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# A BILL FOR AN ACT

RELATING TO REMEDIES.

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

1 SECTION 1. Section 657-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§657-8 Limitation of action for damages based on**  
4 **construction to improve real property.** (a) No action, whether  
5 in contract, tort, statute, or otherwise, to recover damages for  
6 any injury to property, real or personal, or for bodily injury  
7 or wrongful death, arising out of any deficiency or neglect in  
8 the planning, design, construction, supervision and  
9 administering of construction, and observation of construction  
10 relating to an improvement to real property shall be commenced  
11 ~~[more than two years after the cause of action has accrued, but~~  
12 ~~in any event not]~~ no more than ten years after the date of  
13 completion of the improvement~~[-]~~, subject to the statute of  
14 repose provisions under this chapter.

15 (b) This section shall not apply to actions for damages  
16 against owners or other persons having an interest in the real  
17 property or improvement based on their negligent conduct in the



1 repair or maintenance of the improvement or to actions for  
2 damages against surveyors for their own errors in boundary  
3 surveys. ~~[The term "improvement" as used in this section shall  
4 have the same meaning as in section 507-41 and the phrase "date  
5 of completion" as used in this section shall mean the time when  
6 there has been substantial completion of the improvement or the  
7 improvement has been abandoned. The filing of an affidavit of  
8 publication and notice of completion with the circuit court  
9 where the property is situated in compliance with section 507-  
10 43(f) shall be prima facie evidence of the date of completion.]~~

11 An improvement shall be deemed substantially complete upon the  
12 earliest of the following:

- 13 (1) The issuance of a certificate of occupancy; or  
14 (2) The filing of an affidavit of publication and notice  
15 of completion within the circuit court of the judicial  
16 circuit where the property is situated in compliance  
17 with section 507-43(f).

18 If the improvement consists of multiple buildings or  
19 improvements, each building or improvement shall be considered  
20 as a separate improvement for purposes of determining the  
21 limitations period set forth in this section.



1        (c) This section shall not be construed to prevent, limit,  
2 or extend any shorter period of limitation applicable to  
3 sureties provided for in any contract or bond or any other  
4 statute, nor to extend or add to the liability of any surety  
5 beyond that for which the surety agreed to be liable by contract  
6 or bond.

7        [~~e~~] (d) Nothing in this section shall exclude or limit  
8 the liability provisions as set forth in the products liability  
9 laws.

10       (e) No action, whether in contract, tort, statute, or  
11 otherwise, based on a violation of the applicable building code  
12 shall be commenced unless the violation is a material violation  
13 of the applicable building code.

14       (f) For purposes of this section:

15       "Date of completion" means the time when there has been  
16 substantial completion of the improvement or the improvement has  
17 been abandoned.

18       "Improvement" has the same meaning as in section 507-41.

19       "Material violation" means a building code violation that  
20 exists within a completed building, structure, or facility that  
21 may reasonably result or has resulted in physical harm to a



1 person or significant damage to the performance of a building or  
2 its systems."

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

5 "[+]§672E-3[+] **Notice of claim of construction defect.**

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

9 (1) State that the claimant asserts a claim against the  
10 contractor for a construction defect in the design,  
11 construction, or remodeling, or any combination  
12 thereof, of a dwelling or premises; and

13 (2) Describe the claim [~~in detail and include the results~~  
14 of any testing done.] with particularity and  
15 specificity sufficient to determine the circumstances  
16 constituting the alleged construction defect. A  
17 general statement that a construction defect may exist  
18 shall be insufficient.

19 The notice of claim shall not constitute a claim under any  
20 applicable insurance policy and shall not give rise to a duty of  
21 any insurer to provide a defense under any applicable insurance



1 policy unless and until the process set forth in section 672E-5  
2 is completed. Nothing in this chapter shall in any way  
3 interfere with or alter the rights and obligations of the  
4 parties under any liability policy.

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

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

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



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

4        SECTION 3. 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)~~] (2) to the notice of claim within thirty
- 13            days 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[+] inspect the premises. The claimant and contractor  
7 shall agree on a time and date for the inspection, which shall  
8 occur within thirty days of the claimant's acceptance of the  
9 contractor's proposal for inspection, unless the claimant and  
10 contractor agree to a later date. The claimant shall provide  
11 reasonable access to the dwelling or premises during normal  
12 working hours to:

- 13 (1) Inspect the premises;  
14 (2) Document any alleged construction defects; and  
15 (3) Perform any testing required to evaluate the nature,  
16 extent, and cause of the asserted construction defect,  
17 and the nature and extent of any repair or replacement  
18 that may be necessary to remedy the asserted  
19 construction defect;

20 provided that if the claimant is an association under chapter  
21 514B, the claimant shall have forty-five days to provide [~~such~~]



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

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

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



1 to remedy the construction defect and a timetable for  
2 the completion of the additional construction;

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

4 (3) Offer for a combination of repairs and monetary  
5 payment; or

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

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

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

18 "[~~§~~§672E-6[~~§~~] Offer of settlement. (a) Any time after  
19 the service of the notice of claim, any party may serve an offer  
20 of settlement.



1        (b) If the offer is accepted, the parties shall be deemed  
2 to have resolved the claim in whole or in part pursuant to the  
3 offer.

4        (c) An offer not accepted within the time period required  
5 under section 672E-5, or ten days after service for any  
6 subsequent offers, shall be deemed withdrawn and evidence  
7 thereof ~~[is]~~ shall not be admissible except to determine  
8 entitlement to recovery of attorneys' fees and costs ~~[. If the~~  
9 ~~judgment or award obtained in a subsequent proceeding is not~~  
10 ~~more favorable than the offer, the offeror shall pay the costs~~  
11 ~~incurred by the offeror after the making of the offer. The fact~~  
12 ~~that an offer is made and not accepted does not preclude a~~  
13 ~~subsequent offer.]~~ and reasonableness of the contractor's offer  
14 of settlement in subsection (d).

15        (d) If a claimant rejects a contractor's reasonable offer  
16 of settlement, the claimant's cost of repair recovery shall be  
17 limited to the reasonable value of the repair determined as of  
18 the date of the offer and the amount of the offered monetary  
19 payment. Any additional damages caused by the alleged  
20 construction defect shall not be limited by this section."



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 3000.



**Report Title:**

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

**Description:**

Clarifies the applicability of the statute of repose for actions arising from construction defects. Repeals the two-year limitation for actions arising from construction defects. Clarifies the required contents of a notice of claim of construction defect served on a contractor. Specifies that claimants must comply with the Contractor Repair Act and bars persons from joining a class for failure to comply with the Contractor Repair Act. Amends the process and time frame for a claimant to accept a contractor's offer to settle or inspect. Limits the amount a claimant can recover if the claimant rejects a contractor's reasonable proposal for inspection or a reasonable offer to remedy. Clarifies the consequences of rejecting an offer of settlement. Effective 7/1/3000. (HD3)

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

