

House File 678 - Introduced

HOUSE FILE 678
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 177)

A BILL FOR

1 An Act relating to notice and opportunity to repair
2 construction defects in new construction, and including
3 effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 686.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Action*" means any civil action or arbitration proceeding
5 for damages or indemnity asserting a claim for injury to
6 property, real or personal, arising out of the unsafe or
7 defective condition of an improvement to real property based on
8 tort, breach of contract, or express or implied warranty.

9 2. "*Association*" means an entity or homeowners association
10 created for the purposes of managing the operations of a
11 community as set forth in a declaration of covenants or
12 declaration of submission of property to horizontal property
13 regime filed of record in the county that the property is
14 located.

15 3. "*Claimant*" means a private owner, a subsequent private
16 owner, or an association, who asserts a claim in a class action
17 for damages against a general contractor or subcontractor
18 concerning a construction defect. "*Claimant*" shall not include
19 a public corporation as defined in section 573.1.

20 4. "*Construction defect*" means an alleged or actual unsafe
21 or defective condition of an improvement to real property.

22 5. "*General contractor*" means a person who does work or
23 furnishes materials by contract, express or implied, with an
24 owner.

25 6. "*Owner*" means the legal or equitable titleholder of
26 record to real property or the holder of a leasehold interest.

27 7. "*Serve*", "*served*", or "*service*" means delivery by
28 certified mail with a United States postal service record
29 of evidence of delivery or attempted delivery to the last
30 known address of the addressee, by hand delivery with written
31 evidence of delivery, or by delivery by any courier with
32 written evidence of delivery.

33 8. "*Subcontractor*" means a person furnishing material
34 or performing labor upon any building, erection, or other
35 improvement to land, except those having contracts directly

1 with the owner.

2 Sec. 2. NEW SECTION. **686.2 Action — compliance.**

3 1. A claimant shall not file an action without first
4 complying with the requirements of this chapter. If a claimant
5 files an action alleging a construction defect without first
6 complying with the requirements of this chapter, on timely
7 motion by a party to the action, the court shall stay the
8 action, without prejudice, and the action shall not proceed
9 until the claimant has complied with the requirements.

10 2. An action filed prior to the expiration of the
11 statute of limitations set forth in section 614.1, which is
12 stayed pursuant to this section and for which the statute of
13 limitations runs during the time the claimant is complying with
14 this statute, shall not be deemed barred by the applicable
15 statute of limitation for the pending action if the claimant
16 complies with the requirements of this chapter and the action
17 is otherwise allowed to proceed.

18 Sec. 3. NEW SECTION. **686.3 Notice and opportunity to**
19 **repair.**

20 1. Prior to commencing an action alleging a construction
21 defect, the claimant shall, at least one hundred twenty days
22 before filing an action, serve written notice of claim on the
23 general contractor and subcontractor. The notice of claim
24 shall refer to this chapter and must describe the claim in
25 reasonable detail sufficient to determine the general nature of
26 each alleged construction defect, a description of the damage
27 or loss resulting from the defect, if known, and any work or
28 inspections completed to determine the cause of the damage
29 or loss or correct the construction defect. This subsection
30 does not preclude a claimant from filing an action sooner than
31 one hundred twenty days, after service of written notice as
32 expressly provided in subsection 6, 7, or 8.

33 2. *a.* Within sixty days after service of the notice
34 of claim, the person served with the notice of claim under
35 subsection 1 is entitled to perform a reasonable inspection

1 of the property or of each unit subject to the claim to
2 assess each alleged construction defect. The claimant shall
3 provide the person served with notice under subsection 1 and
4 the person's general contractors, subcontractors, or agents
5 reasonable access to the property during normal working hours
6 to inspect the property to determine the nature and cause of
7 each alleged construction defect and the nature and extent
8 of any repairs or replacements necessary to remedy each
9 construction defect. The person served with notice under
10 subsection 1 shall reasonably coordinate the timing and manner
11 of any and all inspections with the claimant to minimize the
12 number of inspections. The inspection may include reasonable
13 destructive testing by mutual agreement under the following
14 terms and conditions:

15 (1) If the person served with notice under subsection 1
16 determines that destructive testing is necessary to determine
17 the nature and cause of the alleged construction defects, the
18 person shall notify the claimant in writing.

19 (2) The notice shall describe the destructive testing
20 to be performed, the person selected to do the testing, the
21 estimated anticipated damage and repairs to or restoration of
22 the property resulting from the testing, the estimated amount
23 of time necessary for the testing and to complete the repairs
24 or restoration, and the financial responsibility offered for
25 covering the costs of repairs or restoration.

26 (3) The testing shall be done at a mutually agreeable time.

27 (4) The claimant or a representative of the claimant may be
28 present to observe the destructive testing.

29 *b.* If the claimant refuses to agree and permit reasonable
30 destructive testing, the claimant shall have no claim for
31 damages which could have been avoided or mitigated had
32 destructive testing been allowed when requested and had a
33 feasible remedy been promptly implemented.

34 3. The general contractor or subcontractor may serve a
35 copy of the notice of claim to each subcontractor or general

1 contractor whom the general contractor or subcontractor
2 reasonably believes is responsible for a construction defect
3 specified in the notice of claim and shall note the specific
4 construction defect for which the subcontractor or general
5 contractor is alleged to be responsible. The notice described
6 in this subsection shall not be construed as an admission of
7 any kind. A general contractor or subcontractor may inspect
8 the property in the manner described in subsection 2.

9 4. Within thirty days after service of the notice of
10 claim pursuant to subsection 3, the general contractor or
11 subcontractor must serve a written response to the general
12 contractor or subcontractor who served the notice of claim.
13 The written response shall include a report, if any, of
14 the scope of any inspection of the property, the findings
15 and results of the inspection, a statement of whether the
16 subcontractor or general contractor is willing to make repairs
17 to the property or whether the claim is disputed, a description
18 of any repairs the subcontractor or general contractor is
19 willing to make to remedy the alleged construction defect, and
20 a timetable for the completion of the repairs. This response
21 may also be served on the initial claimant by the general
22 contractor or subcontractor.

23 5. Within seventy-five days after service of the notice of
24 claim, the person who was served the notice under subsection 1
25 shall serve a written response to the claimant. The response
26 shall be served to the attention of the person who signed the
27 notice of claim, unless otherwise designated in the notice
28 of claim. The written response must provide for one of the
29 following:

30 a. A written offer to remedy the alleged construction defect
31 at no cost to the claimant, a description of the proposed
32 repairs necessary to remedy the construction defect, and a
33 timetable for the completion of such repairs.

34 b. A written offer to compromise and settle the claim by
35 monetary payment, that will not obligate the person's insurer,

1 and a timetable for making payment.

2 *c.* A written offer to compromise and settle the claim by
3 a combination of repairs and monetary payment that will not
4 obligate the person's insurer, and which includes a detailed
5 description of the proposed repairs and a timetable for the
6 completion of such repairs and making payment.

7 *d.* A written statement that the person disputes the claim
8 and will not remedy the construction defect or compromise and
9 settle the claim.

10 *e.* A written statement that a monetary payment, including
11 insurance proceeds, if any, will be determined by the person's
12 insurer after notification to the insurer by means of serving
13 the claim, which service shall occur at the same time the
14 claimant is notified of this settlement option, which the
15 claimant may accept or reject. A written statement under this
16 paragraph may also include an offer under paragraph "*c*", but
17 such offer shall be contingent upon the claimant also accepting
18 the determination of the insurer whether to make any additional
19 monetary payment.

20 6. If the person served with a notice of claim pursuant
21 to subsection 1 disputes the claim and will neither remedy
22 the construction defect nor compromise and settle the claim,
23 or does not respond to the claimant's notice of claim within
24 the time provided in subsection 5, the claimant may, without
25 further notice, proceed with an action against that person for
26 the claim described in the notice of claim. Nothing in this
27 chapter shall be construed to preclude a partial settlement or
28 compromise of the claim as agreed to by the parties and, in
29 that event, the claimant may, without further notice, proceed
30 with an action on the unresolved portions of the claim.

31 7. A claimant who receives a timely settlement offer shall
32 accept or reject the offer by serving written notice of such
33 acceptance or rejection on the person making the offer within
34 forty-five days after receiving the settlement offer. If
35 a claimant initiates an action without first accepting or

1 rejecting the offer, the court shall stay the action upon
2 timely motion until the claimant complies with this subsection.

3 8. If the claimant timely and properly accepts the offer
4 to repair an alleged construction defect, the claimant shall
5 provide the offeror and the offeror's agents reasonable access
6 to the claimant's property during normal working hours to
7 perform the repair by the agreed-upon timetable as stated
8 in the offer. If the offeror does not make the payment or
9 repair the construction defect within the agreed time and in
10 the agreed manner, except for reasonable delays beyond the
11 control of the offeror, including but not limited to weather
12 conditions, delivery of materials, claimant's actions, or
13 issuance of any required permits, the claimant may, without
14 further notice, proceed with an action against the offeror
15 based upon the claim in the notice of claim. If the offeror
16 makes payment or repairs to the defect within the agreed
17 time and in the agreed manner, the claimant is barred from
18 proceeding with an action for the claim described in the notice
19 of claim or as otherwise provided in the accepted settlement
20 offer.

21 9. This section does not prohibit or limit a claimant from
22 making any necessary emergency repairs to the property as are
23 required to protect the health, safety, and welfare of any
24 person.

25 10. Any offer or failure to offer, pursuant to subsection 5,
26 to remedy a construction defect or to compromise and settle the
27 claim by monetary payment does not constitute an admission of
28 liability with respect to the defect and is not admissible in
29 an action that is subject to this chapter.

30 11. This section does not relieve the person who is served
31 a notice of claim under subsection 1 from complying with all
32 contractual provisions of any liability insurance policy as
33 a condition precedent to coverage for any claim under this
34 section.

35 Sec. 4. NEW SECTION. 686.4 Multiple construction defects.

1 The procedures in this chapter apply to each construction
2 defect. However, a claimant may include multiple defects in
3 one notice of claim. A claimant may amend the initial list of
4 construction defects to identify additional or new construction
5 defects as the defects become known to the claimant. The court
6 shall allow the action to proceed to trial only as to alleged
7 construction defects that were noticed and for which the
8 claimant has complied with this chapter and as to construction
9 defects reasonably related to, or caused by, the construction
10 defects previously noticed. Nothing in this section shall
11 preclude subsequent or further actions.

12 Sec. 5. NEW SECTION. **686.5 Limitations of chapter.**

13 This chapter does not do any of the following:

14 1. Bar or limit any rights, including the right of specific
15 performance to the extent such right would be available in the
16 absence of this chapter, any causes of action, or any theories
17 on which liability may be based, except as specifically
18 provided in this chapter.

19 2. Bar or limit any defense, or create any new defense,
20 except as specifically provided in this chapter.

21 3. Create any new rights, causes of action, or theories on
22 which liability may be based.

23 Sec. 6. NEW SECTION. **686.6 Effect of arbitration clauses.**

24 To the extent that an arbitration clause in a contract for
25 the sale, design, or construction of real property conflicts
26 with this chapter, this chapter shall control.

27 Sec. 7. NEW SECTION. **686.7 Application.**

28 1. This chapter applies to construction defects in new
29 construction. This chapter does not apply to construction
30 defects in renovations or remodels.

31 2. This chapter only applies to actions brought pursuant to
32 a class action.

33 Sec. 8. **EFFECTIVE DATE.** This Act, being deemed of immediate
34 importance, takes effect upon enactment.

35 Sec. 9. **APPLICABILITY.** This Act applies to actions for

1 which litigation has not commenced prior to the effective date
2 of this Act.

3 EXPLANATION

4 The inclusion of this explanation does not constitute agreement with
5 the explanation's substance by the members of the general assembly.

6 This bill relates to notice and opportunity to repair
7 construction defects. The bill proposes a new Code chapter
8 which provides a mandatory dispute resolution process for
9 construction defects to new property, which are originally
10 brought as class actions. The bill is effective upon enactment
11 and applies to actions for which litigation has not commenced
12 prior to the effective date of the bill. The bill provides
13 that a claimant must comply with the requirements set forth in
14 the bill before filing an action. The bill provides that if a
15 claimant files an action alleging a construction defect without
16 first complying with the requirements of the bill, the court
17 shall stay the action without prejudice until the requirements
18 have been met. The bill sets forth specific time frames for
19 each part of the dispute resolution.

20 The bill provides that the claimant shall serve written
21 notice of a construction defect claim on the general contractor
22 and subcontractor. In the notice, the claimant shall refer
23 to the new Code chapter and describe the claim in reasonable
24 detail sufficient to determine the general nature of each
25 alleged construction defect, provide a description of the
26 damage or loss resulting from the defect, if known, and
27 describe any work or inspections completed to determine the
28 cause of the damage or loss or correct the construction defect.

29 The bill provides that after being served with the notice
30 of claim, the person is entitled to perform a reasonable
31 inspection of the property or of each unit subject to the
32 claim to assess each alleged construction defect. The bill
33 provides that the claimant shall provide the person served with
34 notice reasonable access to the property during normal working
35 hours to inspect the property to determine the nature and

1 cause of each alleged construction defect and the nature and
2 extent of any repairs or replacements necessary to remedy each
3 construction defect. The bill provides additional details,
4 including providing for destructive testing.

5 The bill provides that the general contractor or
6 subcontractor may serve a copy of the notice of claim to
7 each subcontractor or general subcontractor whom the general
8 contractor or subcontractor reasonably believes is responsible
9 for each construction defect specified in the notice of claim.
10 The bill provides that subcontractors shall be entitled to
11 inspect in the same manner as general contractors. The general
12 contractor or subcontractor must then serve a written response,
13 which shall include a report, if any, of the scope of any
14 inspection of the property, the findings and results of the
15 inspection, a statement of whether the general contractor or
16 subcontractor is willing to make repairs to the property or
17 whether such claim is disputed, a description of any repairs
18 they are willing to make, and a timetable for the completion of
19 the repairs. This response may also be served on the initial
20 claimant by the general contractor.

21 The bill provides that the person who was served the notice
22 must serve a written response to the claimant. The bill
23 provides that the written response must fall into one of five
24 categories, which are laid forth in the bill.

25 If the person served with a notice of claim disputes the
26 claim and will neither remedy the construction defect nor
27 compromise and settle the claim, or does not respond to the
28 claimant's notice of claim within the time provided in the
29 bill, the claimant may, without further notice, proceed with
30 an action against that person for the claim described in the
31 notice of claim.

32 A claimant who receives a timely settlement offer must
33 accept or reject the offer by serving written notice of such
34 acceptance or rejection on the person or company making the
35 offer within the time period set forth in the bill after

1 receiving the settlement offer. The bill specifies that if
2 a claimant initiates an action without first accepting or
3 rejecting the offer, the court shall stay the action upon
4 timely motion until the claimant complies with the requirement.

5 The bill provides that if the claimant timely and properly
6 accepts the offer to repair an alleged construction defect,
7 the claimant shall provide the offeror and the offeror's
8 agents reasonable access to the claimant's property during
9 normal working hours to perform the repair by the agreed-upon
10 timetable as stated in the offer. If the offeror does not make
11 the payment or repair the construction defect within the agreed
12 time and in the agreed manner, except for reasonable delays
13 beyond the control of the offeror, the claimant may, without
14 further notice, proceed with an action against the offeror
15 based upon the claim in the notice of claim. If the offeror
16 makes payment or repairs the defect within the agreed time and
17 in the agreed manner, the claimant is barred from proceeding
18 with an action for the claim described in the notice of claim
19 or as otherwise provided in the accepted settlement offer.

20 The bill does not bar or limit any rights, including the
21 right of specific performance to the extent such right would be
22 available in the absence of the new Code chapter, any causes of
23 action, or any theories on which liability may be based, except
24 as specifically provided in the bill. Additionally, the bill
25 does not bar or limit any defense, or create any new defense,
26 except as specifically provided in the new Code chapter.
27 Finally, the bill does not create any new rights, causes of
28 actions, or theories on which liability may be based.

29 The bill provides that to the extent that an arbitration
30 clause in a contract for the sale, design, or construction of
31 real property conflicts with the bill, the bill shall control.