIST UNDER THIS
24 SUBSECTION (4) DELAY THE SETTING OF THE TRIAL.

25 **13-20-808. Inapplicability to governments.** (1) THE PROVISIONS
26 OF THIS PART 8 SHALL NOT APPLY TO CLAIMS BY GOVERNMENTS FOR
27 LOSSES RELATED TO CONSTRUCTION DEFECTS.

1 (2) FOR PURPOSES OF THIS SECTION "GOVERNMENT" MEANS THE
2 STATE, A CITY, COUNTY, CITY AND COUNTY, SCHOOL DISTRICT, OR SPECIAL
3 DISTRICT.

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

6 **6-1-105. Deceptive trade practices.** (2.5) THE ACT OF
7 OBTAINING A CERTIFICATE OF OCCUPANCY IS NOT A REPRESENTATION FOR
8 PURPOSES OF DETERMINING WHETHER A PERSON HAS ENGAGED IN A
9 DECEPTIVE TRADE PRACTICE AS DESCRIBED IN THIS SECTION. A TECHNICAL
10 VIOLATION OF AN APPLICABLE BUILDING CODE SHALL NOT GIVE RISE TO A
11 DECEPTIVE TRADE PRACTICE CLAIM UNDER THIS ARTICLE. NOTHING IN
12 THIS SECTION SHALL BE CONSTRUED TO CREATE AN ADDITIONAL OR
13 SEPARATE CAUSE OF ACTION AGAINST A GOVERNING JURISDICTION OR ITS
14 AUTHORIZED AGENTS RELATED TO ITS ACTIONS UNDER THIS SECTION.

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

17 **13-80-104. Limitation of actions against architects,**
18 **contractors, builders or builder vendors, engineers, inspectors, and**
19 **others.** (1) (c) Such actions shall include any and all actions in tort,
20 contract, indemnity, WARRANTY, INCLUDING, BUT NOT LIMITED TO,
21 WARRANTY TO REPAIR OR REPLACE DEFECTIVE GOODS OR SERVICES, or
22 contribution, or other actions for the recovery of damages for:

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

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