

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 10, 2003

Date

Committee on Business Affairs & Labor.

After consideration on the merits, the Committee recommends the following:

HB03-1161 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 4, line 24, after "TO", insert "A
2 CONSTRUCTION PROFESSIONAL BY".

3 Page 5, line 10, strike "ON" and substitute "TO".

4 Page 9, strike lines 8 through 26 and substitute the following:

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



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

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

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

18 Page 10, after line 18, insert the following:

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

22 Page 11, line 2, strike "AN IMMINENT" and substitute "A".

23 Page 13, after line 8, insert the following:

24 "**13-20-808. Inapplicability to governments.** (1) THE
25 PROVISIONS OF THIS PART 8 SHALL NOT APPLY TO CLAIMS BY
26 GOVERNMENTS FOR LOSSES RELATED TO CONSTRUCTION DEFECTS.

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

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