

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Cutter

1 Amend the Zenzinger floor amendment (SB106_L.099), page 3, after line
2 40 insert:

3 "SECTION 4. In Colorado Revised Statutes, **add** 13-20-809 as
4 follows:

5 **13-20-809. Repeal of part - notice to revisor of statutes.** THIS
6 PART 8 WILL BE REPEALED ON SEPTEMBER 1, 2029, IF THE COMMISSIONER
7 OF INSURANCE DETERMINES THAT CONSTRUCTION PROFESSIONAL
8 LIABILITY INSURANCE FOR BUILDING CONDOMINIUMS HAS NOT DECREASED
9 FROM THE 2023 LEVELS. THE COMMISSIONER OF INSURANCE SHALL NOTIFY
10 THE REVISOR OF STATUTES IN WRITING ON JANUARY 1, 2029, IF THE
11 CONDITION SPECIFIED IN THIS SECTION HAS OCCURRED BY E-MAILING THE
12 NOTICE TO REVISOROFSTATUTES.GA@COLEG.GOV. THIS PART 8 IS
13 REPEALED SEPTEMBER 1, 2029, IF THE REVISOR OF STATUTES IS NOTIFIED
14 THAT CONSTRUCTION PROFESSIONAL LIABILITY INSURANCE FOR BUILDING
15 CONDOMINIUMS HAS NOT DECREASED FROM THE 2023 LEVELS."

16 Renumber succeeding sections accordingly.

17 Page 4, after line 5 insert:

18 "SECTION 6. In Colorado Revised Statutes, **add** part 13 to
19 article 20 of title 13 as follows:

20 PART 13

21 CONSTRUCTION DEFECT ACTIONS FOR
22 PROPERTY LOSS AND DAMAGE

23 **13-20-1301. Short title.** THE SHORT TITLE OF THIS PART 13 IS THE
24 "CONSTRUCTION DEFECT ACTION REFORM ACT OF 2026".

25 **13-20-1302. Legislative declaration.** THE GENERAL ASSEMBLY
26 FINDS, DETERMINES, AND DECLARES THAT CHANGES IN THE LAW ARE
27 NECESSARY AND APPROPRIATE CONCERNING ACTIONS CLAIMING DAMAGES,
28 INDEMNITY, OR CONTRIBUTION IN CONNECTION WITH ALLEGED
29 CONSTRUCTION DEFECTS. IT IS THE INTENT OF THE GENERAL ASSEMBLY
30 THAT THIS PART 13 APPLY TO THESE TYPES OF CIVIL ACTIONS WHILE
31 PRESERVING ADEQUATE RIGHTS AND REMEDIES FOR PROPERTY OWNERS
32 WHO BRING AND MAINTAIN THESE ACTIONS.

33 **13-20-1303. Definitions.** AS USED IN THIS PART 13, UNLESS THE
34 CONTEXT OTHERWISE REQUIRES:

35 (1) "ACTION" MEANS A CIVIL ACTION OR AN ARBITRATION
36 PROCEEDING FOR DAMAGES, INDEMNITY, OR CONTRIBUTION BROUGHT

1 AGAINST A CONSTRUCTION PROFESSIONAL TO ASSERT A CLAIM,
2 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR DAMAGES OR
3 LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL PROPERTY OR
4 PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR CONSTRUCTION
5 OF AN IMPROVEMENT TO REAL PROPERTY.

6 (2) "ACTUAL DAMAGES" MEANS THE FAIR MARKET VALUE OF THE
7 REAL PROPERTY WITHOUT THE ALLEGED CONSTRUCTION DEFECT; THE
8 REPLACEMENT COST OF THE REAL PROPERTY OR THE REASONABLE COST TO
9 REPAIR THE ALLEGED CONSTRUCTION DEFECT, WHICHEVER IS LESS,
10 TOGETHER WITH RELOCATION COSTS AND, WITH RESPECT TO RESIDENTIAL
11 PROPERTY, OTHER DIRECT ECONOMIC COSTS RELATED TO LOSS OF USE, IF
12 ANY; INTEREST AS PROVIDED BY LAW; AND THE COSTS OF SUIT AND
13 REASONABLE ATTORNEY FEES AS MAY BE AWARDBLE PURSUANT TO
14 CONTRACT OR APPLICABLE LAW. "ACTUAL DAMAGES" AS TO PERSONAL
15 INJURY MEANS THOSE DAMAGES RECOVERABLE BY LAW, EXCEPT AS
16 LIMITED BY SECTION 13-20-1308 (4).

17 (3) "CLAIMANT" MEANS A PERSON OTHER THAN THE ATTORNEY
18 GENERAL OR THE DISTRICT ATTORNEYS OF THE SEVERAL JUDICIAL
19 DISTRICTS OF THE STATE WHO ASSERTS A CLAIM AGAINST A
20 CONSTRUCTION PROFESSIONAL THAT ALLEGES A DEFECT IN THE
21 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY.

22 (4) "CONSTRUCTION PROFESSIONAL" MEANS AN ARCHITECT,
23 CONTRACTOR, SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR,
24 ENGINEER, OR INSPECTOR PERFORMING OR FURNISHING THE DESIGN,
25 SUPERVISION, INSPECTION, CONSTRUCTION, OR OBSERVATION OF THE
26 CONSTRUCTION OF ANY IMPROVEMENT TO REAL PROPERTY. IF THE
27 IMPROVEMENT TO REAL PROPERTY IS TO A COMMERCIAL PROPERTY, THE
28 TERM "CONSTRUCTION PROFESSIONAL" ALSO INCLUDES ANY PRIOR OWNER
29 OF THE COMMERCIAL PROPERTY, OTHER THAN THE CLAIMANT, AT THE TIME
30 THE WORK WAS PERFORMED. AS USED IN THIS SUBSECTION (4),
31 "COMMERCIAL PROPERTY" MEANS PROPERTY THAT IS ZONED TO PERMIT
32 COMMERCIAL, INDUSTRIAL, OR OFFICE TYPES OF USE.

33 (5) "NOTICE OF CLAIM" MEANS A WRITTEN NOTICE SENT BY A
34 CLAIMANT TO THE LAST-KNOWN ADDRESS OF A CONSTRUCTION
35 PROFESSIONAL AGAINST WHOM THE CLAIMANT ASSERTS A CONSTRUCTION
36 DEFECT CLAIM THAT DESCRIBES THE CLAIM IN REASONABLE DETAIL
37 SUFFICIENT TO DETERMINE THE GENERAL NATURE OF THE DEFECT,
38 INCLUDING A GENERAL DESCRIPTION OF THE TYPE AND LOCATION OF THE
39 CONSTRUCTION THAT THE CLAIMANT ALLEGES TO BE DEFECTIVE AND ANY
40 DAMAGES CLAIMED TO HAVE BEEN CAUSED BY THE DEFECT.

41 **13-20-1304. List of defects required.** (1) IN ADDITION TO THE
42 NOTICE OF CLAIM REQUIRED BY SECTION 13-20-1305, IN EVERY ACTION
43 BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL, THE CLAIMANT

1 SHALL FILE WITH THE COURT OR ARBITRATOR AND SERVE ON THE
2 CONSTRUCTION PROFESSIONAL AN INITIAL LIST OF CONSTRUCTION DEFECTS
3 IN ACCORDANCE WITH THIS SECTION.

4 (2) THE INITIAL LIST OF CONSTRUCTION DEFECTS MUST CONTAIN
5 A DESCRIPTION OF THE CONSTRUCTION THAT THE CLAIMANT ALLEGES TO
6 BE DEFECTIVE. THE INITIAL LIST OF CONSTRUCTION DEFECTS MUST BE
7 FILED WITH THE COURT AND SERVED ON THE DEFENDANT WITHIN SIXTY
8 DAYS AFTER THE COMMENCEMENT OF THE ACTION OR WITHIN SUCH
9 LONGER PERIOD AS THE COURT IN ITS DISCRETION MAY ALLOW.

10 (3) THE INITIAL LIST OF CONSTRUCTION DEFECTS MAY BE
11 AMENDED BY THE CLAIMANT TO IDENTIFY ADDITIONAL CONSTRUCTION
12 DEFECTS AS THEY BECOME KNOWN TO THE CLAIMANT. IN NO EVENT SHALL
13 THE COURT ALLOW THE CASE TO BE SET FOR TRIAL BEFORE THE INITIAL
14 LIST OF CONSTRUCTION DEFECTS IS FILED AND SERVED.

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

24 **13-20-1305. Notice of claim process.** (1) NO LATER THAN
25 SEVENTY-FIVE DAYS BEFORE FILING AN ACTION AGAINST A CONSTRUCTION
26 PROFESSIONAL, OR NO LATER THAN NINETY DAYS BEFORE FILING THE
27 ACTION IN THE CASE OF A COMMERCIAL PROPERTY, A CLAIMANT SHALL
28 SEND OR DELIVER A WRITTEN NOTICE OF CLAIM TO THE CONSTRUCTION
29 PROFESSIONAL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY
30 PERSONAL SERVICE.

31 (2) FOLLOWING THE MAILING OR DELIVERY OF THE NOTICE OF
32 CLAIM, AT THE WRITTEN REQUEST OF THE CONSTRUCTION PROFESSIONAL,
33 THE CLAIMANT SHALL PROVIDE THE CONSTRUCTION PROFESSIONAL AND
34 ITS CONTRACTORS OR OTHER AGENTS REASONABLE ACCESS TO THE
35 CLAIMANT'S PROPERTY DURING NORMAL WORKING HOURS TO INSPECT THE
36 PROPERTY AND THE CLAIMED DEFECT. THE INSPECTION MUST BE
37 COMPLETED WITHIN THIRTY DAYS AFTER SERVICE OF THE NOTICE OF
38 CLAIM.

39 (3)(a) WITHIN THIRTY DAYS FOLLOWING THE COMPLETION OF THE
40 INSPECTION PROCESS CONDUCTED PURSUANT TO SUBSECTION (2) OF THIS
41 SECTION, OR WITHIN FORTY-FIVE DAYS FOLLOWING THE COMPLETION OF
42 THE INSPECTION PROCESS IN THE CASE OF A COMMERCIAL PROPERTY, A
43 CONSTRUCTION PROFESSIONAL MAY SEND OR DELIVER TO THE CLAIMANT,

1 BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL
2 SERVICE, AN OFFER TO SETTLE THE CLAIM BY PAYMENT OF A SUM CERTAIN
3 OR BY AGREEING TO REMEDY THE CLAIMED DEFECT DESCRIBED IN THE
4 NOTICE OF CLAIM.

5 (b) A WRITTEN OFFER TO REMEDY THE CONSTRUCTION DEFECT
6 MUST INCLUDE A REPORT OF THE SCOPE OF THE INSPECTION, THE FINDINGS
7 AND RESULTS OF THE INSPECTION, A DESCRIPTION OF THE ADDITIONAL
8 CONSTRUCTION WORK NECESSARY TO REMEDY THE DEFECT DESCRIBED IN
9 THE NOTICE OF CLAIM AND ALL DAMAGE TO THE IMPROVEMENT TO REAL
10 PROPERTY CAUSED BY THE DEFECT, AND A TIMETABLE FOR THE
11 COMPLETION OF THE REMEDIAL CONSTRUCTION WORK.

12 (4) UNLESS A CLAIMANT ACCEPTS AN OFFER MADE PURSUANT TO
13 SUBSECTION (3) OF THIS SECTION IN WRITING WITHIN FIFTEEN DAYS AFTER
14 THE DELIVERY OF THE OFFER, THE OFFER IS DEEMED TO HAVE BEEN
15 REJECTED.

16 (5) (a) A CLAIMANT WHO ACCEPTS A CONSTRUCTION
17 PROFESSIONAL'S OFFER TO REMEDY OR SETTLE BY PAYMENT OF A SUM
18 CERTAIN A CONSTRUCTION DEFECT CLAIM SHALL DO SO BY SENDING THE
19 CONSTRUCTION PROFESSIONAL A WRITTEN NOTICE OF ACCEPTANCE NO
20 LATER THAN FIFTEEN DAYS AFTER RECEIPT OF THE OFFER. IF AN OFFER TO
21 SETTLE IS ACCEPTED, THEN THE MONETARY SETTLEMENT MUST BE PAID IN
22 ACCORDANCE WITH THE OFFER.

23 (b) IF AN OFFER TO REMEDY IS ACCEPTED BY THE CLAIMANT, THE
24 REMEDIAL CONSTRUCTION WORK MUST BE COMPLETED IN ACCORDANCE
25 WITH THE TIMETABLE SET FORTH IN THE OFFER UNLESS THE DELAY IS
26 CAUSED BY EVENTS BEYOND THE REASONABLE CONTROL OF THE
27 CONSTRUCTION PROFESSIONAL.

28 (6) IF NO OFFER IS MADE BY THE CONSTRUCTION PROFESSIONAL OR
29 IF THE CLAIMANT REJECTS AN OFFER, THE CLAIMANT MAY BRING AN
30 ACTION AGAINST THE CONSTRUCTION PROFESSIONAL FOR THE
31 CONSTRUCTION DEFECT CLAIM DESCRIBED IN THE NOTICE OF CLAIM
32 UNLESS THE PARTIES HAVE CONTRACTUALLY AGREED TO A MEDIATION
33 PROCEDURE, IN WHICH CASE THE MEDIATION PROCEDURE MUST BE
34 SATISFIED PRIOR TO BRINGING AN ACTION.

35 (7) IF AN OFFER BY A CONSTRUCTION PROFESSIONAL IS MADE AND
36 ACCEPTED, AND IF THEREAFTER THE CONSTRUCTION PROFESSIONAL DOES
37 NOT COMPLY WITH THE OFFER TO REMEDY OR SETTLE A CLAIM FOR A
38 CONSTRUCTION DEFECT, THE CLAIMANT MAY FILE AN ACTION AGAINST THE
39 CONSTRUCTION PROFESSIONAL FOR CLAIMS ARISING OUT OF THE DEFECT
40 OR DAMAGE DESCRIBED IN THE NOTICE OF CLAIM WITHOUT FURTHER
41 NOTICE.

42 (8) AFTER SENDING A NOTICE OF CLAIM, A CLAIMANT AND A
43 CONSTRUCTION PROFESSIONAL MAY, BY WRITTEN MUTUAL AGREEMENT,

1 ALTER THE PROCEDURE FOR THE NOTICE OF CLAIM PROCESS DESCRIBED IN
2 THIS SECTION.

3 (9) AN ACTION COMMENCED BY A CLAIMANT WHO FAILS TO
4 COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE STAYED,
5 WHICH STAY MUST REMAIN IN EFFECT UNTIL THE CLAIMANT HAS COMPLIED
6 WITH THE REQUIREMENTS OF THIS SECTION.

7 (10) A CLAIMANT MAY AMEND A NOTICE OF CLAIM TO INCLUDE
8 CONSTRUCTION DEFECTS DISCOVERED AFTER THE SERVICE OF THE
9 ORIGINAL NOTICE OF CLAIM, BUT THE CLAIMANT MUST OTHERWISE
10 COMPLY WITH THE REQUIREMENTS OF THIS SECTION FOR THE ADDITIONAL
11 CLAIMS.

12 (11) FOR PURPOSES OF THIS SECTION, ACTUAL RECEIPT BY ANY
13 MEANS OF A WRITTEN NOTICE, OFFER, OR RESPONSE PREPARED PURSUANT
14 TO THIS SECTION WITHIN THE TIME PRESCRIBED FOR DELIVERY OR SERVICE
15 OF THE NOTICE, OFFER, OR RESPONSE IS SUFFICIENT DELIVERY OR SERVICE.

16 (12) EXCEPT AS PROVIDED IN SECTION 13-20-1308, A CLAIMANT
17 SHALL NOT RECOVER MORE THAN ACTUAL DAMAGES IN AN ACTION.

18 **13-20-1306. Restriction on construction defect negligence**
19 **claims.** (1) A CLAIMANT IS BARRED FROM ASSERTING A NEGLIGENCE
20 CLAIM SEEKING DAMAGES FOR A CONSTRUCTION DEFECT IF THE CLAIM
21 ARISES FROM THE FAILURE TO CONSTRUCT AN IMPROVEMENT TO REAL
22 PROPERTY IN SUBSTANTIAL COMPLIANCE WITH AN APPLICABLE BUILDING
23 CODE OR INDUSTRY STANDARD; EXCEPT THAT THE CLAIMANT MAY ASSERT
24 THE CLAIM IF THE FAILURE RESULTS IN ONE OR MORE OF THE FOLLOWING:

25 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;
26 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;
27 (c) BODILY INJURY OR WRONGFUL DEATH; OR
28 (d) A RISK OF BODILY INJURY OR DEATH TO, OR A THREAT TO THE
29 LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE RESIDENTIAL REAL
30 PROPERTY.

31 (2) THIS SECTION DOES NOT PROHIBIT, LIMIT, OR IMPAIR THE
32 FOLLOWING:

33 (a) THE ASSERTION OF TORT CLAIMS OTHER THAN CLAIMS FOR
34 NEGLIGENCE;
35 (b) THE ASSERTION OF CONTRACT OR WARRANTY CLAIMS; OR
36 (c) THE ASSERTION OF CLAIMS THAT ARISE FROM THE VIOLATION
37 OF ANY STATUTE OR ORDINANCE OTHER THAN CLAIMS FOR VIOLATION OF
38 A BUILDING CODE.

39 **13-20-1307. Tolling of statutes of limitation.** IF A NOTICE OF
40 CLAIM IS SENT TO A CONSTRUCTION PROFESSIONAL IN ACCORDANCE WITH
41 SECTION 13-20-1305 WITHIN THE TIME PRESCRIBED FOR THE FILING OF AN
42 ACTION UNDER ANY APPLICABLE STATUTE OF LIMITATIONS OR REPOSE,
43 THEN THE STATUTE OF LIMITATIONS OR REPOSE IS TOLLED UNTIL SIXTY

1 DAYS AFTER THE COMPLETION OF THE NOTICE OF CLAIM PROCESS
2 DESCRIBED IN SECTION 13-20-1305.

3 **13-20-1308. Limitation of damages - definition.** (1) A
4 CONSTRUCTION PROFESSIONAL IS NOT LIABLE FOR MORE THAN ACTUAL
5 DAMAGES UNLESS AND ONLY IF THE CLAIMANT OTHERWISE PREVAILS ON
6 THE CLAIM THAT A VIOLATION OF THE "COLORADO CONSUMER
7 PROTECTION ACT", ARTICLE 1 OF TITLE 6, HAS OCCURRED AND IF:

8 (a) THE CONSTRUCTION PROFESSIONAL'S MONETARY OFFER, MADE
9 PURSUANT TO SECTION 13-20-1305 (3), TO SETTLE FOR A SUM CERTAIN A
10 CONSTRUCTION DEFECT CLAIM DESCRIBED IN A NOTICE OF CLAIM IS LESS
11 THAN EIGHTY-FIVE PERCENT OF THE AMOUNT AWARDED TO THE CLAIMANT
12 AS ACTUAL DAMAGES SUSTAINED, EXCLUSIVE OF COSTS, INTEREST, AND
13 ATTORNEY FEES; OR

14 (b) THE REASONABLE COST, AS DETERMINED BY THE TRIER OF
15 FACT, TO COMPLETE THE CONSTRUCTION PROFESSIONAL'S OFFER, MADE
16 PURSUANT TO SECTION 13-20-1305 (3), TO REMEDY THE CONSTRUCTION
17 DEFECT DESCRIBED IN THE NOTICE OF CLAIM IS LESS THAN EIGHTY-FIVE
18 PERCENT OF THE AMOUNT AWARDED TO THE CLAIMANT AS ACTUAL
19 DAMAGES SUSTAINED EXCLUSIVE OF COSTS, INTEREST, AND ATTORNEY
20 FEES.

21 (2) IF A CONSTRUCTION PROFESSIONAL DOES NOT SUBSTANTIALLY
22 COMPLY WITH THE TERMS OF AN ACCEPTED OFFER TO REMEDY OR AN
23 ACCEPTED OFFER TO SETTLE A CLAIM FOR A CONSTRUCTION DEFECT MADE
24 PURSUANT TO SECTION 13-20-1305 OR IF A CONSTRUCTION PROFESSIONAL
25 FAILS TO RESPOND TO A NOTICE OF CLAIM, THE CONSTRUCTION
26 PROFESSIONAL IS SUBJECT TO THE TREBLE DAMAGES PROVISION OF
27 SECTION 6-1-113 (2)(a)(III); EXCEPT THAT A CONSTRUCTION
28 PROFESSIONAL IS SUBJECT TO THE TREBLE DAMAGES PROVISION ONLY IF
29 THE CLAIMANT OTHERWISE PREVAILS ON THE CLAIM THAT A VIOLATION OF
30 THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6,
31 HAS OCCURRED.

32 (3) NOTWITHSTANDING ARTICLE 1 OF TITLE 6, THE AGGREGATE
33 AMOUNT OF TREBLE DAMAGES AWARDED IN AN ACTION UNDER SECTION
34 6-1-113 (2)(a)(III) AND ATTORNEY FEES AWARDED TO A CLAIMANT UNDER
35 SECTION 6-1-113 (2)(b) MUST NOT EXCEED TWO HUNDRED FIFTY
36 THOUSAND DOLLARS IN ANY ACTION AGAINST A CONSTRUCTION
37 PROFESSIONAL.

38 (4) (a) IN AN ACTION ASSERTING PERSONAL INJURY OR BODILY
39 INJURY AS A RESULT OF A CONSTRUCTION DEFECT IN WHICH DAMAGES FOR
40 NONECONOMIC LOSS OR INJURY OR DERIVATIVE NONECONOMIC LOSS OR
41 INJURY MAY BE AWARDED, THE DAMAGES SHALL NOT EXCEED THE SUM OF
42 TWO HUNDRED FIFTY THOUSAND DOLLARS.

43 (b) THE LIMITATIONS ON NONECONOMIC DAMAGES SET FORTH IN

1 THIS SUBSECTION (4) ARE ADJUSTED FOR INFLATION AS OF JULY 1, 2003,
2 AND AS OF JULY 1 OF EACH YEAR THEREAFTER UNTIL AND INCLUDING JULY
3 1, 2008. THE ADJUSTMENTS MADE PURSUANT TO THIS SUBSECTION (4) ARE
4 ROUNDED UPWARD OR DOWNWARD TO THE NEAREST TEN DOLLAR
5 INCREMENT.

6 (c) THE SECRETARY OF STATE SHALL CERTIFY THE ADJUSTED
7 LIMITATION ON DAMAGES WITHIN FOURTEEN DAYS AFTER THE
8 APPROPRIATE INFORMATION IS AVAILABLE, AND THE ADJUSTED
9 LIMITATION ON DAMAGES IS THE LIMITATION APPLICABLE TO ALL CLAIMS
10 FOR RELIEF THAT ACCRUE ON OR AFTER JULY 1, 2003.

11 (d) AS USED IN THIS SUBSECTION (4):

12 (I) "DERIVATIVE NONECONOMIC LOSS OR INJURY" HAS THE
13 MEANING SET FORTH IN SECTION 13-21-102.5 (2)(a).

14 (II) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE
15 UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS
16 CONSUMER PRICE INDEX FOR DENVER-Boulder, ALL ITEMS, ALL URBAN
17 CONSUMERS, OR ITS SUCCESSOR INDEX.

18 (III) "NONECONOMIC LOSS OR INJURY" HAS THE MEANING SET
19 FORTH IN SECTION 13-21-102.5 (2)(b).

20 (5) CLAIMS FOR PERSONAL INJURY OR BODILY INJURY AS A RESULT
21 OF A CONSTRUCTION DEFECT ARE NOT SUBJECT TO THE TREBLE DAMAGES
22 PROVISIONS OF THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE
23 1 OF TITLE 6.

24 (6) IN ANY CASE IN WHICH THE COURT DETERMINES THAT THE
25 ISSUE OF A VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT",
26 ARTICLE 1 OF TITLE 6, WILL BE SUBMITTED TO A JURY, THE COURT SHALL
27 NOT DISCLOSE NOR ALLOW DISCLOSURE TO THE JURY OF AN OFFER OF
28 SETTLEMENT OR OFFER TO REMEDY MADE UNDER SECTION 13-20-1305
29 THAT WAS NOT ACCEPTED BY THE CLAIMANT.

30 (7)(a) IN ORDER TO PRESERVE COLORADO RESIDENTIAL PROPERTY
31 OWNERS' LEGAL RIGHTS AND REMEDIES, IN ANY CIVIL ACTION OR
32 ARBITRATION PROCEEDING DESCRIBED IN SECTION 13-20-1303 (1), ANY
33 EXPRESS WAIVER OF, OR LIMITATION ON, THE LEGAL RIGHTS, REMEDIES, OR
34 DAMAGES PROVIDED BY THE "CONSTRUCTION DEFECT ACTION REFORM
35 ACT OF 2026", THIS PART 13, OR PROVIDED BY THE "COLORADO
36 CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, AS DESCRIBED IN
37 THIS SECTION, OR ANY LIMITATION ON THE ABILITY TO ENFORCE THE
38 LEGAL RIGHTS, REMEDIES, OR DAMAGES WITHIN THE TIME PROVIDED BY
39 APPLICABLE STATUTES OF LIMITATION OR REPOSE IS VOID AS AGAINST
40 PUBLIC POLICY.

41 (b) A WAIVER, LIMITATION, OR RELEASE CONTAINED IN A WRITTEN
42 SETTLEMENT OF CLAIMS, AND ANY RECORDED NOTICE OF THE
43 SETTLEMENT, BETWEEN A RESIDENTIAL PROPERTY OWNER AND A

1 CONSTRUCTION PROFESSIONAL AFTER THE CLAIM HAS ACCRUED IS NOT
2 VOIDED BY THIS SUBSECTION (7).

3 (c) THIS SUBSECTION (7) APPLIES ONLY TO THE LEGAL RIGHTS,
4 REMEDIES, OR DAMAGES OF CLAIMANTS ASSERTING CLAIMS ARISING OUT
5 OF RESIDENTIAL PROPERTY AND DOES NOT APPLY TO SALES OR DONATIONS
6 OF PROPERTY OR SERVICES BY A BONA FIDE CHARITABLE ORGANIZATION
7 THAT IS IN COMPLIANCE WITH THE REGISTRATION AND REPORTING
8 REQUIREMENTS OF ARTICLE 16 OF TITLE 6.

9 (d) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (7) TO
10 THE CONTRARY, THIS SUBSECTION (7) APPLIES ONLY TO ACTIONS THAT ARE
11 GOVERNED BY THE PROVISIONS OF THIS PART 13, ALSO KNOWN AS THE
12 "CONSTRUCTION DEFECT ACTION REFORM ACT OF 2026", AND DO NOT
13 ALTER OR AMEND THE LIMITATIONS ON DAMAGES CONTAINED IN THIS PART
14 13, INCLUDING THE LIMITATIONS ON TREBLE DAMAGES AND ATTORNEY
15 FEES SET FORTH IN THIS SECTION.

16 (e) THIS SECTION DOES NOT RENDER VOID ANY REQUIREMENT TO
17 PARTICIPATE IN MEDIATION PRIOR TO FILING A SUIT OR ARBITRATION
18 PROCEEDING.

19 **13-20-1309. Express warranty - not affected.** THIS PART 13 IS
20 NOT INTENDED TO ABROGATE OR LIMIT THE PROVISIONS OF ANY EXPRESS
21 WARRANTY OR THE OBLIGATIONS OF THE PROVIDER OF THE WARRANTY.
22 THIS PART 13 APPLIES TO THOSE CIRCUMSTANCES WHERE AN ACTION IS
23 FILED ASSERTING ONE OR MORE CLAIMS FOR RELIEF, INCLUDING A CLAIM
24 FOR BREACH OF WARRANTY; EXCEPT THAT, IN THE ACTION, SECTION
25 13-20-1308 (7) DOES NOT APPLY TO A BREACH OF EXPRESS WARRANTY
26 CLAIMS EXCEPT TO THE EXTENT THAT PROVISIONS OF THE EXPRESS
27 WARRANTY PURPORT TO WAIVE OR LIMIT CLAIMS FOR RELIEF OTHER THAN
28 THE BREACH OF EXPRESS WARRANTY CLAIM. THIS PART 13 DOES NOT
29 REQUIRE A CLAIMANT THAT IS THE BENEFICIARY OF AN EXPRESS
30 WARRANTY TO COMPLY WITH THE NOTICE PROVISIONS OF SECTION
31 13-20-1305 TO REQUEST ORDINARY WARRANTY SERVICE IN ACCORDANCE
32 WITH THE TERMS OF THE WARRANTY. A CLAIMANT THAT REQUIRES
33 WARRANTY SERVICE MUST COMPLY WITH THE PROVISIONS OF THE
34 WARRANTY.

35 **13-20-1310. Insurance policies issued to construction**
36 **professionals - legislative declaration - definitions.** (1) (a) THE
37 GENERAL ASSEMBLY FINDS AND DETERMINES THAT:

38 (I) THE INTERPRETATION OF INSURANCE POLICIES ISSUED TO
39 CONSTRUCTION PROFESSIONALS IS OF VITAL IMPORTANCE TO THE
40 ECONOMIC AND SOCIAL WELFARE OF THE CITIZENS OF COLORADO AND IN
41 FURTHERING THE PURPOSES OF THIS PART 13;

42 (II) INSURANCE POLICIES ISSUED TO CONSTRUCTION
43 PROFESSIONALS HAVE BECOME INCREASINGLY COMPLEX, OFTEN

1 CONTAINING MULTIPLE, LENGTHY ENDORSEMENTS AND EXCLUSIONS THAT
2 CONFLICT WITH THE REASONABLE EXPECTATIONS OF THE INSURED; AND
3 (III) THE CORRECT INTERPRETATION OF COVERAGE FOR DAMAGES
4 ARISING OUT OF CONSTRUCTION DEFECTS IS IN THE BEST INTEREST OF
5 INSURERS, CONSTRUCTION PROFESSIONALS, AND PROPERTY OWNERS.
6 (b) THE GENERAL ASSEMBLY DECLARES THAT:
7 (I) THE POLICY OF COLORADO FAVORS THE INTERPRETATION OF
8 INSURANCE COVERAGE BROADLY FOR THE INSURED;
9 (II) THE LONG-STANDING AND CONTINUING POLICY OF COLORADO
10 FAVORS A BROAD INTERPRETATION OF AN INSURER'S DUTY TO DEFEND THE
11 INSURED UNDER LIABILITY INSURANCE POLICIES AND THAT THIS DUTY IS
12 A FIRST-PARTY BENEFIT TO AND CLAIM ON BEHALF OF THE INSURED;
13 (III) THE DECISION OF THE COLORADO COURT OF APPEALS IN
14 *GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA V. MOUNTAIN STATES*
15 *MUTUAL CASUALTY COMPANY*, 205 P.3d 529 (COLO. APP. 2009) DOES NOT
16 PROPERLY CONSIDER A CONSTRUCTION PROFESSIONAL'S REASONABLE
17 EXPECTATION THAT AN INSURER WOULD DEFEND THE CONSTRUCTION
18 PROFESSIONAL AGAINST AN ACTION OR NOTICE OF CLAIM CONTEMPLATED
19 BY THIS PART 13; AND
20 (IV) FOR THE PURPOSES OF GUIDING PENDING AND FUTURE
21 ACTIONS INTERPRETING LIABILITY INSURANCE POLICIES ISSUED TO
22 CONSTRUCTION PROFESSIONALS, WHAT HAS BEEN AND CONTINUES TO BE
23 THE POLICY OF COLORADO IS CLARIFIED AND CONFIRMED IN THE
24 INTERPRETATION OF INSURANCE POLICIES THAT HAVE BEEN AND MAY BE
25 ISSUED TO CONSTRUCTION PROFESSIONALS.
26 (2) AS USED IN THIS SECTION:
27 (a) "INSURANCE" HAS THE MEANING SET FORTH IN SECTION
28 10-1-102.
29 (b) "INSURANCE POLICY" MEANS A CONTRACT OF INSURANCE.
30 (c) "INSURER" HAS THE MEANING SET FORTH IN SECTION 10-1-102.
31 (d) "LIABILITY INSURANCE POLICY" MEANS A CONTRACT OF
32 INSURANCE THAT COVERS OCCURRENCES OF DAMAGE OR INJURY DURING
33 THE POLICY PERIOD AND INSURES A CONSTRUCTION PROFESSIONAL FOR
34 LIABILITY ARISING FROM CONSTRUCTION-RELATED WORK.
35 (3) IN INTERPRETING A LIABILITY INSURANCE POLICY ISSUED TO A
36 CONSTRUCTION PROFESSIONAL, A COURT SHALL PRESUME THAT THE WORK
37 OF A CONSTRUCTION PROFESSIONAL THAT RESULTS IN PROPERTY DAMAGE,
38 INCLUDING DAMAGE TO THE WORK ITSELF OR OTHER WORK, IS AN
39 ACCIDENT UNLESS THE PROPERTY DAMAGE IS INTENDED AND EXPECTED BY
40 THE INSURED. THIS SUBSECTION (3) DOES NOT:
41 (a) REQUIRE COVERAGE FOR DAMAGE TO AN INSURED'S OWN WORK
42 UNLESS OTHERWISE PROVIDED IN THE INSURANCE POLICY; OR
43 (b) CREATE INSURANCE COVERAGE THAT IS NOT INCLUDED IN THE

1 INSURANCE POLICY.

2 (4) (a) UPON A FINDING OF AMBIGUITY IN AN INSURANCE POLICY,
3 A COURT MAY CONSIDER A CONSTRUCTION PROFESSIONAL'S OBJECTIVE,
4 REASONABLE EXPECTATIONS IN THE INTERPRETATION OF AN INSURANCE
5 POLICY ISSUED TO THE CONSTRUCTION PROFESSIONAL.

6 (b) IN CONSTRUING AN INSURANCE POLICY TO MEET A
7 CONSTRUCTION PROFESSIONAL'S OBJECTIVE, REASONABLE EXPECTATIONS,
8 THE COURT MAY CONSIDER THE FOLLOWING:

9 (I) THE OBJECT SOUGHT TO BE OBTAINED BY THE CONSTRUCTION
10 PROFESSIONAL IN THE PURCHASE OF THE INSURANCE POLICY; AND

11 (II) WHETHER A CONSTRUCTION DEFECT HAS RESULTED, DIRECTLY
12 OR INDIRECTLY, IN BODILY INJURY, PROPERTY DAMAGE, OR LOSS OF THE
13 USE OF PROPERTY.

14 (c) IN CONSTRUING AN INSURANCE POLICY TO MEET A
15 CONSTRUCTION PROFESSIONAL'S OBJECTIVE, REASONABLE EXPECTATIONS,
16 A COURT MAY CONSIDER AND GIVE WEIGHT TO ANY WRITING CONCERNING
17 THE INSURANCE POLICY PROVISION IN DISPUTE THAT IS NOT PROTECTED
18 FROM DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE, WORK-PRODUCT
19 PRIVILEGE, OR PART 2 OF ARTICLE 72 OF TITLE 24 AND THAT IS
20 GENERATED, APPROVED, ADOPTED, OR RELIED ON BY THE INSURER OR ITS
21 PARENT OR SUBSIDIARY COMPANY OR AN INSURANCE RATING OR POLICY
22 DRAFTING ORGANIZATION, SUCH AS THE INSURANCE SERVICES OFFICE,
23 INC., OR ITS PREDECESSOR OR SUCCESSOR ORGANIZATION; EXCEPT THAT
24 THIS SUBSECTION (4)(c) DOES NOT RESTRICT, LIMIT, EXCLUDE, OR
25 CONDITION COVERAGE OR THE INSURER'S OBLIGATION BEYOND THAT
26 WHICH IS REASONABLY INFERRED FROM THE WORDS USED IN THE
27 INSURANCE POLICY.

28 (5) IF AN INSURANCE POLICY PROVISION THAT APPEARS TO GRANT
29 OR RESTORE COVERAGE CONFLICTS WITH AN INSURANCE POLICY
30 PROVISION THAT APPEARS TO EXCLUDE OR LIMIT COVERAGE, THE COURT
31 SHALL CONSTRUE THE INSURANCE POLICY TO FAVOR COVERAGE IF
32 REASONABLY AND OBJECTIVELY POSSIBLE.

33 (6) IF AN INSURER DISCLAIMS OR LIMITS COVERAGE UNDER A
34 LIABILITY INSURANCE POLICY ISSUED TO A CONSTRUCTION PROFESSIONAL,
35 THE INSURER BEARS THE BURDEN OF PROVING BY A PREPONDERANCE OF
36 THE EVIDENCE THAT:

37 (a) A POLICY'S LIMITATION, EXCLUSION, OR CONDITION IN THE
38 INSURANCE POLICY BARS OR LIMITS COVERAGE FOR THE INSURED'S LEGAL
39 LIABILITY IN AN ACTION OR NOTICE OF CLAIM MADE PURSUANT TO SECTION
40 13-20-1305 CONCERNING A CONSTRUCTION DEFECT; AND

41 (b) AN EXCEPTION TO THE LIMITATION, EXCLUSION, OR CONDITION
42 IN THE INSURANCE POLICY DOES NOT RESTORE COVERAGE UNDER THE
43 POLICY.

1 (7) (a) AN INSURER'S DUTY TO DEFEND A CONSTRUCTION
2 PROFESSIONAL OR OTHER INSURED UNDER A LIABILITY INSURANCE POLICY
3 ISSUED TO A CONSTRUCTION PROFESSIONAL IS TRIGGERED BY A
4 POTENTIALLY COVERED LIABILITY DESCRIBED IN:

5 (I) A NOTICE OF CLAIM MADE PURSUANT TO SECTION 13-20-1305;
6 OR

7 (II) A COMPLAINT, CROSS-CLAIM, COUNTERCLAIM, OR
8 THIRD-PARTY CLAIM FILED IN AN ACTION AGAINST THE CONSTRUCTION
9 PROFESSIONAL CONCERNING A CONSTRUCTION DEFECT.

10 (b) (I) AN INSURER SHALL DEFEND A CONSTRUCTION
11 PROFESSIONAL THAT HAS RECEIVED A NOTICE OF CLAIM MADE PURSUANT
12 TO SECTION 13-20-1305, REGARDLESS OF WHETHER ANOTHER INSURER
13 MAY ALSO OWE THE INSURED A DUTY TO DEFEND THE NOTICE OF CLAIM,
14 UNLESS AUTHORIZED BY LAW. IN DEFENDING THE CLAIM, THE INSURER
15 SHALL:

16 (A) REASONABLY INVESTIGATE THE CLAIM; AND

17 (B) REASONABLY COOPERATE WITH THE INSURED IN THE NOTICE
18 OF CLAIM PROCESS.

19 (II) THIS SUBSECTION (7)(b) DOES NOT REQUIRE THE INSURER TO
20 RETAIN LEGAL COUNSEL FOR THE INSURED OR TO PAY ANY SUMS TOWARD
21 SETTLEMENT OF THE NOTICE OF CLAIM THAT ARE NOT COVERED BY THE
22 INSURANCE POLICY.

23 (III) AN INSURER SHALL NOT WITHDRAW ITS DEFENSE OF AN
24 INSURED CONSTRUCTION PROFESSIONAL OR COMMENCE AN ACTION
25 SEEKING REIMBURSEMENT FROM AN INSURED FOR EXPENDED DEFENSE
26 COSTS UNLESS AUTHORIZED BY LAW AND UNLESS THE INSURER HAS
27 RESERVED THE RIGHT IN WRITING WHEN ACCEPTING OR ASSUMING THE
28 DEFENSE OBLIGATION.

29 **13-20-1311. Part to take effect - notice to revisor of statutes.**

30 THIS PART 13 WILL TAKE EFFECT ON SEPTEMBER 1, 2029, IF THE
31 COMMISSIONER OF INSURANCE DETERMINES THAT CONSTRUCTION
32 PROFESSIONAL LIABILITY INSURANCE FOR BUILDING CONDOMINIUMS HAS
33 NOT DECREASED FROM THE 2023 LEVELS. THE COMMISSIONER OF
34 INSURANCE SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING ON
35 JANUARY 1, 2029, IF THE CONDITION SPECIFIED IN THIS SECTION HAS
36 OCCURRED BY E-MAILING THE NOTICE TO
37 REVISOROFSTATUTES.GA@COLEG.GOV. THIS PART 13 TAKES EFFECT
38 SEPTEMBER 1, 2029, IF THE REVISOR OF STATUTES IS NOTIFIED THAT
39 CONSTRUCTION PROFESSIONAL LIABILITY INSURANCE FOR BUILDING
40 CONDOMINIUMS HAS NOT DECREASED FROM THE 2023 LEVELS."

41 Renumber succeeding section accordingly.

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