

STAND. COM. REP. NO.

1162

Honolulu, Hawaii

**FEB 28**, 2025

RE: H.B. No. 420  
H.D. 3

Honorable Nadine K. Nakamura  
Speaker, House of Representatives  
Thirty-Third State Legislature  
Regular Session of 2025  
State of Hawaii

Madame:

Your Committee on Judiciary & Hawaiian Affairs, to which was referred H.B. No. 420, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO REMEDIES,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Clarify the applicability of the statute of repose for actions arising from construction defects;
- (2) Specify that a plaintiff's failure to plead with particularity the claim of fraudulent concealment, if the plaintiff raises the defense, subjects the plaintiff to liability for the costs incurred by the defendant, contents of a notice of claim of construction defect served on a contractor;
- (3) Clarify the required contents of a contractor's offer to settle or inspect and authorize the contractor to proceed with repairs;
- (4) Limit the amount a claimant can recover if the claimant rejects a contractor's reasonable proposal for inspection or a reasonable offer to remedy; and



- (5) Clarify the consequences of rejecting an offer of settlement.

Your Committee received testimony in support of this measure from the Gentry Homes, Ltd.; Hawaii Laborers & Employers Cooperation and Education Trust; Hawai'i Regional Council of Carpenters; Honolulu Fire Protection; Bruce Matson Company, Inc.; Hawaii Operating Engineers Industry Stabilization Fund Political Action Committee; Z Contractors, Inc.; Hawai'i Association of REALTORS; Mutual Housing Association of Hawai'i, Inc.; Paradigm Construction LLC; Newport Pacific Cabinets, Inc.; Tru-Door Hawaii; General Contractors Association of Hawaii; Young Democrats of Hawai'i; Case Lombardi A Law Corporation; Hawaiiana Management Company, Ltd.; Royal Contracting Co. Ltd.; Vinyl Tech and Masonry, Inc.; Hawaii Fence Builders; Holomua Collaborative; Island Flooring; Housing Hawai'i's Future; Commercial Sheetmetal Co. Inc.; Pacific Resource Partnership; D.R. Horton Hawaii; Plumbing & Mechanical Contractors Association of Hawaii; Chamber of Commerce Hawaii; Hawai'i Construction Alliance; Building Industry Association of Hawaii; International Union of Operating Engineers Local 3 District 17; Hawai'i YIMBY; Kapolei Chamber of Commerce; and numerous individuals.

Your Committee received testimony in opposition to this measure from LippSmith LLP; Kasdan Turner Thomson Booth, LLLC; Law Offices of Philip S. Nerney, LLLC; and one individual.

Your Committee finds that the original intent of the Contractor Repair Act was to create a cooperative process between builders and homeowners, allowing defects to be identified and repaired without immediately resorting to lawsuits. However, existing law has led to an increase in litigation that discourages builders from undertaking new housing projects. This measure will help protect the State's workers and jobs and protect homeowners by ensuring timely repairs.

Your Committee has amended this measure by:

- (1) Deleting language establishing a two-year period of limitation for initiating actions after the cause of action has accrued for damages arising out of any deficiency or neglect in construction, while clarifying the remaining limitation is subject to the existing statute of repose provisions;



- (2) Deleting the issuance of a temporary certificate of occupancy from the points in time that determines whether an improvement is substantially complete;
- (3) Deleting language that awarded defendants costs incurred when a plaintiff invokes the doctrine of fraudulent concealment to toll the limitation and the plaintiff fails to plead with particularity the claim of fraudulent concealment;
- (4) Clarifying the definition of "material violation" by:
  - (A) Including building code violations that may reasonably result in physical harm; and
  - (B) Deleting the proviso that specified when conduct is not a material violation;
- (5) Specifying, for purposes of a notice of claim of construction defect, that the claimant describe the claim with particularity and specificity sufficient to determine the circumstances without need for describing damages;
- (6) Clarifying that the claimant need only provide evidence of the defect, rather than actual evidence, and deleting expert reports from the specified evidence;
- (7) Clarifying that the Contractor Repair Act applies to putative class members;
- (8) Specifying that no person may join a class action under the Contractor Repair Act unless the person has complied with the Contractor Repair Act;
- (9) Clarifying that a claimant shall provide access to inspect the premises within thirty days of a contractor's proposal to inspect;
- (10) Repealing language that awarded costs to an offerer if a judgment or award obtained in a subsequent proceeding was not more favorable than the offer;



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- (11) Specifying that any additional damage caused by the alleged construction defect is not limited by an offer of settlement; and
- (12) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 420, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 420, H.D. 3.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary &  
Hawaiian Affairs,



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DAVID A. TARNAS, Chair



*HSR 1162*

**Record of Votes of the Committee on Judiciary & Hawaiian Affairs**

<b>Bill/Resolution No.:</b> <i>HB 420 HD2</i>	<b>Committee Referral:</b> <i>HJG, CPC, JHA</i>	<b>Date:</b> <i>02/26/2025</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JHA Members	Ayes	Ayes (WR)	Nays	Excused
1. TARNAS, David A. (C)	✓			
2. POEPOE, Mahina (VC)	✓			
3. BELATTI, Della Au		✓		
4. COCHRAN, Elle				✓
5. HASHEM, Mark J.	✓			
6. KAHALOA, Kirstin				✓
7. PERRUSO, Amy A.		✓		
8. TAKAYAMA, Gregg	✓			
9. TODD, Chris	✓			
10. GARCIA, Diamond		✓		
11. SHIMIZU, Garner M.		✓		
<b>TOTAL (11)</b>	<i>5</i>	<i>4</i>	<i>0</i>	<i>2</i>
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
<b>Vice Chair's or designee's signature:</b> <i>[Signature]</i>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO				