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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. The legislature finds that Hawaii is in a major  
2 housing crisis, which continues to worsen, and has been further  
3 exacerbated by the impacts of the August 2023 Maui wildfires.  
4 Residents of Hawaii face the highest housing costs in the nation  
5 and the median single-family home and condominium prices have  
6 more than tripled since the 1990s. A substantial contributing  
7 factor to the high cost of housing is the cost of anticipated  
8 litigation and insurance requirements necessary to protect  
9 against future claims, which disincentivizes the construction of  
10 homes. Developers or improvers of real property are required to  
11 insure against deficiencies of improvements. The proliferation  
12 of construction defect litigation results in increased housing  
13 prices directly, through passed-on insurance costs, and  
14 indirectly, through lower levels of housing supply. This has  
15 been exacerbated in recent years with the practice of filing  
16 unrestricted construction defect complaints, which can be filed  
17 with no identified defect, and complaints that do not allow a



1 developer or improver of real property to inspect or remedy  
2 potential defects. This results in settlements that often do  
3 not benefit the homeowner, higher insurance costs, and lower  
4 housing production.

5 The legislature finds that the current language contained  
6 in the Contractor Repair Act and the statute of repose have  
7 failed in their purpose to assist the parties in the early  
8 resolution of claims and provide a clear framework for  
9 resolution of construction defect claims. The lack of clarity  
10 has also reduced the effectiveness of these laws by making it  
11 more difficult for all parties to resolve construction defect  
12 disputes fairly, resulting in inconsistent rulings and  
13 prolonging the dispute-resolution process.

14 Therefore, the purpose of this Act is to:

- 15 (1) Clarify the applicability of the statute of repose for  
16 actions arising from construction defects;
- 17 (2) Specify that a plaintiff's failure to plead with  
18 particularity the claim of fraudulent concealment, if  
19 the plaintiff raises the defense, subjects the  
20 plaintiff to liability for costs incurred by the  
21 defendant;



- 1 (3) Clarify the required contents of a notice of claim of  
2 construction defect served on a contractor;
- 3 (4) Amend the process and time frame for a claimant to  
4 accept a contractor's offer to settle or inspect and  
5 authorize the contractor to proceed with repairs;
- 6 (5) Limit the amount a claimant can recover if the  
7 claimant rejects a contractor's reasonable proposal  
8 for inspection or a reasonable offer to remedy; and
- 9 (6) Clarify the consequences of rejecting an offer of  
10 settlement.

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

13 **"§657-8 Limitation of action for damages based on**  
14 **construction to improve real property.** (a) No action, whether  
15 in contract, tort, statute, or otherwise, to recover damages for  
16 any injury to property, real or personal, or for bodily injury  
17 or wrongful death, arising out of any deficiency or neglect in  
18 the planning, design, construction, supervision and  
19 administering of construction, and observation of construction  
20 relating to an improvement to real property shall be commenced  
21 more than two years after the cause of action has accrued, but



1 in any event [~~not~~] no more than ten years after the date of  
2 completion of the improvement.

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

7        (c) 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)~~ (d) Nothing in this section shall exclude or limit  
14 the liability provisions as set forth in the products liability  
15 laws.

16        (e) If a plaintiff invokes the doctrine of fraudulent  
17 concealment to toll the limitation under subsection (a) and the  
18 plaintiff fails to plead with particularity the claim of  
19 fraudulent concealment, then the plaintiff shall be liable for  
20 the costs incurred by the defendant, including attorneys' fees  
21 and costs directly related to responding to the pleading.



1       (f) No action, whether in contract, tort, statute, or  
2 otherwise, based on a violation of the applicable building code  
3 shall be commenced unless the violation is a material violation  
4 of the applicable building code.

5       (g) For purposes of this section:

6       "Date of completion" means the time when there has been  
7 substantial completion of the improvement or the improvement has  
8 been abandoned.

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

10       "Material violation" means a building code violation that  
11 exists within a completed building, structure, or facility that  
12 has resulted in physical harm to a person or significant damage  
13 to the performance of a building or its systems; provided that,  
14 without limiting the foregoing, it shall not be deemed a  
15 "material violation" of an applicable building code if:

16       (1) The person or party that is alleged to have violated  
17 the building code obtained the required building  
18 permits;

19       (2) The local government or public agency with authority  
20 to enforce the building code approved the plans;



- 1       (3) The construction project passes all required
- 2       inspections under the code; and
- 3       (4) There is no personal injury or damage to property
- 4       other than the property that is the subject of the
- 5       permits, plans, and inspections, unless the person or
- 6       party knew or should have known that the material
- 7       violation existed during construction."

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

10       "~~§~~**672E-3** **Notice of claim of construction defect.**

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

14       (1) State that the claimant asserts a claim against the  
 15       contractor for a construction defect in the design,  
 16       construction, or remodeling of a dwelling or premises;  
 17       and

18       (2) Describe the claim, with particularity, specificity,  
 19       and in detail ~~[and include the results of any testing~~  
 20       ~~done.]~~ sufficient to determine the circumstances  
 21       constituting the alleged construction defect and



1 damages resulting from the construction defect. A  
2 general statement that a construction defect may exist  
3 shall be insufficient.

4 The notice of claim shall not constitute a claim under any  
5 applicable insurance policy and shall not give rise to a duty of  
6 any insurer to provide a defense under any applicable insurance  
7 policy unless and until the process set forth in section 672E-5  
8 is completed. Nothing in this chapter shall in any way  
9 interfere with or alter the rights and obligations of the  
10 parties under any liability policy.

11 (b) If available to the claimant, the claimant shall  
12 provide to the contractor, with the notice of claim, actual  
13 evidence that depicts the nature and cause of the construction  
14 defect and the nature and extent of the repairs necessary to  
15 repair the defect, including the following information if  
16 obtained by the claimant: expert reports, photographs,  
17 videotapes, and any testing performed.

18 (c) Each individual claimant or class member shall comply  
19 with this chapter, which includes permitting inspection under  
20 section 672E-4 of each dwelling or premises that is the subject  
21 of the claim.



1        [~~(b)~~] (d) A contractor served with a written notice of  
2 claim shall serve any other appropriate subcontractor with  
3 notice of the claim. The contractor's notice shall include the  
4 claimant's written notice of claim.

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

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

10        **"§672E-4 Rejection of claim; opportunity to repair**

11 **construction defect.** (a) The contractor rejects a claimant's  
12 claim of construction defects by:

13        (1) Serving the claimant with a written rejection of the  
14 claim; or

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

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



- 1 (1) Offers to settle without inspecting the construction  
2 defect by:
- 3 (A) Monetary payment;
- 4 (B) Making repairs; or
- 5 (C) Both subparagraphs (A) and (B); or
- 6 (2) Proposes to inspect the premises of the alleged  
7 construction defect that is the subject of the claim.
- 8 (c) Within thirty days following any proposal for  
9 inspection under subsection (b) (2), [~~the claimant shall provide~~  
10 ~~access to:~~] the claimant shall accept a contractor's proposal.  
11 After accepting the contractor's proposal for inspection, the  
12 claimant and contractor shall agree on a time and date for the  
13 inspection, which shall occur within thirty days of the  
14 claimant's acceptance of the contractor's proposal for  
15 inspection, unless the claimant and contractor agree to a later  
16 date. The claimant shall provide reasonable access to the  
17 dwelling or premises during normal working hours to:
- 18 (1) Inspect the premises;
- 19 (2) Document any alleged construction defects; and
- 20 (3) Perform any testing required to evaluate the nature,  
21 extent, and cause of the asserted construction defect,



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



- 1 (d) Within fourteen days following the inspection and  
2 testing, the contractor shall serve on the claimant a written:
- 3 (1) Offer to fully or partially remedy the construction  
4 defect at no cost to the claimant. [~~Such~~] The offer  
5 shall include a description of construction necessary  
6 to remedy the construction defect and a timetable for  
7 the completion of the additional construction;
- 8 (2) Offer to settle the claim by monetary payment;
- 9 (3) Offer for a combination of repairs and monetary  
10 payment; or
- 11 (4) Statement that the contractor will not proceed further  
12 to remedy the construction defect.
- 13 (e) Any offer of settlement under this section shall  
14 reference this section, and shall state that a claimant's  
15 failure to respond with a written notice of acceptance or  
16 rejection within thirty or forty-five days, whichever applies  
17 pursuant to section 672E-5(a), shall mean that the offer is  
18 rejected. Failure to serve a written offer or statement under  
19 this section shall be deemed a statement that the contractor  
20 will not proceed further."



1 SECTION 5. Section 672E-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~†~~]**§672E-6**[~~†~~] **Offer of settlement.** (a) Any time after  
4 the service of the notice of claim, any party may serve an offer  
5 of settlement.

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

9 (c) An offer not accepted within the time period required  
10 under section 672E-5, or ten days after service for any  
11 subsequent offers, shall be deemed withdrawn and evidence  
12 thereof is not admissible except to determine entitlement to  
13 recovery of attorneys' fees and costs[~~-~~] and reasonableness of  
14 the contractor's offer 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.

20 (e) If the judgment or award obtained in a subsequent  
21 proceeding is not more favorable than the offer[~~7~~] of



1 settlement, the offeree shall pay the costs incurred by the  
2 offeror after the making of the offer[-] and the offeree shall  
3 not be entitled to recover attorneys' fees and costs incurred  
4 after the offer was made. The fact that an offer is made and  
5 not accepted does not preclude a subsequent offer."

6 SECTION 6. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect on July 1, 3000.



**Report Title:**

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

**Description:**

Clarifies the applicability of the statute of repose for actions arising from construction defects. Specifies 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, including attorneys' fees and costs. Clarifies the required contents of a notice of claim of construction defect served on a contractor. Amends the process and time frame for a claimant to accept a contractor's offer to settle or inspect and authorize the contractor to proceed with repairs. 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. (HD2)

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

