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# A BILL FOR AN ACT

RELATING TO CONSTRUCTION.

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

1 SECTION 1. 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;



1 (B) Making repairs; or

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

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

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

16 (1) [~~Inspect~~] Inspection of the premises;

17 (2) [~~Document~~] Documentation of any alleged construction  
18 defects; and

19 (3) [~~Perform~~] Performance of any testing required to  
20 evaluate the nature, extent, and cause of the asserted  
21 construction defect, and the nature and extent of any



1 repair or replacement that may be necessary to remedy  
2 the asserted construction defect;  
3 provided that if the claimant is an association under  
4 chapter 514B, the claimant shall have forty-five days to provide  
5 ~~[such]~~ access. If access to ~~[an]~~ individual condominium ~~[unit]~~  
6 units is necessary, and the association is unable to obtain  
7 ~~[such]~~ access, then the association shall have a reasonable time  
8 to 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 or premises. If a  
16 claim is asserted on behalf of owners of multiple dwellings, or  
17 multiple owners of units within a multi-family complex, the  
18 contractor shall be entitled to inspect each of the dwellings or  
19 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. [~~Sueh~~] 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 an offer made under subsection (b) (1),  
12 (d) (1), (d) (2), or (d) (3), and within thirty or forty-five days,  
13 whichever applies pursuant to section 672E-5(a), the claimant  
14 may accept the offer and authorize the contractor to proceed  
15 with any repairs offered under subsection (b) (1), (d) (1), or  
16 (d) (3).
- 17 (f) If a claimant unreasonably rejects a proposal to  
18 inspect made under subsection (b) (2), or unreasonably rejects an  
19 offer under subsection (b) (1), (d) (1), (d) (2), or (d) (3), the  
20 claimant shall not recover an amount that exceeds the total  
21 value of the offer, calculated based on the reasonable value of



1 the repair, determined as of the date of the offer or the amount  
2 of the offered monetary payment, or both.

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

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



1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2040.



**Report Title:**

Housing; Construction Defects; Claims; Resolution Process

**Description:**

Revises the construction defect claims process. Takes effect 7/1/2040. (SD1)

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

