SENATE FILE 532
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1146)

(As Amended and Passed by the Senate March 20, 2019)
* = Language Stricken by the Senate

A BILL FOR

An Act relating to notice and opportunity to repair construction defects in new construction, and including effective date and applicability provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 686.1 Definitions.

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

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

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

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

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

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

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

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

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

with the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and a timetable for making payment.

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

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

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

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

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

8. If the claimant timely and properly accepts the offer to repair an alleged construction defect, the claimant shall provide the offeror and the offeror's agents reasonable access to the claimant's property during normal working hours to perform the repair by the agreed-upon timetable as stated

in the offer. If the offeror does not make the payment or repair the construction defect within the agreed time and in the agreed manner, except for reasonable delays beyond the control of the offeror, including but not limited to weather conditions, delivery of materials, claimant's actions, or issuance of any required permits, the claimant may, without further notice, proceed with an action against the offeror based upon the claim in the notice of claim. If the offeror makes payment or repairs to the defect within the agreed time and in the agreed manner, the claimant is barred from proceeding with an action for the claim described in the notice of claim or as otherwise provided in the accepted settlement offer.

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

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

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

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

The procedures in this chapter apply to each construction defect. However, a claimant may include multiple defects in one notice of claim. A claimant may amend the initial list of construction defects to identify additional or new construction defects as the defects become known to the claimant. The court shall allow the action to proceed to trial only as to alleged construction defects that were noticed and for which the

claimant has complied with this chapter and as to construction defects reasonably related to, or caused by, the construction defects previously noticed. Nothing in this section shall preclude subsequent or further actions.

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

This chapter does not do any of the following:

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

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

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

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

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

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

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

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

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

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