

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0137.01 Bart Miller x2173

SENATE BILL 13-052

SENATE SPONSORSHIP

Scheffel, Cadman

HOUSE SPONSORSHIP

DelGrosso,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING REAL PROPERTY CONSTRUCTION DEFECT ACTIONS, AND,
102 IN CONNECTION THEREWITH, ENACTING THE
103 "TRANSIT-ORIENTED DEVELOPMENT CLAIMS ACT OF 2013".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

With respect to construction defect actions involving transit-oriented development, the bill makes the following changes to the law:

! **Section 1** creates the "Transit-oriented Development

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.

Claims Act of 2013".

! **Section 2** institutes a right to repair for construction professionals that receive a notice of claim with respect to a construction defect in a transit-oriented development.

! **Section 3** institutes a binding arbitration requirement for claims against construction professionals with respect to transit-oriented development. This section also makes construction professionals immune to suit for environmental conditions including noise, odors, light, temperatures, humidity, vibrations, and smoke or fumes causally related to transit, commercial, public, or retail use.

With respect to construction defect actions in general:

! **Section 4** clarifies the statute of repose for the 6-year statute of limitations for actions against architects, contractors, builders, builder vendors, engineers, or inspectors involved in improvements to real property.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** This section 1 and sections 2, 3, and 6
3 of this act shall be known and may be cited as the "Transit-oriented
4 Development Claims Act of 2013".

5 **SECTION 2.** In Colorado Revised Statutes, 13-20-803.5, **add** (13)
6 as follows:

7 **13-20-803.5. Notice of claim process - transit-oriented**
8 **development - right to repair.** (13) (a) IF ANY CLAIMED DEFECTS
9 DESCRIBED IN A NOTICE OF CLAIM ARISE OUT OF, RELATE TO, OR INVOLVE
10 TRANSIT-ORIENTED DEVELOPMENT, AS DEFINED IN SECTION 13-20-809, A
11 CONSTRUCTION PROFESSIONAL THAT IS SENT OR DELIVERED A WRITTEN
12 NOTICE OF CLAIM PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION
13 HAS A RIGHT PURSUANT TO THIS SUBSECTION (13) TO REPAIR ANY CLAIMED
14 DEFECT UPON SENDING OR DELIVERING TO THE CLAIMANT A WRITTEN
15 OFFER TO REMEDY THE CLAIMED DEFECT. THE CONSTRUCTION
16 PROFESSIONAL NEED NOT OFFER TO REPAIR ALL CLAIMED DEFECTS.

1 (b) THE TIMETABLE FOR COMPLETION OF THE REPAIR MUST BE
2 WITHIN A REASONABLE TIME, WITH REASONABLE EFFORTS TO CONCLUDE
3 WITHIN ONE HUNDRED EIGHTY DAYS AFTER COMMENCEMENT OF REPAIRS
4 SUBJECT TO THE REMAINDER OF THIS SUBSECTION (13).

5 (c) THE WRITTEN OFFER TO REMEDY THE CLAIMED DEFECT MUST
6 INCLUDE:

7 (I) NAMES, ADDRESSES, TELEPHONE NUMBERS, AND PROFESSIONAL
8 LICENSE NUMBERS OF THE CONTRACTORS AND SUBCONTRACTORS THE
9 CONSTRUCTION PROFESSIONAL INTENDS TO HAVE PERFORM THE REPAIRS;

10 (II) WITHIN TEN DAYS AFTER ANY REQUEST BY THE CLAIMANT,
11 CERTIFICATES OF INSURANCE OF EACH CONTRACTOR OR SUBCONTRACTOR
12 SHOWING OCCURRENCE COVERAGE FOR PROPERTY DAMAGE OF AT LEAST
13 ONE MILLION DOLLARS PER OCCURRENCE, INCLUDING COMPLETED
14 OPERATIONS COVERAGE; AND

15 (III) IF A PERMIT IS REQUIRED FOR THE REPAIR, PLANS AND
16 SPECIFICATIONS FOR THE REPAIR, AS AVAILABLE, WITHIN A REASONABLE
17 TIME AFTER THE WRITTEN OFFER IS DELIVERED. IF NO PERMIT IS REQUIRED,
18 PLANS AND SPECIFICATIONS NEED NOT BE PROVIDED.

19 (d) IF THE CLAIMANT OBJECTS TO ANY CONTRACTOR OR
20 SUBCONTRACTOR IDENTIFIED BY A CONSTRUCTION PROFESSIONAL UNDER
21 SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (13), THE
22 CLAIMANT MUST NOTIFY THE CONSTRUCTION PROFESSIONAL WITHIN
23 FIFTEEN DAYS AFTER THE RECEIPT OF THE OFFER AND MAY THEN SELECT
24 ANOTHER CONTRACTOR OR SUBCONTRACTOR. THE CLAIMANT IS
25 FINANCIALLY RESPONSIBLE FOR ANY INCREASED COSTS RELATED TO THE
26 SELECTION OF THE ALTERNATIVE CONTRACTOR OR SUBCONTRACTOR.

27 (e) THE CLAIMANT AND ALL PARTICIPATING CONSTRUCTION

1 PROFESSIONALS SHALL MEET TO COORDINATE REPAIRS WITHIN THIRTY
2 DAYS AFTER THE OFFER TO REMEDY THE CLAIMED DEFECT. LEGAL
3 REPRESENTATIVES MAY ALSO ATTEND.

4 (f) EACH CONSTRUCTION PROFESSIONAL AGREEING TO PARTICIPATE
5 IN THE REPAIRS SHALL ACT REASONABLY TO OBTAIN NEEDED PERMITS IN A
6 REASONABLE TIME.

7 (g) REPAIRS MUST COMMENCE AS AGREED BY THE CLAIMANT AND
8 PARTICIPATING CONSTRUCTION PROFESSIONALS, WITH REASONABLE
9 EFFORTS TO BEGIN WITHIN THIRTY-FIVE DAYS AFTER THE OFFER TO
10 REMEDY THE CLAIMED DEFECTS.

11 (h) ALL REPAIRS SHALL BE COMPLETED USING REASONABLE CARE
12 UNDER THE CIRCUMSTANCES AND AS SOON AS REASONABLY POSSIBLE
13 SUBJECT TO:

14 (I) THE NATURE OF THE REPAIR;

15 (II) ACCESS ISSUES; OR

16 (III) UNFORESEEN EVENTS NOT CAUSED BY THE PARTICIPATING
17 CONSTRUCTION PROFESSIONALS OR THOSE CONTRACTORS OR
18 SUBCONTRACTORS THE PARTICIPATING CONSTRUCTION PROFESSIONALS
19 CHOOSE TO PERFORM THE REPAIR.

20 (i) IF A CONSTRUCTION PROFESSIONAL ELECTS TO REPAIR SOME BUT
21 NOT ALL CLAIMED DEFECTS, THE OFFER MUST STATE IN WRITING THE
22 REASONS FOR NOT REPAIRING ALL CLAIMED DEFECTS.

23 (j) IF A CONSTRUCTION PROFESSIONAL FAILS TO COMPLETE REPAIRS
24 WITHIN THE TIME SPECIFIED IN THE OFFER, AND THE FAILURE IS NOT DUE TO
25 ANY FAULT OF THE CLAIMANT OR OF CONTRACTORS OR SUBCONTRACTORS
26 SELECTED BY THE CLAIMANT NOR AS A RESULT OF AN UNFORESEEN
27 CONDITION, INCLUDING AN UNFORESEEN WEATHER CONDITION, THE

1 CLAIMANT MAY FILE AN ACTION.

2 (k) IF THE REPAIR REQUIRES RELOCATION OF THE CLAIMANT OR
3 OTHER PERSONS OR OF ANY PERSONAL PROPERTY, THE CONSTRUCTION
4 PROFESSIONAL SHALL PAY REASONABLE COSTS OF RELOCATION AND
5 RELATED MOVING EXPENSES IN A TIMELY MANNER. CONSTRUCTION
6 PROFESSIONALS ARE NOT RESPONSIBLE FOR ANY ALLEGED LOSS OF USE OR
7 LOSS OF INCOME FOR REPAIRS THAT DO NOT REQUIRE RELOCATION.

8 (l) THE CLAIMANT SHALL PROVIDE REASONABLE ACCESS FOR THE
9 REPAIRS, INCLUDING OBTAINING COOPERATION FROM TENANTS,
10 ASSOCIATION MEMBERS, OR OTHERS.

11 (m) A CONSTRUCTION PROFESSIONAL SHALL REPAIR OR REPLACE TO
12 REASONABLE PREEXISTING CONDITION ANY PROPERTY DAMAGED BY THE
13 REPAIR.

14 (n) A CONSTRUCTION PROFESSIONAL SHALL NOT OBTAIN A RELEASE
15 OR WAIVER IN EXCHANGE FOR ANY REPAIR PURSUANT TO THIS SUBSECTION
16 (13). HOWEVER, CLAIMANTS AND CONSTRUCTION PROFESSIONALS MAY
17 NEGOTIATE A RELEASE IN EXCHANGE FOR REPAIRS.

18 (o) AT THE CONCLUSION OF ANY REPAIRS, A CLAIMANT MAY
19 PROCEED WITH AN ACTION, INCLUDING ANY CLAIM FOR INADEQUATE
20 REPAIR.

21 (p) DURING THE NOTICE PROCESS AND REPAIR, AND FOR NINETY
22 DAYS AFTER SUBSTANTIAL COMPLETION OF THE REPAIR, THE STATUTE OF
23 LIMITATIONS AND STATUTE OF REPOSE APPLICABLE TO THE CLAIMANT,
24 INCLUDING ANY CONSTRUCTION PROFESSIONALS INVOLVED IN THE
25 ORIGINAL CONSTRUCTION OR DESIGN ACTING AS A CLAIMANT, ARE TOLLED
26 AS TO ALL CONSTRUCTION PROFESSIONALS WHO WORKED ON THE ORIGINAL
27 CONSTRUCTION OR DESIGN.

1 (q) NOTHING IN THIS SUBSECTION (13) PRECLUDES CONSTRUCTION
2 PROFESSIONALS FROM OFFERING CASH OR OTHER CONSIDERATION INSTEAD
3 OF A REPAIR. THE CLAIMANT MAY ACCEPT OR REJECT AN OFFER OF CASH OR
4 OTHER CONSIDERATION, AND IF REJECTED, MAY PROCEED WITH AN ACTION.
5 THE PARTIES MAY NEGOTIATE FOR A RELEASE IN THE EVENT OF AN
6 ACCEPTED OFFER INVOLVING CASH, REPAIRS, OR OTHER CONSIDERATION.

7 **SECTION 3.** In Colorado Revised Statutes, **add** 13-20-809 as
8 follows:

9 **13-20-809. Legislative declaration - claims related to**
10 **transit-oriented development - definitions.** (1) (a) THE GENERAL
11 ASSEMBLY FINDS THAT ENCOURAGEMENT OF TRANSIT-ORIENTED
12 DEVELOPMENT IS VITAL TO THE ECONOMIC AND SOCIAL WELFARE OF THE
13 CITIZENS OF COLORADO.

14 (b) THE GENERAL ASSEMBLY DETERMINES THE FOLLOWING
15 NONEXHAUSTIVE LIST TO BE BENEFITS OF TRANSIT-ORIENTED
16 DEVELOPMENT: JOB CREATION; ECONOMIC DEVELOPMENT; IMPROVED
17 WORKFORCE ACCESS TO JOB OPPORTUNITIES; ENHANCED ACCESS TO PUBLIC
18 TRANSIT; IMPROVED PUBLIC HEALTH; IMPROVED ACCESS TO AMENITIES;
19 INCREASED TRANSIT RIDERSHIP; REDUCED GREENHOUSE GAS EMISSIONS;
20 AND REDUCED TRANSPORTATION COSTS.

21 (c) THE GENERAL ASSEMBLY DECLARES THAT THE CONSTRUCTION
22 LITIGATION ENVIRONMENT IN COLORADO PRIOR TO THE EFFECTIVE DATE
23 OF THIS SECTION DISCOURAGES DESIRABLE TRANSIT-ORIENTED
24 DEVELOPMENT; INHIBITS JOB CREATION, ECONOMIC DEVELOPMENT,
25 WORKFORCE ACCESS TO JOB OPPORTUNITIES, ACCESS TO PUBLIC TRANSIT,
26 IMPROVED PUBLIC HEALTH, AND ACCESS TO AMENITIES AND TRANSIT
27 RIDERSHIP; AND INCREASES GREENHOUSE GAS EMISSIONS AND

1 TRANSPORTATION COSTS. THIS SECTION IS INTENDED TO ENCOURAGE
2 TRANSIT-ORIENTED DEVELOPMENT FOR THE GOOD OF THE STATE OF
3 COLORADO, LOCAL GOVERNMENTS, AND COLORADO CITIZENS.

4 (2) (a) ALL DISPUTES WITH OR CLAIMS AGAINST A CONSTRUCTION
5 PROFESSIONAL BY ANY CLAIMANT ARISING OUT OF, RELATED TO, OR
6 INVOLVING TRANSIT-ORIENTED DEVELOPMENT OR THE MARKETING, SALE,
7 OR DEVELOPMENT OF TRANSIT-ORIENTED DEVELOPMENT ARE SUBJECT TO
8 MANDATORY BINDING ARBITRATION AT A LOCATION WITHIN TWENTY-FIVE
9 MILES OF THE TRANSIT-ORIENTED DEVELOPMENT OR AS OTHERWISE
10 AGREED BY ALL OF THE PARTIES TO THE ARBITRATION. THE ARBITRATION
11 MUST BE WITH AN ARBITRATION ORGANIZATION AGREED TO BY ALL
12 PARTIES PURSUANT TO ARBITRATION RULES OF THAT ORGANIZATION.

13 (b) IF THE PARTIES CANNOT AGREE ON THE ORGANIZATION TO
14 ADMINISTER THE ARBITRATION, ANY PARTY TO THE ARBITRATION MAY
15 PETITION A DISTRICT COURT WHERE THE TRANSIT-ORIENTED DEVELOPMENT
16 IS SITUATED FOR THE COURT TO DETERMINE THE ORGANIZATION TO
17 ADMINISTER THE ARBITRATION. THE DISTRICT COURT'S DETERMINATION OF
18 THE ORGANIZATION TO ADMINISTER THE ARBITRATION IS FINAL AND NOT
19 APPEALABLE UNTIL THE AWARD IS ENTERED IN THE ARBITRATION.

20 (c) THE STANDARD FOR REVIEW OF A DISTRICT COURT'S SELECTION
21 OF AN ARBITRATION ORGANIZATION IS ABUSE OF DISCRETION. AS USED IN
22 THIS SUBSECTION (2), "ABUSE OF DISCRETION" MEANS SELECTION OF AN
23 ARBITRATION ORGANIZATION THAT HAS SOME FINANCIAL OR OTHER
24 INTEREST IN THE OUTCOME OF THE ARBITRATION SUCH THAT A
25 REASONABLE PERSON WOULD DETERMINE THAT THE ARBITRATION
26 ORGANIZATION COULD NOT FAIRLY ADMINISTER THE ARBITRATION.

27 (d) THE ARBITRATION IS GOVERNED BY PART 2 OF ARTICLE 22 OF

1 THIS TITLE, EXCEPT TO THE EXTENT GOVERNING LAW REQUIRES
2 APPLICATION OF THE FEDERAL ARBITRATION ACT. THIS SUBSECTION (2)
3 DOES NOT APPLY WHEN A GOVERNMENTAL ENTITY IS THE CLAIMANT. IF ALL
4 PARTIES TO AN ARBITRATION UNDER THIS SUBSECTION (2) AGREE, THE
5 REQUIREMENTS OF THIS SUBSECTION (2) MAY BE WAIVED IN A WRITING
6 SIGNED BY ALL PARTIES TO THE ARBITRATION.

7 (3) (a) ALL CONSTRUCTION PROFESSIONALS ARE IMMUNE FROM
8 LIABILITY, AND NO ACTION LIES AGAINST CONSTRUCTION PROFESSIONALS
9 FOR ENVIRONMENTAL CONDITIONS ARISING OUT OF, RELATED TO, OR
10 INVOLVING TRANSIT-ORIENTED DEVELOPMENT OR MARKETING, SALE, OR
11 DEVELOPMENT OF TRANSIT-ORIENTED DEVELOPMENT.

12 (b) FOR THE PURPOSES OF THIS SUBSECTION (3), "ENVIRONMENTAL
13 CONDITIONS ARISING OUT OF, RELATED TO, OR INVOLVING
14 TRANSIT-ORIENTED DEVELOPMENT OR MARKETING, SALE, OR
15 DEVELOPMENT OF TRANSIT-ORIENTED DEVELOPMENT" INCLUDE: NOISE,
16 ODORS, LIGHT, TEMPERATURES, HUMIDITY, VIBRATIONS, AND SMOKE OR
17 FUMES CAUSALLY RELATED TO TRANSIT, COMMERCIAL, PUBLIC, OR RETAIL
18 USE.

19 (4) BEFORE ANY ARBITRATION IS COMMENCED OR BEFORE SUIT IS
20 COMMENCED IF ALL PARTIES WAIVE IN WRITING THE REQUIREMENTS OF
21 SUBSECTION (2) OF THIS SECTION, THE CLAIMANT SHALL COMPLY WITH THE
22 RIGHT-TO-REPAIR PROVISIONS CONTAINED IN SECTION 13-20-803.5 (13). IF
23 THE CLAIMANT HAS NOT SO COMPLIED, THE COURT SHALL IMMEDIATELY
24 DISMISS THE ACTION, AND THE COURT SHALL AWARD ANY CONSTRUCTION
25 PROFESSIONAL AGAINST WHOM THE ACTION WAS BROUGHT REASONABLE
26 ATTORNEY FEES AND COSTS FOR OBTAINING THE DISMISSAL.

27 (5) IF ANY DEVELOPMENT OR CONSTRUCTION QUALIFIES AS

1 TRANSIT-ORIENTED DEVELOPMENT ON OR AFTER THE EFFECTIVE DATE OF
2 THIS SECTION OR AT THE TIME A CERTIFICATE OF OCCUPANCY IS ISSUED OR,
3 IF A CERTIFICATE OF OCCUPANCY IS NOT NORMALLY ISSUED FOR THAT TYPE
4 OF CONSTRUCTION, UPON SUBSTANTIAL COMPLETION, THE DEVELOPMENT
5 OR CONSTRUCTION CONTINUES TO QUALIFY AS TRANSIT-ORIENTED
6 DEVELOPMENT EVEN IF LATER CIRCUMSTANCES SUCH AS CLOSURE OF A
7 STOP WOULD CAUSE CONSTRUCTION OR DEVELOPMENT TO NOT QUALIFY AS
8 TRANSIT-ORIENTED DEVELOPMENT.

9 (6) FOR THE PURPOSES OF THIS SECTION AND SECTION 13-20-803.5:

10 (a) "STOP" MEANS ANY LOCATION WHERE COMMUTER RAIL,
11 COMMUTER LIGHT RAIL, OR COMMUTER BUS SERVICE REGULARLY DROPS
12 OFF OR PICKS UP PASSENGERS.

13 (b) "TRANSIT-ORIENTED DEVELOPMENT" MEANS DESIGN,
14 SUPERVISION, INSPECTION, CONSTRUCTION, OR OBSERVATION OF
15 CONSTRUCTION OF ANY MULTI-FAMILY RESIDENTIAL OR MIXED-USE
16 PROJECT WITHIN ONE-HALF MILE OF ANY COMMUTER RAIL STOP,
17 COMMUTER LIGHT RAIL STOP, OR COMMUTER BUS STOP.

18 **SECTION 4.** In Colorado Revised Statutes, **amend** 13-80-104 as
19 follows:

20 **13-80-104. Limitation of actions against architects, contractors,**
21 **builders or builder vendors, engineers, inspectors, and others.**

22 (1)(a) Notwithstanding any statutory provision to the contrary, all actions
23 against any architect, contractor, builder or builder vendor, engineer, or
24 inspector performing or furnishing the design, planning, supervision,
25 inspection, construction, or observation of construction of any
26 improvement to real property ~~shall~~ MUST be brought within the time
27 provided in section 13-80-102 after the claim for relief arises and not

1 thereafter. ~~but in~~ IN no case ~~shall~~ MAY such an action be brought more
2 than six years after the substantial completion of the improvement to the
3 real property except:

4 (I) FOR CLAIMS ARISING as provided in SUBPARAGRAPH (II) OF
5 PARAGRAPH (b) OF THIS SUBSECTION (1); AND

6 (II) AS OTHERWISE PROVIDED IN subsection (2) of this section.

7 (b) (I) Except as otherwise provided in subparagraph (II) of this
8 paragraph (b), a claim for relief arises under this section at the time the
9 claimant or the claimant's predecessor in interest discovers or in the
10 exercise of reasonable diligence should have discovered the physical
11 manifestations of a defect in the improvement ~~which~~ THAT ultimately
12 causes the injury.

13 (II) Notwithstanding ~~the provisions of~~ paragraph (a) of this
14 subsection (1) AND SUBSECTION (2) OF THIS SECTION, all claims, including
15 ~~but not limited to~~ indemnity or contribution, by a claimant against a person
16 who is or may be liable to the claimant for all or part of the claimant's
17 liability to a third person:

18 (A) Arise at the time the third person's claim against the claimant
19 is settled or at the time final judgment is entered on the third person's
20 claim against the claimant, whichever comes first; and

21 (B) ~~Shall~~ MUST be brought within ninety days after the claims
22 arise, and not thereafter, WITHOUT REGARD TO THE LIMITATION OF SIX
23 YEARS AFTER THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT TO
24 THE REAL PROPERTY PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (1)
25 AND WITHOUT REGARD TO THE LIMITATIONS IN SUBSECTION (2) OF THIS
26 SECTION.

27 (c) ~~Such~~ THESE actions ~~shall~~ include any and all actions in tort,

1 contract, indemnity, or contribution or other actions for the recovery of
2 damages for:

3 (I) Any deficiency in the design, planning, supervision, inspection,
4 construction, or observation of construction of any improvement to real
5 property; or

6 (II) Injury to real or personal property caused by ~~any such~~ THE
7 deficiency IN THE DESIGN, PLANNING, SUPERVISION, INSPECTION,
8 CONSTRUCTION, OR OBSERVATION OF CONSTRUCTION OF ANY
9 IMPROVEMENT TO REAL PROPERTY; or

10 (III) Injury to or wrongful death of a person caused by ~~any such~~
11 THE deficiency IN THE DESIGN, PLANNING, SUPERVISION, INSPECTION,
12 CONSTRUCTION, OR OBSERVATION OF CONSTRUCTION OF ANY
13 IMPROVEMENT TO REAL PROPERTY.

14 (2) ~~In case~~ IF any ~~such~~ cause of action SUBJECT TO THIS SECTION
15 arises during the fifth or sixth year after substantial completion of the
16 improvement to real property, ~~said~~ THE action ~~shall~~ MUST be brought
17 within two years after the date upon which ~~said~~ THE cause of action arises.

18 (3) The limitations provided by this section shall not be asserted
19 as a defense by any person in actual possession or control, as owner or
20 tenant or in any other capacity, of ~~such an~~ THE improvement at the time
21 any deficiency in ~~such an~~ THE improvement constitutes the proximate
22 cause of the injury or damage for which it is proposed to bring an action.

23 **SECTION 5. Effective date - applicability.** This act takes effect
24 upon passage and applies to actions pending or filed on or after said date.

25 **SECTION 6. 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.