

JAN 23 2025

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# A BILL FOR AN ACT

RELATING TO CONSTRUCTION DEFECTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the existing  
2 language of the Contractor Repair Act and the statute of repose,  
3 section 657-8, Hawaii Revised Statutes, has led to inconsistent  
4 application in the courts, which at times has permitted  
5 incomplete or inadequate claims to go forward prematurely.  
6 Therefore, it is the intent of the legislature to amend the  
7 Contractor Repair Act to ensure that its implementation serves  
8 both homeowners and homebuilders in promoting early and  
9 efficient resolution of construction defect claims.

10       Accordingly, the purpose of this Act is to:

- 11       (1) Clarify the statute of repose to make it clear that  
12             the statute applies to contract, tort, and statutory  
13             claims;  
14       (2) Clarify the required contents of a notice of claim of  
15             construction defect served on a contractor;



1           (3) Require the notice, offer, and inspection provisions  
2           of this Act to be satisfied before a claimant may  
3           proceed with or join a class action; and

4           (4) Clarify the process and time frame by which a claimant  
5           may accept or reject a contractor's offer to settle  
6           and authorize repairs.

7           SECTION 2. Section 657-8, Hawaii Revised Statutes, is  
8           amended by amending subsection (a) to read as follows:

9           "(a) No action, whether in contract, tort, statute, or  
10          otherwise, to recover damages for any injury to property, real  
11          or personal, or for bodily injury or wrongful death, arising out  
12          of any deficiency or neglect in the planning, design,  
13          construction, supervision and administering of construction, and  
14          observation of construction relating to an improvement to real  
15          property shall be commenced more than two years after the cause  
16          of action has accrued, but in any event not more than ten years  
17          after the date of completion of the improvement."

18          SECTION 3. Section 672E-3, Hawaii Revised Statutes, is  
19          amended to read as follows:

20          "~~{}~~§672E-3~~{}~~ **Notice of claim of construction defect.**

21          (a) A claimant, no later than ninety days before filing an



1 action against a contractor, shall serve the contractor with a  
2 written notice of claim. The notice of claim shall [~~describe~~  
3 ~~the claim in detail and include the results of any testing~~  
4 ~~done.~~]:

5 (1) State that the claimant asserts a claim against the  
6 contractor for a construction defect in the design,  
7 construction, or remodeling of a dwelling or premises;  
8 and

9 (2) Describe the claim in detail sufficient to determine  
10 the circumstances constituting the alleged  
11 construction defect and damages resulting from the  
12 construction defect. The description shall  
13 specifically identify the alleged defect or problem;  
14 provided that a general statement that a construction  
15 defect may exist shall be insufficient.

16 The notice of claim shall not constitute a claim under any  
17 applicable insurance policy and shall not give rise to a duty of  
18 any insurer to provide a defense under any applicable insurance  
19 policy unless and until the process [~~set forth~~] described in  
20 section 672E-5 is completed. Nothing in this chapter shall in



1 any way interfere with or alter the rights and obligations of  
2 the parties under any liability policy.

3 (b) If available to the claimant, the claimant shall  
4 provide to the contractor, with the notice of claim, evidence  
5 that depicts the nature and cause of the construction defect and  
6 the nature and extent of the repairs necessary to repair the  
7 defect, including expert reports, photographs, videotapes, and  
8 any testing performed, if obtained by the claimant.

9 (c) Each individual claimant or class member shall comply  
10 with this chapter, which includes permitting inspection under  
11 section 672E-4 of each dwelling or premises that is the subject  
12 of the claim. No person shall be permitted to join a class  
13 action brought under this chapter unless that person has first  
14 complied with the requirements of this chapter.

15 ~~[(b)]~~ (d) A contractor served with a written notice of  
16 claim shall serve any other appropriate subcontractor with  
17 notice of the claim. The contractor's notice shall include the  
18 claimant's written notice of claim.

19 ~~[(c)]~~ (e) After serving the notice of claim, a claimant  
20 shall give to the contractor reasonable prior notice and an  
21 opportunity to observe if any testing is done."



1       SECTION 4. Section 672E-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       **"§672E-4 Rejection of claim; opportunity to repair**

4 **construction defect.** (a) The contractor rejects a claimant's  
5 claim of construction defects by:

6       (1) Serving the claimant with a written rejection of the  
7 claim; or

8       (2) Failing to respond pursuant to subsection (b)(1) or  
9 (b)(2), to the notice of claim within thirty days  
10 after service.

11       (b) The contractor, within thirty days after service of  
12 the notice of claim, shall serve the claimant and any other  
13 contractor that has received the notice of claim with a written  
14 response to the alleged construction defect that:

15       (1) Offers to settle without inspecting the construction  
16 defect by:

17               (A) Monetary payment;

18               (B) Making repairs; or

19               (C) Both subparagraphs (A) and (B); or

20       (2) Proposes to inspect the premises of the alleged  
21 construction defect that is the subject of the claim.



1 (c) Within thirty days following any proposal for  
2 inspection under subsection (b)(2), the claimant shall [~~provide~~  
3 ~~access to:~~] accept a contractor's proposal to inspect. After  
4 accepting the contractor's proposal to inspect, the claimant and  
5 contractor shall agree on a time and date for the inspection,  
6 which shall occur within thirty days of the claimant's  
7 acceptance of the contractor's proposal to inspect, unless the  
8 claimant and contractor agree to a later date. The claimant  
9 shall provide reasonable access to the dwelling or premises  
10 during normal working hours to:

11 (1) Inspect the premises;

12 (2) Document any alleged construction defects; and

13 (3) Perform any testing required to evaluate the nature,  
14 extent, and cause of the asserted construction defect,  
15 and the nature and extent of any repair or replacement  
16 that may be necessary to remedy the asserted  
17 construction defect;

18 provided that if the claimant is an association under chapter  
19 514B, the claimant shall have forty-five days to provide [~~such~~]  
20 access. If access to an individual condominium unit is  
21 necessary, and the association is unable to obtain [~~such~~]



1 access, then the association shall have a reasonable time to  
2 provide access. If destructive testing is required, the  
3 contractor shall give advance notice of tests and return the  
4 premises to its pre-testing condition. If inspection or testing  
5 reveals a condition that requires additional testing to fully  
6 and completely evaluate the nature, cause, and extent of the  
7 construction defect, the contractor shall provide notice to the  
8 claimant of the need for additional testing. The claimant shall  
9 provide additional access to the dwellings or premises. If a  
10 claim is asserted on behalf of owners of multiple dwellings, or  
11 multiple owners of units within a multi-family complex, the  
12 contractor shall be entitled to inspect each of the dwellings or  
13 units.

14 (d) Within fourteen days following the inspection and  
15 testing, the contractor shall serve on the claimant a written:

16 (1) Offer to fully or partially remedy the construction  
17 defect at no cost to the claimant. [~~Such~~] The offer  
18 shall include a description of construction necessary  
19 to remedy the construction defect and a timetable for  
20 the completion of the additional construction;

21 (2) Offer to settle the claim by monetary payment;



1           (3) Offer for a combination of repairs and monetary  
2           payment; or

3           (4) Statement that the contractor will not proceed further  
4           to remedy the construction defect.

5           (e) Upon receipt of the offer made under subsection  
6           (b)(1), (d)(1), (d)(2), or (d)(3), the claimant, within thirty  
7           or forty-five days, whichever applies pursuant to section  
8           672E-5(a), may accept the offer and authorize the contractor to  
9           proceed with any repairs offered under subsection (b)(1),  
10          (d)(1), or (d)(3), or deny the offer.

11          (f) Any offer of settlement under this section shall  
12          reference this section, and shall state that a claimant's  
13          failure to respond with a written notice of acceptance or  
14          rejection within thirty or forty-five days, whichever applies  
15          pursuant to section 672E-5(a), shall mean that the offer is  
16          rejected. Failure to serve a written offer or statement under  
17          this section shall be deemed a statement that the contractor  
18          will not proceed further."

19          SECTION 5. Statutory material to be repealed is bracketed  
20          and stricken. New statutory material is underscored.

21





# S.B. NO. 1650

1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:

*Karl Rhoads*



# S.B. NO. 1650

**Report Title:**

Contractor Repair Act; Notice of Claim; Inspection; Repair;  
Statute of Repose; Limitations on Recovery

**Description:**

Clarifies the statute of repose to make it clear that the statute applies to contract, tort, and statutory claims. Clarifies the required contents of a notice of claim of construction defect served on a contractor. Requires the claimant to provide actual evidence of the nature and cause of the construction defect and extent of necessary repairs, along with the notice of claim. Amends the process and time frame for a claimant to accept a contractor's proposal to inspect and authorize the contractor to proceed with repairs.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

