

# House Study Bill 200

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON PAULSEN)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act creating an alternative dispute resolution process in  
2 residential construction defect cases and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1930YC 81  
5 rh/gg/14

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1 1 Section 1. NEW SECTION. 657B.1 DEFINITIONS.  
1 2 1. "Action" means any civil lawsuit, judicial action, or  
1 3 arbitration proceeding asserting a claim, in whole or in part,  
1 4 for damages or other relief in connection with a dwelling,  
1 5 caused by an alleged construction defect.  
1 6 2. "Association" means a nonprofit or other organization  
1 7 comprised of property owners in a subdivision or a group of  
1 8 subdivisions whose purpose is to represent the mutual  
1 9 interests of the property owners regarding the construction,  
1 10 protection, and maintenance of the commonly owned or used  
1 11 property and improvements.  
1 12 3. "Claimant" means a person who asserts a claim  
1 13 concerning a construction defect.  
1 14 4. "Construction defect" has the meaning assigned by a  
1 15 written, express warranty either provided by the contractor or  
1 16 required by applicable statutory law. If no written, express  
1 17 warranty or applicable statutory warranty provides a  
1 18 definition, then "construction defect" means a matter  
1 19 concerning the design, construction, or repair of a dwelling,  
1 20 of an alteration of or repair or addition to an existing  
1 21 dwelling, or of an appurtenance to a dwelling, on which a  
1 22 person has a complaint against a contractor. "Construction  
1 23 defect" may include any physical damage to the dwelling, any  
1 24 appurtenance, or the real property on which the dwelling or  
1 25 appurtenance is affixed, proximately caused by a construction  
1 26 defect.  
1 27 5. "Contractor" means any person, firm, partnership,  
1 28 corporation, association, or other entity that is engaged in  
1 29 the business of designing, developing, constructing, or  
1 30 selling dwellings, or the alteration of or addition to  
1 31 existing dwellings, repair of new or existing dwellings, or  
1 32 construction, sale, alteration, addition, or repair of  
1 33 appurtenances to new or existing dwellings. "Contractor"  
1 34 includes all of the following:  
1 35 a. An owner, officer, director, shareholder, partner, or  
2 1 employee of the contractor.  
2 2 b. A subcontractor or supplier of labor and materials used  
2 3 by the contractor in a dwelling.  
2 4 c. A risk retention group registered under applicable law,  
2 5 if any, that insures all or any part of the contractor's  
2 6 liability for the cost to repair a construction defect.  
2 7 6. "Dwelling" means a single-family house, duplex, or  
2 8 multifamily unit designed for residential use and shall  
2 9 include common areas and improvements that are owned or  
2 10 maintained by an association or by members of an association.  
2 11 "Dwelling" includes the systems, other components,  
2 12 improvements, other structures, or recreational facilities  
2 13 that are appurtenant to the house, duplex, or multifamily unit  
2 14 at the time of its initial sale, but are not necessarily a  
2 15 part of the house, duplex, or multifamily unit.  
2 16 7. "Serve" or "service" means delivery by registered  
2 17 certified mail, return receipt requested, to the last known  
2 18 address of the addressee. For a corporation, limited

2 19 partnership, limited liability company, or other registered  
2 20 business organization, it means service on the registered  
2 21 agent or other agent for service of process authorized by the  
2 22 laws of this state.

2 23 Sec. 2. NEW SECTION. 657B.2 NOTICE AND OPPORTUNITY TO  
2 24 REPAIR.

2 25 1. In an action subject to this chapter, the claimant  
2 26 shall, no later than sixty days before initiating an action  
2 27 against a contractor, provide service of written notice of the  
2 28 claim against the contractor to the contractor. The notice of  
2 29 claim shall state that the claimant asserts a construction  
2 30 defect claim and is providing notice of the claim pursuant to  
2 31 the requirements of this chapter. The notice of claim shall  
2 32 describe the claim or claims in detail sufficient to explain  
2 33 the nature of the alleged construction defects and the results  
2 34 of the defects. In addition, the claimant shall provide to  
2 35 the contractor any evidence that depicts the nature and cause  
3 1 of the construction defect including expert reports,  
3 2 photographs, and videotapes, if that evidence would be  
3 3 discoverable under this state's evidentiary rules. If, after  
3 4 proper request, the claimant fails to provide such evidence,  
3 5 then the claimant shall not be permitted to introduce any such  
3 6 evidence not produced into evidence in any action.

3 7 2. Within thirty days after service of the notice of the  
3 8 claim by the claimant required in subsection 1, a contractor  
3 9 that has received the notice of claim may serve on the  
3 10 claimant, and on any other contractor that has received the  
3 11 notice of claim, a written response to the claim, which does  
3 12 either of the following:

3 13 a. Offers to settle the claim by monetary payment, the  
3 14 making of repairs, or a combination of both, without  
3 15 inspection.

3 16 b. Proposes to inspect the dwelling that is the subject of  
3 17 the claim.

3 18 3. If the contractor wholly rejects the claim and will  
3 19 neither remedy the alleged construction defect nor settle the  
3 20 claim, or does not respond to the claimant's notice of claim  
3 21 within the time period stated in subsection 2, the claimant  
3 22 may bring an action against the contractor for the claims  
3 23 described in the notice of claim without further notice except  
3 24 as otherwise provided by applicable law.

3 25 4. If the claimant rejects a settlement offer made by the  
3 26 contractor pursuant to subsection 2, the claimant shall  
3 27 provide written notice of the claimant's rejection to the  
3 28 contractor and, if represented by legal counsel, the  
3 29 contractor's attorney. The notice shall include the specific  
3 30 factual and, if known, legal reasons for the claimant's  
3 31 rejection of the contractor's proposal or offer. If the  
3 32 claimant believes that the settlement offer either omits  
3 33 reference to any portion of the claim or was unreasonable in  
3 34 any manner, the claimant shall in the claimant's written  
3 35 notice include those items that the claimant believes were  
4 1 omitted and set forth in detail all reasons why the claimant  
4 2 believes the settlement offer is unreasonable. In any  
4 3 subsequent action where the claimant asserts that the  
4 4 settlement offer was unreasonable, the claimant shall not  
4 5 raise any reasons that were not included in the claimant's  
4 6 original response to the contractor.

4 7 5. a. If a proposal for inspection is made pursuant to  
4 8 subsection 2, the claimant shall, within thirty days of  
4 9 receiving the contractor's proposal, provide the contractor  
4 10 and the contractor's subcontractors, agents, experts, and  
4 11 consultants prompt and complete access to the dwelling to  
4 12 inspect the dwelling, document any alleged construction  
4 13 defects, and perform any destructive or nondestructive testing  
4 14 required to fully and completely evaluate the nature, extent,  
4 15 and cause of the claimed defects and the nature and extent of  
4 16 any repairs or replacements that may be necessary to remedy  
4 17 the alleged defects.

4 18 b. If destructive testing is required, the contractor  
4 19 shall give the claimant advance notice of such tests and  
4 20 shall, after completion of the testing, return the dwelling to  
4 21 its pretesting condition. If any inspection or testing  
4 22 reveals a condition that requires additional testing to allow  
4 23 the contractor to fully and completely evaluate the nature,  
4 24 cause, and extent of the construction defect, the contractor  
4 25 shall provide notice to the claimant of the need for such  
4 26 additional testing and the claimant shall provide access as  
4 27 set forth in this section. If a claim is asserted on behalf  
4 28 of owners of multiple dwellings, or multiple owners of units  
4 29 within a multifamily complex, then the contractor shall be

4 30 entitled to inspect each of the dwellings or units.  
4 31 6. Within fourteen days following completion of the  
4 32 inspection and testing set forth in subsection 5, the  
4 33 contractor may serve on the claimant any of the following:  
4 34 a. A written offer to fully or partially remedy the  
4 35 construction defect at no cost to the claimant. Such offer  
5 1 shall include a description of any additional construction  
5 2 necessary to remedy the defect described in the claim, and an  
5 3 anticipated timetable for the completion of such construction.  
5 4 b. A written offer to settle the claim by monetary  
5 5 payment.  
5 6 c. A written offer including a combination of repairs and  
5 7 monetary payment.  
5 8 d. A written statement that the contractor will not  
5 9 proceed further to remedy the defect.  
5 10 7. If the claimant accepts a contractor's offer made  
5 11 pursuant to subsection 6, paragraph "a", "b", or "c", and the  
5 12 contractor does not proceed to make the monetary payment or  
5 13 remedy the construction defect within the agreed upon  
5 14 timetable, the claimant may bring an action against the  
5 15 contractor for the claim described in the notice of claim  
5 16 without further notice except as otherwise provided by  
5 17 applicable law. In such a situation, the claimant may also  
5 18 file the contractor's offer and the claimant's acceptance, and  
5 19 such offer and acceptance shall create a rebuttable  
5 20 presumption that a binding and valid settlement agreement has  
5 21 been created and should be enforced by the court arbitrator.  
5 22 8. If the claimant receives a written statement that the  
5 23 contractor will not proceed further to remedy the defect  
5 24 pursuant to subsection 6, paragraph "d", the claimant may  
5 25 bring an action against the contractor for the claim described  
5 26 in the notice of claim without further notice except as  
5 27 otherwise provided by applicable law.  
5 28 9. If the claimant rejects an offer made by the contractor  
5 29 to remedy the construction defect or to settle the claim by  
5 30 monetary payment or a combination of each pursuant to  
5 31 subsection 6, the claimant shall serve written notice of the  
5 32 claimant's rejection on the contractor. The notice shall  
5 33 include the specific factual and, if known, legal reasons for  
5 34 the claimant's rejection of the contractor's offer. If the  
5 35 claimant believes the contractor's settlement offer is  
6 1 unreasonable, the claimant shall set forth in detail all  
6 2 reasons why the claimant believes the settlement offer is  
6 3 unreasonable. In any subsequent action where the claimant  
6 4 asserts that the settlement offer was unreasonable, the  
6 5 claimant shall not raise any reasons that were not included in  
6 6 the claimant's original response to the contractor.  
6 7 10. Upon receipt of the claimant's rejection and the  
6 8 reasons for such rejection, the contractor may, within fifteen  
6 9 days of receiving the rejection, make a supplemental offer to  
6 10 remedy the defect or a monetary payment to the claimant or a  
6 11 combination of each.  
6 12 11. If the claimant rejects the supplemental offer made by  
6 13 the contractor to remedy the construction defect or to settle  
6 14 the claim by monetary payment or a combination of each, the  
6 15 claimant shall serve written notice of the claimant's  
6 16 rejection on the contractor. The notice shall include the  
6 17 specific factual and, if known, legal reasons for the  
6 18 claimant's rejection of the contractor's supplemental  
6 19 settlement offer. If the claimant believes the contractor's  
6 20 supplemental settlement offer is unreasonable, the claimant  
6 21 shall set forth in detail all of the reasons why the claimant  
6 22 believes the supplemental settlement offer is unreasonable.  
6 23 In any subsequent action where the claimant asserts that the  
6 24 supplemental settlement offer was unreasonable, the claimant  
6 25 shall not raise any reasons that were not included in the  
6 26 claimant's original response to the contractor.  
6 27 12. a. If the claimant rejects a reasonable offer  
6 28 including any reasonable supplemental offer made, as provided  
6 29 in this chapter, or does not permit the contractor to repair  
6 30 the construction defect pursuant to an accepted offer of  
6 31 settlement, the claimant shall not recover an amount in excess  
6 32 of either of the following:  
6 33 (1) The fair market value of the offer of settlement, or  
6 34 the actual cost of the repairs to be made, whichever is less.  
6 35 (2) The amount of the monetary offer of settlement.  
7 1 b. For purposes of this subsection, the trier of fact  
7 2 shall determine the reasonableness of an offer of settlement  
7 3 made pursuant to this section. If the claimant has rejected a  
7 4 reasonable offer, including any reasonable supplemental offer,  
7 5 and any other law allows the claimant to recover costs and

7 6 attorney fees, then the claimant shall not recover costs or  
7 7 attorney fees incurred after the date of the claimant's  
7 8 rejection.

7 9 13. A claimant accepting the offer of the contractor to  
7 10 remedy a construction defect shall do so by serving the  
7 11 contractor with a written notice of acceptance within a  
7 12 reasonable period of time after receipt of the contractor's  
7 13 settlement offer, but no later than thirty days after receipt  
7 14 of the offer. If no response is served upon the contractor  
7 15 within the thirty-day period, then the offer shall be deemed  
7 16 accepted.

7 17 14. If a claimant accepts a contractor's offer to repair a  
7 18 construction defect described in a notice of claim, the  
7 19 claimant shall provide the contractor and the contractor's  
7 20 subcontractors, agents, experts, and consultants prompt and  
7 21 open access to the dwelling to perform and complete the  
7 22 construction by the time period stated in the settlement  
7 23 offer.

7 24 15. If, during the pendency of the notice, inspection,  
7 25 offer, acceptance, or repair process, an applicable limitation  
7 26 period would otherwise expire, the claimant may file an action  
7 27 against the contractor, but such action shall be immediately  
7 28 abated pending completion of the notice of claim process  
7 29 described in this section. This subsection shall not be  
7 30 construed to do either of the following:

7 31 a. Revive a statute of limitations period that has expired  
7 32 prior to the date on which a claimant's written notice of  
7 33 claim is served.

7 34 b. Extend any applicable statute of repose.

7 35 16. After sending the initial notice of claim, a claimant  
8 1 and a contractor may, by written mutual agreement, alter the  
8 2 procedure for the notice of claim process described in this  
8 3 section.

8 4 17. In an action relating to a dwelling involving a  
8 5 construction defect, a contractor shall not be liable for  
8 6 damages involving or caused by any of the following:

8 7 a. Normal shrinkage due to drying or settlement of  
8 8 construction components within the tolerance of building  
8 9 standards.

8 10 b. The contractor's reliance on written information  
8 11 relating to the dwelling that was obtained from official  
8 12 government records or provided by a governmental entity.

8 13 c. A construction defect known by or disclosed to a  
8 14 claimant in writing before the claimant's purchase of the  
8 15 dwelling.

8 16 d. If the claimant is not the original owner of the  
8 17 dwelling, any construction defect known by the claimant or  
8 18 that could have been discovered by the claimant through the  
8 19 exercise of reasonable diligence prior to the claimant's  
8 20 purchase of the dwelling.

8 21 e. Refusal of a person to allow the contractor or the  
8 22 contractor's agents to perform warranty service work.

8 23 Sec. 3. NEW SECTION. 657B.3 ADDITIONAL CONSTRUCTION  
8 24 DEFECTS == ADDITIONAL NOTICE AND OPPORTUNITY TO REPAIR  
8 25 REQUIRED.

8 26 A construction defect that is discovered after a claimant  
8 27 has provided a contractor with the initial notice of claim  
8 28 described in section 657B.2 may not be alleged in an action  
8 29 until the claimant has given the contractor who performed the  
8 30 original construction both of the following:

8 31 1. Written notice of a claim regarding the alleged defect  
8 32 as required by section 657B.2.

8 33 2. An opportunity to resolve the notice of the claim in  
8 34 the manner provided in section 657B.2.

8 35 Sec. 4. NEW SECTION. 657B.4 RELEASE == INSURANCE.

9 1 If a claimant accepts an offer made in compliance with this  
9 2 chapter and the contractor fulfills the offer in compliance  
9 3 with this chapter, the claimant shall thereafter be barred  
9 4 from bringing an action for the claim described in the notice  
9 5 of claim and the contractor shall be deemed, for insurance  
9 6 purposes, to have been legally obligated to make the repairs  
9 7 as if the claimant had recovered a judgment against the  
9 8 contractor in the amount of the cost of repairs or the amount  
9 9 of the monetary payment or both.

9 10 Sec. 5. NEW SECTION. 657B.5 CONTRACT OF SALE.

9 11 1. Upon entering into a contract for sale, construction,  
9 12 or improvement of a dwelling, a contractor shall provide  
9 13 notice to the owner or potential owner of the dwelling of the  
9 14 contractor's right to resolve alleged construction defects  
9 15 before a claimant may commence litigation against the  
9 16 contractor. Such notice shall be conspicuous and may be

9 17 included as part of the contract.

9 18 2. The notice required by this section shall be in  
9 19 substantially the following form:

9 20 IOWA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW  
9 21 BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE  
9 22 CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, ALTERED,  
9 23 OR REPAIRED YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR  
9 24 LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A  
9 25 WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE  
9 26 DEFECTIVE. UNDER THE LAW, A CONTRACTOR MUST HAVE THE  
9 27 OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS,  
9 28 OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A  
9 29 CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER  
9 30 STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY  
9 31 TO FILE A LAWSUIT OR OTHER ACTION.

9 32 Sec. 6. NEW SECTION. 657B.6 ACTIONS OF ASSOCIATIONS.

9 33 1. A person shall not provide or offer to provide anything  
9 34 of value, directly or indirectly, to a property manager of an  
9 35 association to induce the property manager of an association  
10 1 or to a member or officer of an association to induce the  
10 2 property manager, member, or officer to encourage or  
10 3 discourage the association to file a claim for damages arising  
10 4 from a construction defect.

10 5 2. A property manager retained by an association shall not  
10 6 accept anything of value, directly or indirectly, in exchange  
10 7 for encouraging or discouraging the association that the  
10 8 property manager manages to file a claim for damages arising  
10 9 from a construction defect.

10 10 3. A member or officer of an association shall not accept  
10 11 anything of value, directly or indirectly, in exchange for  
10 12 encouraging or discouraging the association of which a member  
10 13 or officer is a member to file a claim for damages arising  
10 14 from a construction defect.

10 15 4. A person who knowingly violates subsection 1, 2, or 3  
10 16 is guilty of a serious misdemeanor.

10 17 5. An association may bring an action against a contractor  
10 18 to recover damages resulting from construction defects in any  
10 19 of the common elements or limited common elements of the  
10 20 common-interest community only. Such action may be brought  
10 21 only after all of the following conditions are met:

10 22 a. The association first obtains the written approval of  
10 23 each unit's owner whose interest in the common elements or  
10 24 limited common elements will be the subject of the action.

10 25 b. A vote of the units' owners to which at least a  
10 26 majority of the votes of the members of the association are  
10 27 allocated. In such a case, the association shall provide  
10 28 written notice to each owner of each unit of the meeting at  
10 29 which the commencement of an action is to be considered or  
10 30 action is to be taken at least twenty-one calendar days before  
10 31 the meeting.

10 32 c. The full board of directors of the association and the  
10 33 contractor have met in person and conferred in a good faith  
10 34 attempt to resolve the association's claim, or the contractor  
10 35 has definitively declined or ignored the requests to meet with  
11 1 the board of directors of the association.

11 2 d. The association has otherwise satisfied all of the  
11 3 requirements for a claimant to commence an action as set forth  
11 4 in this chapter.

11 5 6. At least three business days in advance of any vote to  
11 6 commence an action by an association to recover damages  
11 7 resulting from construction defects in any of the common  
11 8 elements or limited common elements of the common-interest  
11 9 community, the attorney representing the association shall  
11 10 provide to each unit's owner a written statement that  
11 11 includes, in reasonable detail, all of the following:

11 12 a. The defects and damages or injuries to the common  
11 13 elements or limited common elements.

11 14 b. The cause of the defects, if the cause is known.

11 15 c. The nature and the extent that is known of the damage  
11 16 or injury resulting from the defects.

11 17 d. The location of each defect within the common elements  
11 18 or limited common elements, if known.

11 19 e. A reasonable estimate of the cost of the action or  
11 20 mediation, including reasonable attorney fees and costs,  
11 21 expert fees, and the cost of testing.

11 22 f. All disclosures that the unit owner is required to make  
11 23 upon the sale of the unit.

11 24 7. An association or an attorney for an association shall  
11 25 not employ a person to perform destructive tests to determine  
11 26 any damage or injury to a unit, common element, or limited  
11 27 common element caused by a construction defect unless all of

11 28 the following conditions are met:

11 29 a. The person is licensed as a contractor pursuant to  
11 30 applicable local law.

11 31 b. The association has obtained the prior written approval  
11 32 of each unit's owner whose unit or interest in the common  
11 33 element or limited common element will be affected by such  
11 34 testing.

11 35 c. The person performing the tests has provided a written  
12 1 schedule for repairs.

12 2 d. The person performing the tests is required to repair  
12 3 all damage resulting from such tests in accordance with state  
12 4 law and local ordinances.

12 5 e. The association or the person so employed obtains all  
12 6 permits required to conduct such tests and to repair any  
12 7 damage resulting from such tests.

12 8 f. Reasonable prior notice and opportunity to observe the  
12 9 tests is given to the contractor against whom an action may be  
12 10 brought as a result of the tests.

12 11 8. The board of directors of an association may, without  
12 12 giving notice to the units' owners, employ a contractor and  
12 13 such other persons as are necessary to make such immediate  
12 14 repairs to a unit or common element within the common-interest  
12 15 community as are required to protect the health, safety, and  
12 16 welfare of the units' owners.

12 17 Sec. 7. NEW SECTION. 657B.7 ACTION == DISMISSAL WITHOUT  
12 18 PREJUDICE.

12 19 If a claimant files an action without first complying with  
12 20 the requirements of this chapter, on application by a party to  
12 21 the action, the court or arbitrator shall dismiss the action,  
12 22 without prejudice, and the action may not be refiled or  
12 23 resumed until the claimant has complied with the requirements  
12 24 of this chapter. To the extent that the action includes a  
12 25 cause of action for damages due to personal injury or death,  
12 26 such cause of action shall not be subject to dismissal  
12 27 pursuant to this section.

12 28 Sec. 8. NEW SECTION. 657B.8 CAUSE OF ACTION ==  
12 29 APPLICABILITY.

12 30 1. This chapter does not create a cause of action on  
12 31 behalf of a claimant or contractor.

12 32 2. This chapter does not apply to a contractor's right to  
12 33 seek contribution, indemnity, or recovery against a  
12 34 subcontractor, supplier, or design professional for any claim  
12 35 made against a contractor by a claimant.

13 1 3. This chapter shall apply to all actions commenced after  
13 2 the effective date of this Act regardless of the date of sale  
13 3 or substantial completion of the dwelling at issue in the  
13 4 action.

#### 13 5 EXPLANATION

13 6 This bill creates an alternative dispute resolution process  
13 7 in residential construction defect cases and provides a  
13 8 penalty.

13 9 The bill requires a claimant to provide written notice to a  
13 10 contractor responsible for a construction defect in or around  
13 11 the claimant's dwelling before initiating a lawsuit against  
13 12 the contractor allowing the contractor the opportunity to  
13 13 offer to repair the defect or reach a monetary settlement, or  
13 14 both, with the claimant. After service of the notice, a  
13 15 contractor may serve on the claimant a written response either  
13 16 offering to settle the case or offering to inspect the  
13 17 dwelling that is the subject of the claim. If the contractor  
13 18 rejects the claim and refuses to either remedy the defect or  
13 19 settle the claim, or does not respond to the claim within the  
13 20 30-day period, the claimant may file a lawsuit against the  
13 21 contractor.

13 22 The bill provides that if the claimant rejects the  
13 23 contractor's settlement offer, the claimant shall provide  
13 24 written notice of the rejection and the reasons in support of  
13 25 the rejection. If a contractor requests an inspection, the  
13 26 claimant shall provide access to the dwelling for inspection  
13 27 and testing purposes. Following completion of the inspection  
13 28 and testing, the contractor shall serve the claimant with an  
13 29 offer to remedy the defect, settle the claim monetarily, or a  
13 30 combination of both, or provide a written statement that the  
13 31 contractor will not proceed further to remedy the defect. If  
13 32 the contractor offers to remedy the defect or settle the claim  
13 33 monetarily and fails to do so, the claimant may bring a  
13 34 lawsuit against the contractor. In addition, the claimant may  
13 35 also file the contractor's offer and the claimant's  
14 1 acceptance, and such offer and acceptance shall create a  
14 2 rebuttable presumption that a binding and valid settlement  
14 3 agreement has been created and should be enforced by the court

14 4 or arbitrator.

14 5 The bill further provides that if the claimant rejects the  
14 6 offer made by the contractor, the claimant shall serve written  
14 7 notice upon the contractor. The notice shall state the  
14 8 specific reasons in support of the claimant's rejection. Upon  
14 9 receipt of the claimant's rejection, the contractor may make a  
14 10 supplemental offer of settlement or a monetary payment, and if  
14 11 the claimant rejects the supplemental offer of settlement or  
14 12 monetary payment, the claimant shall serve written notice upon  
14 13 the contractor setting forth the reasons for rejection. If a  
14 14 claimant rejects a reasonable offer, the claimant shall not  
14 15 recover an amount in excess of the fair market value of the  
14 16 offer of settlement or the actual cost of the repairs that  
14 17 were made, whichever is less. A claimant who rejects a  
14 18 reasonable offer shall not recover attorney fees incurred  
14 19 after the date of rejection.

14 20 The bill provides that a claimant accepting the  
14 21 contractor's offer to remedy a construction defect shall  
14 22 provide open access to the dwelling.

14 23 The bill provides that if, during the pendency of the  
14 24 notice, inspection, offer, acceptance, or repair process, an  
14 25 applicable statute of limitations period would otherwise  
14 26 expire, the claimant may bring an action against the  
14 27 contractor, but such action shall be immediately abated  
14 28 pending completion of the notice of claim process.

14 29 The bill provides that the notice of claim process may be  
14 30 amended by an agreement between the parties.

14 31 The bill provides that in an action relating to a dwelling  
14 32 involving a construction defect, a contractor shall not be  
14 33 liable for damages involving or caused by normal shrinkage due  
14 34 to drying or settling, the contractor's reliance on written  
14 35 information relating to the dwelling that was obtained from  
15 1 official government records or provided by a governmental  
15 2 entity, a construction defect known by or disclosed to a  
15 3 claimant in writing before the claimant's purchase of the  
15 4 dwelling, any construction defect known by the claimant or  
15 5 that could have been discovered by the claimant through the  
15 6 exercise of reasonable diligence prior to the claimant's  
15 7 purchase of the dwelling, or refusal to allow the contractor  
15 8 or the contractor's agents to perform warranty service work.

15 9 The bill provides that a construction defect that is  
15 10 discovered after a claimant has provided a contractor with the  
15 11 initial claim notice may not be alleged in an action until the  
15 12 claimant has given the contractor who performed the original  
15 13 construction both written notice and an opportunity to resolve  
15 14 the claim in the manner provided in this bill.

15 15 The bill provides that if a claimant accepts an offer made  
15 16 in compliance with this bill and the contractor fulfills the  
15 17 offer in compliance with this bill, the claimant shall  
15 18 thereafter be barred from bringing an action for the claim and  
15 19 the contractor shall be deemed, for insurance purposes, to  
15 20 have been legally obligated to make the repairs as if the  
15 21 claimant had recovered a judgment against the contractor in  
15 22 the amount of the cost of repairs or the amount of the  
15 23 monetary payment or both.

15 24 The bill provides that upon entering into a contract for  
15 25 the sale, construction, or improvement of a dwelling, the  
15 26 contractor shall provide notice to the owner of the dwelling  
15 27 of the contractor's right to resolve alleged construction  
15 28 defects before a claimant may commence litigation against the  
15 29 contractor.

15 30 The bill provides that it is a serious misdemeanor for a  
15 31 person to offer, or for a property manager, member, or officer  
15 32 of an association to accept anything of value to influence the  
15 33 association to file a claim for damages arising from a  
15 34 construction defect. A serious misdemeanor is punishable by  
15 35 confinement for no more than one year and a fine of at least  
16 1 \$250 but not more than \$1,500.

16 2 The bill provides that an association may bring a  
16 3 construction defect claim against a contractor to recover  
16 4 damages resulting from construction defects in any of the  
16 5 common elements or limited common elements of the common=  
16 6 interest community and contains requirements for assuring that  
16 7 any action taken by the association is taken on behalf of and  
16 8 with the informed consent of the association's members. The  
16 9 bill specifies certain written disclosures that shall be made  
16 10 by the association's attorney.

16 11 The bill provides that if a claimant files an action  
16 12 without first complying with the requirements of this bill,  
16 13 the court or arbitrator shall dismiss the action, without  
16 14 prejudice, and the action may not be refiled or resumed until

16 15 the claimant has complied with the requirements of this bill.  
16 16 The bill provides that this bill does not create a cause of  
16 17 action on behalf of a claimant or contractor and does not  
16 18 apply to a contractor's right to seek contribution, indemnity,  
16 19 or recovery against a subcontractor, supplier, or design  
16 20 professional for any claim made against a contractor by a  
16 21 claimant. The bill shall apply to all actions commenced after  
16 22 the effective date of the bill regardless of the date of sale  
16 23 or substantial completion of the dwelling at issue in the  
16 24 action.  
16 25 LSB 1930YC 81  
16 26 rh:nh/gg/14