

JAN 19 2024

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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 ensuring the  
2           accountability of contractors results in quality work. The  
3           legislature further finds that the Contractor Repair Act,  
4           chapter 672E, Hawaii Revised Statutes, provides claimants and  
5           construction professionals with a mechanism to resolve  
6           construction disputes that reduces the need for litigation while  
7           preserving the claimants' rights. The legislature also finds  
8           that claimants may exploit this mechanism for their own benefit  
9           at the expense of contractors.

10           The purpose of this Act is to:

- 11           (1) Provide a timeframe for a claimant to accept a  
12           contractor's proposal to inspect an alleged  
13           construction defect;
- 14           (2) Provide a timeframe for a claimant and contractor to  
15           agree to the date of the inspection;
- 16           (3) Provide a timeframe for a claimant to accept a  
17           contractor's offer to repair or settle; and



1 (4) Limit the remedies for a claimant who unreasonably  
2 rejects a contractor's proposal to inspect or offer to  
3 repair or settle, or both.

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

6 **"§672E-4 Rejection of claim; opportunity to repair**  
7 **construction defect.** (a) The contractor rejects a claimant's  
8 claim of construction defects by:

- 9 (1) Serving the claimant with a written rejection of the  
10 claim; or  
11 (2) Failing to respond pursuant to subsection (b)(1) or  
12 (b)(2), to the notice of claim within thirty days  
13 after service.

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

- 18 (1) Offers to settle without inspecting the construction  
19 defect by:  
20 (A) Monetary payment;  
21 (B) Making repairs; or



1 (C) Both subparagraphs (A) and (B); or  
2 (2) Proposes to inspect the premises of the alleged  
3 construction defect that is the subject of the claim.

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

- 16 (1) Inspect the premises;  
17 (2) Document any alleged construction defects; and  
18 (3) Perform any testing required to evaluate the nature,  
19 extent, and cause of the asserted construction defect,  
20 and the nature and extent of any repair or replacement



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



- 1           (1) Offer to fully or partially remedy the construction  
2           defect at no cost to the claimant. [~~Such~~] The offer  
3           shall include a description of construction necessary  
4           to remedy the construction defect and a timetable for  
5           the completion of the additional construction;
- 6           (2) Offer to settle the claim by monetary payment;
- 7           (3) Offer for a combination of repairs and monetary  
8           payment; or
- 9           (4) Statement that the contractor will not proceed further  
10          to remedy the construction defect.
- 11          (e) Upon receipt of the offer made under subsections  
12          (b) (1), (d) (1), (d) (2), or (d) (3), the claimant shall, within  
13          thirty or forty-five days, whichever applies pursuant to section  
14          672E-5(a), accept the offer and authorize the contractor to  
15          proceed with any repairs offered under subsections (b) (1),  
16          (d) (1), or (d) (3).
- 17          (f) If a claimant unreasonably rejects the contractor's  
18          proposal to inspect made under subsection (b) (2), or  
19          unreasonably rejects an offer made under subsections (b) (1),  
20          (d) (1), (d) (2), or (d) (3), the claimant shall not recover any  
21          amount that exceeds the total value of the offer, calculated



1 based on the reasonable value of the repair determined as of the  
2 date of the offer, the amount of the offered monetary payment,  
3 or both.

4 Any offer of settlement under this section shall reference  
5 this section and shall state that a claimant's failure to  
6 respond with a written notice of acceptance or rejection within  
7 thirty or forty-five days, whichever applies pursuant to section  
8 672E-5(a), shall mean that the offer is rejected[-] and the  
9 claimant is subject to the limitations in subsection (f).  
10 Failure to serve a written offer or statement under this section  
11 shall be deemed a statement that the contractor will not proceed  
12 further."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16 INTRODUCED BY: 



# S.B. NO. 2340

**Report Title:**

Construction Defect; Inspection; Offer to Repair; Housing;  
Contractors

**Description:**

Provides a timeframe for a claimant to accept a contractor's proposal to inspect an alleged construction defect. Provides a timeframe for a claimant and contractor to agree to the date of the inspection. Provides a timeframe for a claimant to accept a contractor's offer to repair or settle. Limits the remedies for a claimant who unreasonably rejects a contractor's proposal to inspect or offer to repair or settle, or both.

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

