

**Senate File 532 - Introduced**

SENATE FILE 532  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1146)

**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, or injury to person or wrongful  
7 death arising out of the unsafe or defective condition of an  
8 improvement to real property based on tort, breach of contract,  
9 or express or implied warranty.

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

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

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

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

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

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

34 8. "*Subcontractor*" means a person furnishing material  
35 or performing labor upon any building, erection, or other

1 improvement to land, except those having contracts directly  
2 with the owner.

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

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

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

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

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

34     2. *a.* Within sixty days after service of the notice  
35 of claim, the person served with the notice of claim under

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

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

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

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

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

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

35 3. The general contractor or subcontractor may serve a

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

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

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

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

35 b. A written offer to compromise and settle the claim by

1 monetary payment, that will not obligate the person's insurer,  
2 and a timetable for making payment.

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

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

11 e. A written offer of a monetary payment, including  
12 insurance proceeds, to be determined by the person and the  
13 person's insurer, which the claimant may accept or reject.

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

25 7. A claimant who receives a timely settlement offer shall  
26 accept or reject the offer by serving written notice of such  
27 acceptance or rejection on the person making the offer within  
28 forty-five days after receiving the settlement offer. If  
29 a claimant initiates an action without first accepting or  
30 rejecting the offer, the court shall stay the action upon  
31 timely motion until the claimant complies with this subsection.

32 8. If the claimant timely and properly accepts the offer  
33 to repair an alleged construction defect, the claimant shall  
34 provide the offeror and the offeror's agents reasonable access  
35 to the claimant's property during normal working hours to

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

15 9. This section does not prohibit or limit a claimant from  
16 making any necessary emergency repairs to the property as are  
17 required to protect the health, safety, and welfare of any  
18 person.

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

24 11. This section does not relieve the person who is served  
25 a notice of claim under subsection 1 from complying with all  
26 contractual provisions of any liability insurance policy as  
27 a condition precedent to coverage for any claim under this  
28 section.

29 Sec. 4. NEW SECTION. **686.4 Multiple construction defects.**

30 The procedures in this chapter apply to each construction  
31 defect. However, a claimant may include multiple defects in  
32 one notice of claim. A claimant may amend the initial list of  
33 construction defects to identify additional or new construction  
34 defects as the defects become known to the claimant. The court  
35 shall allow the action to proceed to trial only as to alleged

1 construction defects that were noticed and for which the  
2 claimant has complied with this chapter and as to construction  
3 defects reasonably related to, or caused by, the construction  
4 defects previously noticed. Nothing in this section shall  
5 preclude subsequent or further actions.

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

7 This chapter does not do any of the following:

8 1. Bar or limit any rights, including the right of specific  
9 performance to the extent such right would be available in the  
10 absence of this chapter, any causes of action, or any theories  
11 on which liability may be based, except as specifically  
12 provided in this chapter.

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

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

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

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

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

22 1. This chapter applies to construction defects in new  
23 construction. This chapter does not apply to construction  
24 defects in renovations or remodels.

25 2. This chapter only applies to actions brought pursuant to  
26 a class action.

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

29 Sec. 9. **APPLICABILITY.** This Act applies to actions for  
30 which litigation has not commenced prior to the effective date  
31 of this Act.

32 **EXPLANATION**

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

35 This bill relates to notice and opportunity to repair



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

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

23 The bill provides that after being served with the notice  
24 of claim, the person is entitled to perform a reasonable  
25 inspection of the property or of each unit subject to the  
26 claim to assess each alleged construction defect. The bill  
27 provides that the claimant shall provide the person served with  
28 notice reasonable access to the property during normal working  
29 hours to inspect the property to determine the nature and  
30 cause of each alleged construction defect and the nature and  
31 extent of any repairs or replacements necessary to remedy each  
32 construction defect. The bill provides additional details,  
33 including providing for destructive testing.

34 The bill provides that the general contractor or  
35 subcontractor may serve a copy of the notice of claim to

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

15 The bill provides that the person who was served the notice  
16 must serve a written response to the claimant. The bill  
17 provides that the written response must fall into one of five  
18 categories, which are laid forth in the bill.

19 If the person served with a notice of claim disputes the  
20 claim and will neither remedy the construction defect nor  
21 compromise and settle the claim, or does not respond to the  
22 claimant's notice of claim within the time provided in the  
23 bill, the claimant may, without further notice, proceed with  
24 an action against that person for the claim described in the  
25 notice of claim.

26 A claimant who receives a timely settlement offer must  
27 accept or reject the offer by serving written notice of such  
28 acceptance or rejection on the person or company making the  
29 offer within the time period set forth in the bill after  
30 receiving the settlement offer. The bill specifies that if  
31 a claimant initiates an action without first accepting or  
32 rejecting the offer, the court shall stay the action upon  
33 timely motion until the claimant complies with the requirement.

34 The bill provides that if the claimant timely and properly  
35 accepts the offer to repair an alleged construction defect,

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

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

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