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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]~~ more than ten years after the date of  
13 completion of the improvement.

14       (b) This section shall not be construed to extend any  
15 shorter period of limitation under chapter 657, including the  
16 six-year statute of limitations under section 657-1 or the  
17 two-year statute of limitations for damages to persons or



1 property under section 657-7, as applicable, subject to the  
2 ten-year statute of repose under subsection (a).

3 ~~[(b)]~~ (c) This section shall not apply to actions for  
4 damages against owners or other persons having an interest in  
5 the real property or improvement based on their negligent  
6 conduct in the repair or maintenance of the improvement or to  
7 actions for damages against surveyors for their own errors in  
8 boundary surveys. ~~[The term "improvement" as used in this~~  
9 ~~section shall have the same meaning as in section 507-41 and the~~  
10 ~~phrase "date of completion" as used in this section shall mean~~  
11 ~~the time when there has been substantial completion of the~~  
12 ~~improvement or the improvement has been abandoned. The filing~~  
13 ~~of an affidavit of publication and notice of completion with the~~  
14 ~~circuit court where the property is situated in compliance with~~  
15 ~~section 507-43(f) shall be prima facie evidence of the date of~~  
16 ~~completion.]~~ An improvement shall be deemed substantially  
17 complete upon the earliest of the following:

18 (1) The issuance of a certificate of occupancy; or

19 (2) The filing of an affidavit of publication and notice

20 of completion within the circuit court of the judicial



1 circuit where the property is situated in compliance  
2 with section 507-43(f).

3 If the improvement consists of multiple buildings or  
4 improvements, each building or improvement shall be considered  
5 as a separate improvement for the purpose of determining the  
6 limitations period set forth in this section.

7 (d) This section shall not be construed to prevent, limit,  
8 or extend any shorter period of limitation applicable to  
9 sureties provided for in any contract or bond or any other  
10 statute, nor to extend or add to the liability of any surety  
11 beyond that for which the surety agreed to be liable by contract  
12 or bond.

13 ~~[+e)]~~ (e) Nothing in this section shall exclude or limit  
14 the liability provisions as set forth in the products liability  
15 laws.

16 (f) For the purposes of this section:

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

20 "Improvement" has the same meaning as defined in section  
21 507-41."



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

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

(a) A claimant, no later than ninety days before filing an action against a contractor, shall serve the contractor with a written notice of claim. The notice of claim shall ~~[describe the claim in detail and include the results of any testing done.]~~:

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

(2) Describe the claim in detail sufficient to determine the circumstances constituting the alleged construction defect and damages resulting from the construction defect. The description shall specifically identify the alleged defect or problem; provided that a general statement that a construction defect may exist shall be insufficient.

The notice of claim shall not constitute a claim under any applicable insurance policy and shall not give rise to a duty of



1 any insurer to provide a defense under any applicable insurance  
2 policy unless and until the process [~~set forth~~] described in  
3 section 672E-5 is completed. Nothing in this chapter shall in  
4 any way interfere with or alter the rights and obligations of  
5 the parties under any liability policy.

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

12 [~~(b)~~] (c) A contractor served with a written notice of  
13 claim shall serve any other appropriate subcontractor with  
14 notice of the claim. The contractor's notice shall include the  
15 claimant's written notice of claim.

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

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



1       "§672E-4 Rejection of claim; opportunity to repair  
2 construction defect. (a) The contractor rejects a claimant's  
3 claim of construction defects by:

4       (1) Serving the claimant with a written rejection of the  
5 claim; or

6       (2) Failing to respond pursuant to subsection (b)(1) or  
7 ~~[(b)(2),]~~ (2) to the notice of claim within thirty  
8 days after service.

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

13       (1) Offers to settle without inspecting the construction  
14 defect by:

15           (A) Monetary payment;

16           (B) Making repairs; or

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

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

20       (c) Within thirty days following any proposal for  
21 inspection under subsection (b)(2), the claimant shall ~~provide~~



1 ~~access to:]~~ accept a contractor's proposal to inspect. After  
2 accepting the contractor's proposal to inspect, the claimant and  
3 contractor shall agree on a time and date for the inspection,  
4 which shall occur within thirty days of the claimant's  
5 acceptance of the contractor's proposal to inspect, unless the  
6 claimant and contractor agree to a later date. The claimant  
7 shall provide reasonable access to the dwelling or premises  
8 during normal working hours to:

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

16 provided that if the claimant is an association under chapter  
17 514B, the claimant shall have forty-five days to provide [~~such~~]  
18 access. If access to an individual condominium unit is  
19 necessary, and the association is unable to obtain [~~such~~]  
20 access, then the association shall have a reasonable time to  
21 provide access. If destructive testing is required, the



1 contractor shall give advance notice of tests and return the  
2 premises to its pre-testing condition. If inspection or testing  
3 reveals a condition that requires additional testing to fully  
4 and completely evaluate the nature, cause, and extent of the  
5 construction defect, the contractor shall provide notice to the  
6 claimant of the need for additional testing. The claimant shall  
7 provide additional access to the dwelling or premises. If a  
8 claim is asserted on behalf of owners of multiple dwellings, or  
9 multiple owners of units within a multi-family complex, the  
10 contractor shall be entitled to inspect each of the dwellings or  
11 units.

12 (d) Inspections and testing performed pursuant to this  
13 section shall be completed within nine months of the  
14 contractor's request to inspect, unless the parties agree or the  
15 court orders otherwise.

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

- 19 (1) Offer to fully or partially remedy the construction  
20 defect at no cost to the claimant. ~~[Such]~~ The offer  
21 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 (f) Upon receipt of the offer made under subsection  
9 (b)(1), (e)(1), (e)(2), or (e)(3), the claimant, within thirty  
10 or forty-five days, whichever applies pursuant to section  
11 672E-5(a), may accept the offer and authorize the contractor to  
12 proceed with any repairs offered under subsection (b)(1),  
13 (e)(1), or (e)(3), or deny the offer.

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



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

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

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

(c) An offer not accepted within the time period required under section 672E-5, or ten days after service for any subsequent offers, shall be deemed withdrawn and evidence thereof [~~is~~] shall not be admissible except to determine entitlement to recovery of costs. If the judgment or award obtained in a subsequent proceeding is not more favorable than the offer, the offeree shall pay the costs incurred by the offeror after the making of the offer. The fact that an offer is made and not accepted does not preclude a subsequent offer."

SECTION 5. Section 672E-7, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~672E-7] Mediation. (a) If the parties are unable to resolve the claim pursuant to section 672E-5 or 672E-6, all



1 parties shall attempt to resolve the dispute through mediation,  
2 even if mediation is not otherwise ordered or mandated by  
3 contract or by law[-]; provided that the parties shall not be  
4 required to attempt to resolve the dispute through mediation  
5 more than once.

6 (b) Mediation shall be completed within twelve months of  
7 the filing of the notice of the claim, unless the parties agree  
8 or the court orders otherwise."

9 SECTION 6. Section 672E-8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§672E-8[+] Statute of limitations on actions  
12 exception. If an applicable statute of limitation or repose  
13 would preclude an action after the notice of claim has been  
14 served but before the dispute is resolved under this chapter,  
15 the claimant may file an action against the contractor but the  
16 action shall be immediately stayed pending the contractor's  
17 opportunity to repair under section 672E-4, or submission of the  
18 dispute to mediation under section 672E-7[-]; provided that no  
19 action shall be filed pursuant to this section more than six  
20 months before the end of the applicable limitation or repose  
21 period. This section shall not be construed to revive a



1 statutory period of limitations on actions that have expired  
2 prior to the date on which a claimant's written notice of claim  
3 is served. After the sending of the initial notice of claim, a  
4 claimant and a contractor, by written mutual agreement, may  
5 alter the procedure for the notice of claim under this section."

6 SECTION 7. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 8. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 9. 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; Construction Defect;  
Mediation; Statute of Limitations

**Description:**

Clarifies the applicability of the statute of repose to apply to contract, tort, and statutory claims. Clarifies the required contents of a notice of claim of a construction defect served on a contractor. Clarifies the process and time frame by which a claimant may accept or reject a contractor's offer to settle and authorize repairs. Clarifies the mediation process for construction defect claims. Clarifies the statute of limitation or response for construction defect claims. Effective 7/1/3000. (SD2)

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

