

Colorado Legislative Council Staff
STATE
FISCAL IMPACT

Drafting Number: LLS 03-0139
Prime Sponsor(s): Rep. Rippy

Date: January 14, 2003
Bill Status: House Business Affairs & Labor
Fiscal Analyst: Josh Harwood (303-866-4796)

TITLE: CONCERNING LIMITATIONS ON CLAIMS FOR DAMAGES FILED AGAINST CONSTRUCTION PROFESSIONALS.

Fiscal Impact Summary	FY 2003/2004	FY 2004/2005
State Revenues General Fund		
State Expenditures General Fund*		
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Upon signature of the Governor.		
Appropriation Summary for FY 2003-2004: None Identified		
Local Government Impact: None		

**A decline in the number of court filings is expected to at least partially offset any expenditure incurred as a result of additional hearings necessary to determine the reasonableness of a settlement offer.*

Summary of Legislation

This bill repeals and reenacts the "Construction Defect Action Reform Act" (CDARA) with several new provisions. The CDARA regulates litigation and claim procedures for property owners and construction professionals in construction defect cases. Under this bill, the claimant must serve notification of claim to all pertinent construction professionals no later than 90 days prior to filing the claim, specifying any defects and all necessary repairs. This list may be altered once, and only to identify defects that were not found, with reasonable diligence, prior to the original notice. The bill specifies that a claim cannot be made based solely on the failure of an improvement to comply with a building code or industry standard. Furthermore, the bill prohibits an insurer from canceling, abrogating, refusing to renew, or altering insurance coverage on a construction professional based on a notice of claim.

The bill allows a construction professional the opportunity to inspect any defect in question, and make an offer to either repair the defect or provide a monetary settlement to the claimant. Under the provisions of the bill, said offer would not constitute an admission of fault should the dispute go

to trial or arbitration. The bill limits the amount of damages that may be awarded in a CDARA action, provided there is no bad faith or fraud by the construction professional.

State Expenditures

Because the bill requires a hearing to determine the reasonableness of rejected settlement offers, there will be some expense incurred in court costs. Furthermore, because the burden of proof in these hearings is beyond a reasonable doubt, the Judicial Department expects "trial-like proceedings" that would occur prior to a civil trial should the settlement offer be deemed unreasonable. However, because current law does not provide for such a hearing, the number of these hearings that will be necessary is undeterminable, as is the degree of additional work such hearings would require.

Expenditures associated with the pre-trial hearings would likely be offset by a decrease in the overall number of filings expected under the bill. Language that encourages settlements, as well as more extensive filing requirements, are expected to lead to this decrease. Ultimately, the net effect of the bill on the Judicial Departmental workload is unclear.

State Appropriations

Because it is unclear if the net effect of the bill on court personnel and hearing costs would be positive or negative, no additional appropriation or spending authority is required in FY 2003-04 in order to implement the provisions of the bill. Any request for additional funding related to the implementation of the bill would be handled through the supplemental request process.

Departments Contacted

Judicial