

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

INTRODUCED

LLS NO. 25-0299.01 Jery Payne x2157

HOUSE BILL 25-1261

HOUSE SPONSORSHIP

Bacon, Garcia, Mabrey, Titone, Velasco, Zokaie

SENATE SPONSORSHIP

Rodriguez and Winter F., Cutter, Gonzales J., Sullivan

House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTIONS FOR HOMEOWNERS THAT RELATE TO**
102 **IMPROVEMENTS TO REAL PROPERTY.**

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 an action against a construction professional, **section 2** of the bill requires the construction professional to provide the claimant or the claimant's legal representative with:

- Copies of all plans, specifications, soils reports, and available engineering calculations;
- Any maintenance and preventive maintenance

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- recommendations;
- The name, last-known address, and scope of work of each construction professional that performed work or services; and
- Copies of all insurance policies held by the construction professional during the appropriate time.

The construction professional may charge reasonable copying costs for the documents. Failure to provide the identifying information of the other construction professionals bars the construction professional from designating the unidentified construction professionals as nonparties at fault in any subsequent action.

Section 3 requires a court to award prejudgement interest of 8% to a prevailing claimant who alleges defects in a residential property construction.

Section 5 voids a provision in a real estate contract that:

- Prohibits group lawsuits against a construction professional; or
- Imposes different or additional requirements than the statutory requirements to bring or join a legal action.

Section 6 changes the time when a claim of relief arises, for the purposes of the statute of limitation and repose, to include both the discovery of the physical manifestation and the cause of the defect.

Current law authorizes, subject to the requirements of the common interest community's (community) declarations, a community to engage in certain actions, such as instituting, defending, or intervening in litigation or administrative proceedings on matters affecting the community. **Section 7** exempts an association's authority to institute, defend, or intervene in litigation proceedings concerning construction defects from the requirement that the action be subject to the declaration.

Section 8 requires the department of regulatory agencies to include in its "SMART Act" report information concerning construction liability insurance and the basis for rates.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Homeownership is the nexus of the American dream, and the
5 purchase of a home represents one of the most significant investments an
6 individual can make;

7 (b) Buying a home is the biggest source of wealth building that

- 1 most people can make in their lifetime;
- 2 (c) Homeowners should expect their new homes to be built
3 correctly;
- 4 (d) If a home is built with construction defects, builders should be
5 responsible for correctly fixing the defects;
- 6 (e) Colorado has some of the weakest protections in the country
7 for homeowners facing construction defects;
- 8 (f) Homeowners facing construction defects lack rights that
9 Colorado consumers have for other purchases;
- 10 (g) Colorado law disincentivizes timely repairs by builders and
11 allows builders to run out the clock on the short window that homeowners
12 have for legal action and to drag out claims that move forward;
- 13 (h) Construction defects arising from the negligence of builders
14 can result in costly repairs and diminished home property values and can
15 cause undue financial hardship for homeowners and their families;
- 16 (i) Repairs of construction defects should happen as quickly as
17 possible;
- 18 (j) Builders and developers are not required to carry construction
19 liability insurance in Colorado, making it difficult for homeowners to
20 hold them accountable for repairs; and
- 21 (k) Builders and developers often put up barriers that go beyond
22 what is required by law for homeowners to take legal action.
- 23 (2) The general assembly declares that this act:
- 24 (a) Seeks to protect the wealth building and equity that
25 homeownership provides to Colorado families;
- 26 (b) Is intended to align homeowners' consumer rights with the
27 rights afforded consumers of other items purchased;

1 (c) Promotes timely repairs of construction defects by builders;
2 and

3 (d) Ensures that Colorado law sets the requirements for
4 homeowners to bring legal action for construction defects.

5 **SECTION 2.** In Colorado Revised Statutes, 13-20-803.5, **add**
6 (3.5) as follows:

7 **13-20-803.5. Notice of claim process.** (3.5) (a) WITHIN THE
8 EARLIER OF SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL
9 ACTUALLY RECEIVES A NOTICE OF CLAIM OR AFTER A CONSTRUCTION
10 PROFESSIONAL OFFERS TO SETTLE A CLAIM, THE CONSTRUCTION
11 PROFESSIONAL SHALL PROVIDE THE CLAIMANT OR THE CLAIMANT'S LEGAL
12 REPRESENTATIVE WITH THE FOLLOWING:

13 (I) COPIES OF ALL PLANS, SPECIFICATIONS, SOILS REPORTS, AND
14 AVAILABLE ENGINEERING CALCULATIONS RELATED TO THE CLAIMANT'S
15 PROPERTY;

16 (II) ANY MAINTENANCE AND PREVENTIVE MAINTENANCE
17 RECOMMENDATIONS FOR THE PROPERTY;

18 (III) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
19 EACH CONSTRUCTION PROFESSIONAL THAT PERFORMED WORK OR SERVICES
20 ON THE CLAIMANT'S PROPERTY; AND

21 (IV) COPIES OF ALL INSURANCE POLICIES HELD BY THE
22 CONSTRUCTION PROFESSIONAL FROM THE EARLIER START DATE OF:

23 (A) THE DATE CONSTRUCTION OF THE IMPROVEMENT TO REAL
24 PROPERTY WAS SUBSTANTIALLY COMPLETE THROUGH THE DATE OF THE
25 NOTICE OF CLAIM; OR

26 (B) THE DATE THE CONSTRUCTION PROFESSIONAL SUBSTANTIALLY
27 COMPLETED ITS WORK ON THE IMPROVEMENT TO REAL PROPERTY

1 THROUGH THE DATE OF THE NOTICE OF CLAIM.

2 (b) THE CONSTRUCTION PROFESSIONAL MAY CHARGE REASONABLE
3 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTIONS
4 (3.5)(a)(I), (3.5)(a)(II), AND (3.5)(a)(IV) OF THIS SECTION.

5 (c) FAILURE TO PROVIDE THE IDENTIFYING INFORMATION
6 REQUIRED IN SUBSECTION (3.5)(a)(III) OF THIS SECTION BARS THE
7 CONSTRUCTION PROFESSIONAL FROM DESIGNATING THE UNIDENTIFIED
8 CONSTRUCTION PROFESSIONALS AS NONPARTIES AT FAULT UNDER SECTION
9 13-21-111.5 (3)(b) IN ANY SUBSEQUENT ACTION.

10 **SECTION 3.** In Colorado Revised Statutes, 13-20-806, **add** (8)
11 as follows:

12 **13-20-806. Limitation of damages.** (8) (a) WITH REGARD TO
13 CLAIMS ARISING FROM ALLEGED DEFECTS IN RESIDENTIAL PROPERTY
14 CONSTRUCTION, A COURT SHALL AWARD PREJUDGMENT INTEREST TO A
15 CLAIMANT WHO PREVAILS WITH THE CLAIM. THE AMOUNT OF THE
16 AWARDED PREJUDGEMENT INTEREST IS:

17 (I) ADDED TO THE AMOUNT OF THE ACTUAL DAMAGES AT A RATE
18 OF EIGHT PERCENT PER YEAR; AND

19 (II) COMPOUNDED ANNUALLY BEGINNING ON THE DATE OF THE
20 MAILING OF THE CLAIMANT'S FIRST NOTICE OF CLAIM SENT IN
21 ACCORDANCE WITH SECTION 13-20-803.5.

22 (b) NOTWITHSTANDING SUBSECTION (8)(a) OF THIS SECTION,
23 PREJUDGMENT INTEREST DOES NOT ACCRUE:

24 (I) AFTER THE DATE A STATUTORY SETTLEMENT OFFER IS MADE
25 PURSUANT TO SECTION 13-20-803.5 (3) IF THE STATUTORY SETTLEMENT
26 OFFER EXCEEDS THE AMOUNT OF THE JUDGMENT; OR

27 (II) ON THE PART OF ANY ACTUAL DAMAGES AWARDED FOR

1 AMOUNTS ACTUALLY SPENT BEFORE JUDGMENT AND FOR WHICH INTEREST
2 UNDER SECTION 5-12-102 (1)(b) IS AWARDED.

3 (c) POSTJUDGMENT INTEREST ACCRUES ON THE JUDGMENT AS
4 PROVIDED BY LAW.

5 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-303.5,
6 **amend** (1)(d)(I)(A) as follows:

7 **38-33.3-303.5. Construction defect actions - disclosure -**
8 **approval by unit owners - definitions - exemptions.** (1) (d) **Approval**
9 **by unit owners - procedures.** (I) (A) Notwithstanding any provision of
10 law or any requirement in the governing documents, the executive board
11 ~~may~~ SHALL HAVE THE RIGHT TO initiate the construction defect action ~~only~~
12 if authorized within the voting period by owners of units to which a
13 majority of votes in the association are allocated. ~~Such~~ THE approval is
14 not required for an association to proceed with a construction defect
15 action if the alleged construction defect pertains to a facility that is
16 intended and used for nonresidential purposes and if the cost to repair the
17 alleged defect does not exceed fifty thousand dollars. ~~Such~~ THE approval
18 is not required for an association to proceed with a construction defect
19 action when the association is the contracting party for the performance
20 of labor or purchase of services or materials.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 13-20-809 as
22 follows:

23 **13-20-809. Void provisions concerning actions - definition.**

24 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES, "DECLARATION" HAS THE MEANING SET FORTH IN SECTION
26 38-33.3-103 (13).

27 (2) A PROVISION IN A CONTRACT TO SELL REAL ESTATE IN A

1 DECLARATION OR IN A GOVERNING DOCUMENT IS VOID IF:

2 (a) THE PROVISION LIMITS A PROPERTY OWNER'S RIGHT TO BRING
3 OR JOIN AN ACTION WITH ONE OR MORE CLAIMANTS AGAINST A
4 CONSTRUCTION PROFESSIONAL; OR

5 (b) THE PROVISION IMPOSES DIFFERENT OR ADDITIONAL
6 REQUIREMENTS THAN THE REQUIREMENTS IN THIS PART 8 OR SECTION
7 38-33.3-303.5 THAT ARE NECESSARY TO BRING OR JOIN AN ACTION.

8 **SECTION 6.** In Colorado Revised Statutes, 13-80-104, **amend**
9 (1)(b)(I) as follows:

10 **13-80-104. Limitation of actions against architects,**
11 **contractors, builders or builder vendors, engineers, inspectors, and**
12 **others.** (1) (b) (I) Except as otherwise provided in ~~subparagraph (H) of~~
13 ~~this paragraph (b)~~ SUBSECTION (1)(b)(II) OF THIS SECTION, a claim for
14 relief arises under this section at the time the claimant or the claimant's
15 predecessor in interest discovers or in the exercise of reasonable diligence
16 should have discovered BOTH OF THE FOLLOWING CONCERNING THE
17 DEFECT IN THE IMPROVEMENT THAT ULTIMATELY CAUSES THE INJURY:

18 (A) The physical manifestations of ~~a~~ THE defect; ~~in the~~
19 ~~improvement which ultimately causes the injury.~~ AND

20 (B) THE CAUSE OF THE DEFECT.

21 **SECTION 7.** In Colorado Revised Statutes, 38-33.3-302, **amend**
22 (1)(d) as follows:

23 **38-33.3-302. Powers of unit owners' association.** (1) Except as
24 provided in subsections (2) and (3) of this section, and subject to the
25 provisions of the declaration, the association, without specific
26 authorization in the declaration, may:

27 (d) Institute, defend, or intervene in litigation or administrative

1 proceedings in its own name on behalf of itself or two or more unit
2 owners on matters affecting the common interest community. WITH
3 REGARD TO INSTITUTING, DEFENDING, OR INTERVENING IN LITIGATION
4 PROCEEDINGS CONCERNING CONSTRUCTION DEFECTS, THE ASSOCIATION IS
5 NOT SUBJECT TO THE PROVISIONS OF THE DECLARATION.

6 **SECTION 8.** In Colorado Revised Statutes, **add** 24-34-113 as
7 follows:

8 **24-34-113. SMART Act reporting on homeowner's insurance.**

9 (1) BEGINNING JANUARY 1, 2026, AND IN JANUARY EVERY YEAR
10 THEREAFTER, THE DEPARTMENT OF REGULATORY AGENCIES SHALL
11 INCLUDE, AS PART OF ITS PRESENTATION DURING ITS "SMART ACT"
12 HEARING REQUIRED BY SECTION 2-7-203, INFORMATION CONCERNING:

13 (a) THE REQUIREMENTS OF THE TYPE AND TERMS OF INSURANCE
14 THAT A CONSTRUCTION PROFESSIONAL IS REQUIRED TO CARRY TO COVER
15 PROFESSIONAL SERVICES;

16 (b) A DETAILED LISTING OF THE INSURERS THAT OFFER
17 RESIDENTIAL CONSTRUCTION LIABILITY INSURANCE POLICIES TO
18 CONSTRUCTION PROFESSIONALS, INCLUDING RESIDENTIAL PROPERTY
19 DEVELOPERS, TO COVER PROFESSIONAL SERVICES;

20 (c) THE RATES THAT INSURERS, AS DEFINED IN SECTION 10-1-102
21 (13), CHARGE TO CONSTRUCTION PROFESSIONALS TO COVER PROFESSIONAL
22 SERVICES;

23 (d) A DETAILED ANALYSIS OF THE BASIS OF THE RATES, DESCRIBED
24 IN SUBSECTION (1)(c) OF THIS SECTION, INCLUDING THE RISK FACTORS,
25 CLASSIFICATIONS, AND COVERAGE DESCRIPTIONS USED TO SET THE RATES;

26 (e) THE TERMS OF COVERAGE IN EACH INSURER'S CONSTRUCTION
27 LIABILITY POLICIES;

1 (f) THE LIMITATIONS ON OR EXCLUSIONS FROM COVERAGE THAT
2 EXIST IN EACH INSURER'S CONSTRUCTION LIABILITY POLICIES FOR
3 CONSTRUCTION PROJECTS, INCLUDING MULTIFAMILY PROJECTS; AND

4 (g) A DESCRIPTION OF THE ROLE OF THE DIVISION OF INSURANCE
5 OVER RESIDENTIAL CONSTRUCTION LIABILITY INSURANCE.

6 **SECTION 9. Act subject to petition - effective date -**
7 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
8 the expiration of the ninety-day period after final adjournment of the
9 general assembly; except that, if a referendum petition is filed pursuant
10 to section 1 (3) of article V of the state constitution against this act or an
11 item, section, or part of this act within such period, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2026 and, in such case, will take
14 effect on the date of the official declaration of the vote thereon by the
15 governor.

16 (2) This act applies to causes of action arising on or after the
17 applicable effective date of this act.