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# A BILL FOR AN ACT

RELATING TO THE CONTRACTOR REPAIR ACT.

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

1           SECTION 1. The legislature finds that the rising costs of  
2 insurance contribute substantially to the soaring costs of  
3 housing in Hawaii. Developers or improvers of real property are  
4 required to insure against deficiencies of improvements, while  
5 costs of insurance are passed on to the purchasers of that real  
6 property, which significantly drives up costs. Higher insurance  
7 costs have resulted from the unrestricted filing of construction  
8 defect claims filed by purchasers of real property. Developers  
9 or improvers of real property have received legal complaints  
10 seeking to recover damages without first being provided the  
11 opportunity to inspect or remedy potential defects.

12           Therefore, the purpose of this Act is to:

- 13           (1) Expand the required contents of a notice of claim of  
14           construction defect served on a contractor;
- 15           (2) Require the claimant to provide actual evidence of the  
16           nature and cause of the construction defect and extent  
17           of necessary repairs along with the notice of claim;



1 (3) Amend the process and time frame for a claimant to  
2 accept a contractor's offer to settle or inspect and  
3 authorize the contractor to proceed with repairs; and

4 (4) Limit the amount a claimant can recover if the  
5 claimant unreasonably rejects a contractor's proposal  
6 to inspect or an offer to remedy.

7 SECTION 2. Section 672E-3, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[+]§672E-3[+] **Notice of claim of construction defect.**

10 (a) A claimant, no later than ninety days before filing an  
11 action against a contractor, shall serve the contractor with a  
12 written notice of claim. The notice of claim shall [~~describe~~]:

13 (1) State that the claimant asserts a claim against the  
14 contractor for a construction defect in the design,  
15 construction, or remodeling of a dwelling or premises;  
16 and

17 (2) Describe the claim, with particularity, specificity,  
18 and in detail [and include the results of any testing  
19 done.] sufficient to determine the circumstances  
20 constituting the alleged construction defect and  
21 damages resulting from the construction defect. A



1           general statement that a construction defect may exist  
2           shall be insufficient.

3 The notice of claim shall not constitute a claim under any  
4 applicable insurance policy and shall not give rise to a duty of  
5 any insurer to provide a defense under any applicable insurance  
6 policy unless and until the process set forth in section 672E-5  
7 is completed. Nothing in this chapter shall in any way  
8 interfere with or alter the rights and obligations of the  
9 parties under any liability policy.

10           (b) The claimant shall provide to the contractor, with the  
11 notice of claim, actual evidence that depicts the nature and  
12 cause of the construction defect and the nature and extent of  
13 the repairs necessary to repair the defect, including but not  
14 limited to expert reports, photographs, videotapes, and any  
15 testing done.

16           (c) Each individual claimant or class member shall comply  
17 with this chapter, which includes permitting inspection under  
18 section 672E-4 of each dwelling or premises that is the subject  
19 of the claim.

20           ~~(b)~~ (d) A contractor served with a written notice of  
21 claim shall serve any other appropriate subcontractor with



1 notice of the claim. The contractor's notice shall include the  
2 claimant's written notice of claim.

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

6 SECTION 3. Section 672E-4, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§672E-4 Rejection of claim; opportunity to repair**  
9 **construction defect.** (a) The contractor rejects a claimant's  
10 claim of construction defects by:

11 (1) Serving the claimant with a written rejection of the  
12 claim; or

13 (2) Failing to respond pursuant to subsection (b)(1) or  
14 (b)(2) [~~r~~] to the notice of claim within thirty days  
15 after service.

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

20 (1) Offers to settle without inspecting the construction  
21 defect by:



- 1 (A) Monetary payment;
- 2 (B) Making repairs; or
- 3 (C) Both subparagraphs (A) and (B); or
- 4 (2) Proposes to inspect the premises of the alleged
- 5 construction defect that is the subject of the claim.
- 6 (c) ~~[Within thirty days following any proposal for~~
- 7 ~~inspection under subsection (b) (2), the claimant shall provide~~
- 8 ~~access to:] The claimant shall accept a contractor's proposal~~
- 9 to inspect under subsection (b) (2) and notify the contractor of
- 10 that acceptance within fourteen days. After accepting the
- 11 contractor's proposal to inspect, the claimant and contractor
- 12 shall agree on a time and date for the inspection, which shall
- 13 occur within thirty days of the claimant's acceptance of the
- 14 contractor's proposal to inspect, unless the claimant and
- 15 contractor agree to a later date. The claimant shall provide
- 16 reasonable access to the dwelling or premises during normal
- 17 working hours to:
- 18 (1) Inspect the premises;
- 19 (2) Document any alleged construction defects; and
- 20 (3) Perform any testing required to evaluate the nature,
- 21 extent, and cause of the asserted construction defect,



1           and the nature and extent of any repair or replacement  
2           that may be necessary to remedy the asserted  
3           construction defect;  
4 provided that if the claimant is an association under chapter  
5 514B, the claimant shall have forty-five days to provide [~~such~~]  
6 access. If access to an individual condominium unit is  
7 necessary, and the association is unable to obtain [~~such~~]  
8 access, then the association shall have a reasonable time to  
9 provide access. If destructive testing is required, the  
10 contractor shall give advance notice of tests and return the  
11 premises to its pre-testing condition. If inspection or testing  
12 reveals a condition that requires additional testing to fully  
13 and completely evaluate the nature, cause, and extent of the  
14 construction defect, the contractor shall provide notice to the  
15 claimant of the need for additional testing. The claimant shall  
16 provide additional access to the dwellings or premises. If a  
17 claim is asserted on behalf of owners of multiple dwellings, or  
18 multiple owners of units within a multi-family complex, the  
19 contractor shall be entitled to inspect each of the dwellings or  
20 units.



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

3 (1) Offer to fully or partially remedy the construction  
4 defect at no cost to the claimant. [~~Such~~] The offer  
5 shall include a description of construction necessary  
6 to remedy the construction defect and a timetable for  
7 the completion of the additional construction;

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

9 (3) Offer for a combination of repairs and monetary  
10 payment; or

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

13 (e) Upon receipt of the offer made under subsection  
14 (b) (1), (d) (1), (d) (2), or (d) (3), the claimant, within thirty  
15 or forty-five days, whichever applies pursuant to section 672E-  
16 5(a), may accept the offer and authorize the contractor to  
17 proceed with any repairs offered under subsection (b)1, (d) (1),  
18 or (d) (3) or deny the offer.

19 (f) If a claimant unreasonably rejects a proposal to  
20 inspect made under subsection (b) (2), or unreasonably rejects an  
21 offer under subsection (b) (1), (d) (1), (d) (2), or (d) (3), the



1 claimant's recovery shall be limited to the total value of the  
2 offer, calculated based on the reasonable value of the repair  
3 determined as of the date of the offer and the amount of the  
4 offered monetary payment.

5 (g) If a claimant unreasonably rejects a contractor's  
6 proposal to inspect under subsection (b) (2), or unreasonably  
7 rejects an offer under subsection (b) (1), (d) (1), (d) (2), or  
8 (d) (3), the court shall deny the claimant an award of attorney  
9 fees and costs even if the claimant is determined to be the  
10 prevailing party, and the contractor shall be entitled to an  
11 award of attorney fees and costs incurred following the date of  
12 the offer.

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





1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Contractor Repair Act; Notice of Claim; Inspection; Repair;  
Rejection of Claims; Limitations on Recovery

**Description:**

Expands 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. Limits the amount a claimant can recover if the claimant unreasonably rejects a contractor's proposal to inspect or an offer to remedy. Effective 7/1/3000. (HD1)

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

