

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0897.03 Jerry Barry x4341

SENATE BILL 16-213

SENATE SPONSORSHIP

Scheffel and Ulibarri,

HOUSE SPONSORSHIP

Singer and DelGrosso,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING DEVELOPING PRACTICES FOR CONSTRUCTION DEFECT
102 LITIGATION.

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>.)

The bill establishes a construction defect litigation study group (study group) to investigate construction defect litigation and to create a report recommending statutory changes and a pilot program within the judicial department for managing construction defect claims. The study group shall report by March 1, 2017, to the judiciary committees of the general assembly and to the chief justice.

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.

The chief justice may adopt a pilot program through a chief justice directive. If adopted:

- ! The pilot program terminates December 31, 2018, unless extended by the chief justice; and
- ! The judicial department shall contract for a study of the pilot program to be completed within 15 months after the pilot program commences and, within 14 days after receiving the report, must forward it to the chief justice and the judiciary committees of the general assembly.

The bill establishes a construction defect litigation cash fund to pay expenses for the study group, and, if adopted, the pilot program and report on the pilot program.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-20-809,
3 13-20-810, and 13-20-811 as follows:

4 **13-20-809. Construction defect litigation - legislative**
5 **declaration - definitions - repeal.** (1) THE GENERAL ASSEMBLY FINDS
6 THAT:

7 (a) THERE ARE CONCERNS ABOUT CONSTRUCTION DEFECT CLAIMS
8 THROUGHOUT THE STATE;

9 (b) PROTECTING THE RIGHTS OF PROPERTY OWNERS AND
10 CONSTRUCTION PROFESSIONALS, WHILE AT THE SAME TIME MAKING
11 CONSTRUCTION DEFECT CLAIMS TIME- AND COST-EFFECTIVE, IS OF
12 PARAMOUNT CONCERN;

13 (c) RECOGNIZING THE BUILDING INDUSTRY AS AN IMPORTANT
14 ELEMENT OF THE STATE'S GROWTH WHILE PROTECTING PROPERTY OWNERS
15 IS AN IMPORTANT CONCERN OF THE GENERAL ASSEMBLY;

16 (d) CREATION OF A CONSTRUCTION DEFECT LITIGATION STUDY
17 GROUP MAY ASSIST IN RESOLVING THOSE CLAIMS QUICKLY AND AT A
18 LOWER COST TO THE LITIGANTS AND THE COURTS; AND

19 (e) THE CONSTRUCTION DEFECT LITIGATION STUDY GROUP SHALL

1 INVESTIGATE AND MAY RECOMMEND STATUTORY CHANGES AND A
2 CONSTRUCTION DEFECT LITIGATION PILOT PROGRAM THAT WOULD RESULT
3 IN A MORE TIME- AND COST-EFFECTIVE MEANS OF HANDLING
4 CONSTRUCTION DEFECT CLAIMS.

5 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT:

6 (a) ISSUES CONCERNING CONSTRUCTION DEFECT LITIGATION ARE
7 MATTERS OF MIXED LOCAL AND STATEWIDE CONCERN; AND

8 (b) THE ESTABLISHMENT OF THE CONSTRUCTION DEFECT
9 LITIGATION STUDY GROUP IN SECTION 13-20-810 IS NECESSARY TO
10 PROVIDE RECOMMENDATIONS FOR STATUTORY CHANGES AND FOR A PILOT
11 PROGRAM TO PROVIDE A MORE TIME- AND COST-EFFICIENT METHOD OF
12 HANDLING CONSTRUCTION DEFECT CLAIMS.

13 (3) AS USED IN THIS SECTION AND IN SECTIONS 13-20-810 AND
14 13-20-811, UNLESS THE CONTEXT OTHERWISE REQUIRES, "CONSTRUCTION
15 DEFECT LITIGATION" MEANS A CIVIL ACTION FOR DAMAGES, INDEMNITY,
16 OR CONTRIBUTION BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL TO
17 ASSERT A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM
18 FOR DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL
19 PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR
20 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY.

21 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2020.

22 **13-20-810. Construction defect litigation study group - report**

23 **- pilot program - repeal.** (1) (a) THERE IS ESTABLISHED IN THE JUDICIAL
24 DEPARTMENT THE CONSTRUCTION DEFECT LITIGATION STUDY GROUP,
25 REFERRED TO IN THIS SECTION AS THE "STUDY GROUP", TO CONSIDER,
26 STUDY, RESEARCH, AND RECOMMEND PROCEDURES FOR POTENTIAL USE IN
27 CONSTRUCTION DEFECT LITIGATION IN DISTRICT COURTS.

1 (b) THE FOLLOWING PERSONS SHALL APPOINT MEMBERS OF THE
2 STUDY GROUP AS FOLLOWS:

3 (I) THE PRESIDENT OF THE SENATE SHALL APPOINT AN ATTORNEY
4 WITH EXPERIENCE REPRESENTING CONSTRUCTION PROFESSIONALS;

5 (II) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
6 APPOINT AN ATTORNEY WITH EXPERIENCE REPRESENTING PLAINTIFFS IN
7 CONSTRUCTION DEFECT LITIGATION;

8 (III) THE MINORITY LEADER OF THE SENATE SHALL APPOINT AN
9 ATTORNEY WITH EXPERIENCE REPRESENTING COMPANIES THAT PROVIDE
10 INSURANCE TO CONSTRUCTION PROFESSIONALS;

11 (IV) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES
12 SHALL APPOINT AN ATTORNEY REPRESENTING HOMEOWNERS'
13 ASSOCIATIONS OR OTHER MULTIPLE-OWNER ENTITIES IN CONSTRUCTION
14 DEFECT LITIGATION;

15 (V) THE GOVERNOR SHALL APPOINT:

16 (A) AN ATTORNEY WITH EXPERIENCE REPRESENTING OWNERS OF
17 SINGLE-FAMILY HOMES IN CONSTRUCTION LITIGATION;

18 (B) AN ATTORNEY WITH EXPERIENCE PROVIDING INSURANCE
19 COVERAGE TO CONSTRUCTION PROFESSIONALS; AND

20 (C) A REPRESENTATIVE OF A TRADE ORGANIZATION OF
21 CONSTRUCTION PROFESSIONALS; AND

22 (VI) THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT SHALL
23 APPOINT THREE DISTRICT COURT JUDGES WITH EXPERIENCE PRESIDING
24 OVER CONSTRUCTION DEFECT LITIGATION.

25 (c) MEMBERS OF THE STUDY GROUP SERVE WITHOUT
26 COMPENSATION BUT MAY BE REIMBURSED FOR EXPENSES INCURRED OUT
27 OF THE CONSTRUCTION DEFECT LITIGATION CASH FUND CREATED

1 PURSUANT TO SECTION 13-20-811 (3).

2 (d) EACH APPOINTING AUTHORITY DESCRIBED IN PARAGRAPH (b)
3 OF THIS SUBSECTION (1) SHALL MAKE HIS OR HER APPOINTMENTS TO THE
4 STUDY GROUP WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS
5 SECTION. THE CHIEF JUSTICE SHALL SELECT ONE OF THE DISTRICT COURT
6 JUDGES APPOINTED PURSUANT TO SUBPARAGRAPH (VI) OF PARAGRAPH (b)
7 OF THIS SUBSECTION (1) TO SERVE AS THE CHAIR OF THE STUDY GROUP.
8 THE CHAIR OF THE STUDY GROUP SHALL CONVENE THE FIRST MEETING OF
9 THE STUDY GROUP WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF
10 THIS SECTION.

11 (e) THE CHIEF JUSTICE SHALL DESIGNATE AN INDIVIDUAL TO STAFF
12 THE STUDY GROUP, AND THE JUDICIAL DEPARTMENT WILL PROVIDE STAFF
13 ASSISTANCE TO THE STUDY GROUP.

14 (f) THE STUDY GROUP SHALL INVESTIGATE AND MAY RECOMMEND
15 PROCEDURES FOR CONDUCTING DISTRICT COURT CONSTRUCTION DEFECT
16 LITIGATION LIMITED TO:

17 (I) RECOMMENDATIONS FOR THE ESTABLISHMENT OF A
18 CONSTRUCTION DEFECT LITIGATION PILOT PROGRAM, INCLUDING CHANGES
19 TO OR NEW COURT RULES AND SPECIALIZED CASE MANAGEMENT ORDERS
20 FOR USE IN THE PILOT PROGRAM, IF THE STUDY GROUP DETERMINES A
21 PILOT PROGRAM IS DESIRABLE;

22 (II) OPTIONS AND ALTERNATIVES FOR DISCOVERY AND
23 PRELIMINARY ISSUES;

24 (III) APPROPRIATE FILING FEES IN CONSTRUCTION DEFECT
25 LITIGATION; AND

26 (IV) STATUTORY CHANGES TO PROVIDE A MORE TIME- AND
27 COST-EFFICIENT METHOD OF HANDLING CONSTRUCTION DEFECT CLAIMS.

1 (g) (I) ON OR BEFORE MARCH 1, 2017, THE STUDY GROUP SHALL
2 SUBMIT A WRITTEN REPORT TO THE CHIEF JUSTICE AND TO THE JUDICIARY
3 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY
4 SUCCESSOR COMMITTEES. IF THE STUDY GROUP CANNOT COMPLETE ITS
5 REPORT BY MARCH 1, 2017, THE CHIEF JUSTICE MAY GRANT THE STUDY
6 GROUP AN EXTENSION OF TIME.

7 (II) THE REPORT MAY INCLUDE RECOMMENDATIONS FOR A
8 CONSTRUCTION DEFECT PILOT PROGRAM, OPTIONS AND ALTERNATIVES FOR
9 DISCOVERY AND PRELIMINARY ISSUES, APPROPRIATE FILING FEES, AND
10 STATUTORY CHANGES FOR CONSTRUCTION DEFECT LITIGATION.

11 (2) THE CHIEF JUSTICE SHALL IMPLEMENT, TO THE EXTENT
12 POSSIBLE, THE RECOMMENDATIONS OF THE STUDY GROUP. THE CHIEF
13 JUSTICE SHALL DETERMINE BY APRIL 15, 2017, WHETHER TO ADOPT A
14 PILOT PROGRAM THROUGH A CHIEF JUSTICE DIRECTIVE, EITHER AS
15 PROPOSED BY THE STUDY GROUP OR AS MODIFIED BY THE CHIEF JUSTICE.
16 THE CHIEF JUSTICE MAY EXTEND THIS DEADLINE.

17 (3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018.

18 **13-20-811. Construction defect litigation pilot program -**
19 **creation - fund - notice to the revisor of statutes - repeal.** (1) ON OR
20 BEFORE MAY 10, 2017, THE CHIEF JUSTICE OF THE COLORADO SUPREME
21 COURT MAY ESTABLISH THROUGH A CHIEF JUSTICE DIRECTIVE A
22 CONSTRUCTION DEFECT LITIGATION PILOT PROGRAM IN ONE OR MORE
23 JUDICIAL DISTRICTS IN THE STATE, REFERRED TO IN THIS SECTION AS THE
24 "PILOT PROGRAM"; EXCEPT THAT THE CHIEF JUSTICE MAY EXTEND THE
25 DATE FOR THE ADOPTION OF THE PILOT PROGRAM. THE PILOT PROGRAM
26 EXPIRES ON DECEMBER 31, 2018, UNLESS EXTENDED BY THE CHIEF
27 JUSTICE.

1 (2) IF A PILOT PROGRAM IS ESTABLISHED PURSUANT TO
2 SUBSECTION (1) OF THIS SECTION, THE JUDICIAL DEPARTMENT SHALL
3 CONTRACT FOR A STUDY OF THE PILOT PROGRAM TO BE COMPLETED
4 WITHIN FIFTEEN MONTHS AFTER THE PILOT PROGRAM COMMENCES. THE
5 STUDY MUST INCLUDE A WRITTEN REPORT THAT MUST INCLUDE AN
6 EVALUATION OF THE SUCCESS OF THE PILOT PROGRAM AS MEASURED BY
7 THE SATISFACTION OF JUDGES, ATTORNEYS, AND LITIGANTS AND MAY
8 RECOMMEND CHANGES TO THE PILOT PROGRAM OR STATUTES. ON OR
9 BEFORE FOURTEEN DAYS AFTER RECEIPT OF THE REPORT, THE JUDICIAL
10 DEPARTMENT SHALL FORWARD THE REPORT TO THE CHIEF JUSTICE AND
11 THE JUDICIARY COMMITTEES OF THE SENATE AND HOUSE OF
12 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES. THE STUDY MUST BE
13 PAID FOR OUT OF THE CONSTRUCTION DEFECT LITIGATION CASH FUND
14 CREATED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

15 (3) (a) THE CONSTRUCTION DEFECT LITIGATION CASH FUND,
16 REFERRED TO IN THIS SECTION AS THE "FUND", IS CREATED IN THE STATE
17 TREASURY. THE FUND CONSISTS OF MONEY THAT THE GENERAL ASSEMBLY
18 MAY APPROPRIATE OR TRANSFER TO THE FUND AND ANY GIFTS, GRANTS,
19 OR DONATIONS RECEIVED BY THE JUDICIAL DEPARTMENT TO CONDUCT THE
20 PILOT PROGRAM.

21 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
22 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
23 FUND TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED
24 TO THE JUDICIAL DEPARTMENT TO PAY EXPENSES RELATED TO THE PILOT
25 PROGRAM.

26 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2020.

27 **SECTION 2. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.