

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 17-0793.01 Duane Gall x4335

SENATE BILL 17-045

SENATE SPONSORSHIP

Grantham and Williams A.,

HOUSE SPONSORSHIP

Duran and Wist,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT FOR EQUITABLE ALLOCATION OF THE**
102 **COSTS OF DEFENDING A CONSTRUCTION DEFECT CLAIM.**

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://leg.colorado.gov>.)

In a construction defect action in which more than one insurer has a duty to defend a party, the bill requires the court to apportion the costs of defense, including reasonable attorney fees, among all insurers with a duty to defend. An initial order apportioning costs must be made within 90 days after an insurer files its claim for contribution, and the court must make a final apportionment of costs after entry of a final judgment

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.

resolving all of the underlying claims against the insured. An insurer seeking contribution may also make a claim against an insured or additional insured who chose not to procure liability insurance for a period of time relevant to the underlying action. A claim for contribution may be assigned and does not affect any insurer's duty to defend.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-20-808, **amend**
3 (6) introductory portion and (7)(b) as follows:

4 **13-20-808. Insurance policies issued to construction**
5 **professionals.** (6) EXCEPT AS OTHERWISE PROVIDED IN SECTION
6 13-21-111.5 (6), if an insurer disclaims or limits coverage under a liability
7 insurance policy issued to a construction professional, the insurer ~~shall~~
8 ~~bear~~ BEARS the burden of proving by a preponderance of the evidence
9 that:

10 (7) (b) WHEN AN INSURER DEFENDS AN INSURED OR ADDITIONAL
11 INSURED UNDER A LIABILITY INSURANCE POLICY:

12 (I) ~~An insurer shall defend a construction professional who has~~
13 ~~received a notice of claim made pursuant to section 13-20-803.5~~
14 ~~regardless of whether another insurer may also owe the insured a duty to~~
15 ~~defend the notice of claim unless authorized by law. In defending the~~
16 ~~claim, the insurer shall:~~

17 (A) ~~Reasonably investigate the claim; and~~

18 (B) ~~Reasonably cooperate with the insured in the notice of claims~~
19 **process** THE DEFENDING INSURER HAS A CLAIM FOR CONTRIBUTION
20 TOWARD THE COST OF THE DEFENSE, INCLUDING REASONABLE ATTORNEY
21 FEES, AGAINST ALL OTHER INSURERS WHO ALSO OWE THE INSURED OR
22 ADDITIONAL INSURED A DUTY TO DEFEND.

23 (II) ~~This paragraph (b) does not require the insurer to retain legal~~

1 counsel for the insured or to pay any sums toward settlement of the notice
2 of claim that are not covered by the insurance policy THE INSURERS WITH
3 A DUTY TO DEFEND MAY, AMONG THEMSELVES, AGREE ON HOW TO
4 APPORTION PAST AND FUTURE DEFENSE COSTS, INCLUDING REASONABLE
5 ATTORNEY FEES. ANY SUCH AGREEMENT IS ENFORCEABLE AS A CONTRACT.
6 IF THE INSURERS ARE UNABLE TO REACH SUCH AN AGREEMENT WITHIN
7 FORTY-FIVE DAYS AFTER THE FILING OF THE CONTRIBUTION ACTION, THE
8 DISTRICT COURT SHALL SET THE CONTRIBUTION CLAIM FOR AN EXPEDITED
9 EVIDENTIARY HEARING, WHICH MUST BE HELD WITHIN SIXTY DAYS.
10 STATEMENTS MADE BY PARTIES AND COUNSEL ON BEHALF OF ANY PARTY,
11 WHEN OFFERED TO PROVE LIABILITY FOR, VALIDITY OF, OR AMOUNT OF
12 ANY CLAIMS DURING THE HEARING, ARE NOT ADMISSIBLE IN ANY
13 SUBSEQUENT PROCEEDING. THE DISTRICT COURT SHALL PROMPTLY DECIDE
14 THE CLAIM UNLESS ALL THE PARTIES TO THE CLAIM AGREE TO RESOLVE IT
15 THROUGH A MUTUALLY ACCEPTABLE, ALTERNATIVE PROCESS. THE
16 DISTRICT COURT SHALL ENTER SUCH ORDERS AS ARE NECESSARY TO HOLD
17 THE EXPEDITED EVIDENTIARY HEARING, INCLUDING ESTABLISHING AN
18 EXPEDITED BRIEFING SCHEDULE AND PRECLUDING DISCOVERY.

19 (III) ~~An insurer shall not withdraw its defense of an insured~~
20 ~~construction professional or commence an action seeking reimbursement~~
21 ~~from an insured for expended defense cost unless authorized by law and~~
22 ~~unless the insurer has reserved such right in writing when accepting or~~
23 ~~assuming the defense obligation~~ THE DISTRICT COURT SHALL, ON AN
24 INTERIM BASIS PENDING CONCLUSION OF THE UNDERLYING ACTION
25 AGAINST THE INSURED, APPORTION PAST AND FUTURE DEFENSE COSTS,
26 INCLUDING REASONABLE ATTORNEY FEES, AMONG ALL INSURERS AS IS
27 EQUITABLE UNDER THE CIRCUMSTANCES.

1 (IV) AFTER A JUDGMENT RESOLVING ALL CLAIMS IN THE
2 UNDERLYING ACTION AGAINST THE INSURED BECOMES FINAL, ANY
3 INSURER MAY APPLY TO THE DISTRICT COURT FOR A FINAL
4 APPORTIONMENT OF THE DEFENSE COSTS, INCLUDING REASONABLE
5 ATTORNEY FEES, ACTUALLY PAID BY ALL INSURERS PURSUANT TO THE
6 INITIAL ORDERS ARISING FROM THE CONTRIBUTION ACTION. IN RENDERING
7 ITS DECISION REGARDING THIS FINAL APPORTIONMENT, THE DISTRICT
8 COURT SHALL EQUITABLY ALLOCATE DEFENSE COSTS, INCLUDING
9 REASONABLE ATTORNEY FEES, AMONG THE INSURERS IN A MANNER THAT
10 ACCOUNTS FOR THE DAMAGES LIABILITY ARISING FROM A NAMED
11 INSURED'S WORK IN RELATION TO THE DAMAGES LIABILITY ARISING FROM
12 AN ADDITIONAL INSURED'S WORK. THE DISTRICT COURT MAY CONSIDER
13 THE RECORD IN THE UNDERLYING ACTION AGAINST THE INSURED AND ANY
14 VERDICTS THAT WERE ENTERED, AS WELL AS ANY EVIDENCE OFFERED BY
15 THE INSURERS THAT THE COURT DEEMS RELEVANT.

16 (V) ANY INSURER SEEKING CONTRIBUTION MAY INCLUDE A CLAIM
17 AGAINST AN INSURED OR ADDITIONAL INSURED WHO CHOSE NOT TO
18 PROCURE LIABILITY INSURANCE FOR ANY PERIOD OF TIME IMPLICATED BY
19 THE UNDERLING ACTION AND THE ALLEGATIONS THEREIN.

20 (VI) THE CONTRIBUTION CLAIM MAY BE ASSIGNED.

21 (VII) THE CONTRIBUTION CLAIM DOES NOT LIMIT ANY INSURER'S
22 DUTY TO DEFEND.

23 **SECTION 2. Effective date - applicability.** This act takes effect
24 July 1, 2017, and applies to actions filed on or after said date.

25 **SECTION 3. 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.