2005 DRAFTING REQUEST

Bill

Received: **11/01/2005**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Luther Olsen (608) 266-0751**

By/Representing: **Heather**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Olsen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Claims against contractors and suppliers

Instructions:

same as -2307

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson2 11/03/2005	kfollett 11/03/2005		_____ _____			
/1			rschluet 11/03/2005	_____ _____	lnorthro 11/03/2005	sbasford 11/04/2005	
/2	rnelson2 11/11/2005	kfollett 11/11/2005	jfrantze 11/11/2005	_____ _____	lemery 11/11/2005	lemery 11/11/2005	

FE Sent For:

<END>

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Instructions: 11/9 Fix based on Wiechert changes in 2307 (Mon., 11/14)

same as -2307

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/?	rnelson2 11/03/2005	kfollett 11/03/2005		_____ _____			
/1		12 kgf 11/10	rschluet 11/03/2005	_____ _____	lnorthro 11/03/2005	sbasford 11/04/2005	

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/?	rnelson2	11/3	1135				

FE Sent For:

<END>

3973/1

2005 – 2006 LEGISLATURE

LRB–~~2307/1~~

RPN&RNK:wlj&kjf:~~pg~~

Wanted 11/4

stays

No changes

2005 BILL

Regen

1 AN ACT ***to create*** 101.148 and 895.07 of the statutes; **relating to:** contractor's
2 notices, claims against certain building contractors and suppliers, and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires contractors and subcontractors who contract to construct a home or to remodel a home or manufactured home to provide a notice to the homeowner telling the homeowner that he or she must follow the procedure in this bill before suing a contractor, subcontractor, or door or window supplier. Under the bill, if a homeowner, which includes condominium associations, is concerned about a possible construction defect, the homeowner must give written notice of the claim to the contractor at least 90 working days before starting an action against the contractor. The bill requires the written notice of the claim to detail the nature of the alleged defect, including any evidence and information the homeowner has that depicts the nature and cause of the defect.

After the contractor receives the notice, the bill gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the bill, if the claim is rejected at this point, the homeowner can start an action against the contractor. The bill requires the homeowner to allow the contractor access to the home if the contractor wants to inspect the alleged defect. If the contractor makes a settlement offer and the homeowner rejects the offer, the homeowner must do so with a written statement that includes the factual reasons for the rejection and any known legal

reasons for the rejection. The bill allows the contractor to submit a timely supplemental offer in response to the homeowner's rejection and requires the homeowner to respond to the supplemental offer under the same procedures as he or she responds to an original offer.

If the property is inspected and requires some destructive testing, the bill requires the contractor to return the building to its preinspection condition after finishing the inspection and testing. After the inspection, the bill gives the contractor an opportunity to remedy the defect, settle the claim with a monetary settlement, or refuse to remedy the alleged defect. Under the bill, if the contractor refuses to remedy the alleged defect, after notification the homeowner may start an action regarding the defect. If the homeowner agrees to a contractor's settlement offer, and the contractor does not follow through as agreed, the bill allows the homeowner to include in its court action the offer and acceptance as rebuttable evidence of an agreement.

Under the bill, if a homeowner rejects a reasonable settlement offer or does not permit the contractor to repair the defect, the homeowner's damages are limited to the fair market value of the offer of settlement or the actual costs of the repairs, whichever is less, or the amount of the monetary offer of settlement.

The bill allows a homeowner to repair a defect immediately without giving notice if the repair is necessary for health or safety.

The bill also provides that the contractor or supplier may not be liable for damages for a defect if the damage is caused by normal shrinkage or settlement of the construction, if the contractor or supplier relied on written information from a public agency, if the defect was known by or disclosed to the homeowner before the purchase, the building was purchased "as is," the defect could have been discovered by the homeowner with due diligence before purchasing the building, or the contractor or supplier was not allowed to perform warranty service work.

Condominium associations and other homeowner associations are required by the bill to follow additional procedures before bringing an action for a construction defect, including receiving approval from each unit's owner who is affected by that action, the majority of the unit owners vote for the action, and the association's board of directors negotiated in good faith with the contractor to resolve the defect.

Under the bill, a contractor may obtain contribution from a window or door supplier for the cost of repairing the defect if the contractor follows procedures in the bill similar to those that apply to the contractor and homeowner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The bill requires the Department of Commerce to prepare a draft of a brochure that explains the process in this bill and provide that draft to contractors. Contractors are required to give a copy of the brochure to homeowners.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.148 of the statutes is created to read:

2 **101.148 Contractor notices. (1)** DEFINITIONS. In this section:

3 (a) "Building" means any structure that is an improvement to land and that is
4 intended for use as a dwelling.

5 (b) "Claimant" has the meaning given in s. 895.07 (1) (c).

6 (c) "Contractor" means a person that enters into a contract with a potential
7 claimant to construct a building on the potential claimant's land, to complete a
8 remodeling project on a building on the potential claimant's land, or to complete a
9 remodeling project on the potential claimant's manufactured home. "Contractor"
10 includes a subcontractor.

11 (e) "Manufactured home" has the meaning given in s. 101.91 (2).

12 (f) "Remodel" does not include maintenance and repair work.

13 (g) "Supplier" means a person that supplies windows or doors to a building.

14 **(2)** NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Upon entering into a contract
15 to construct a building, to complete a remodeling project on a building, or to complete
16 a remodeling project on a manufactured home, the contractor shall give the potential
17 claimant, if any, a copy of the brochure prepared under s. 895.07 (12) and a notice
18 worded substantially as follows:

19 NOTICE CONCERNING CONSTRUCTION
20 DEFECTS

21 Wisconsin law contains important requirements you must follow before you
22 may file a lawsuit for defective construction against the contractor who constructed
23 your building or completed your remodeling project or against window or door
24 suppliers. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires
25 you to deliver to the contractor a written notice of any construction conditions you

allege are defective before you file your lawsuit, and you must provide your contractor or window or door suppliers the opportunity to make an offer to repair or pay for the construction defects. You are not obligated to accept any offer made by the contractor or window or door suppliers, but failure to accept a reasonable offer may limit your recoverable damages. All parties are bound by applicable warranty provisions.

(b) The notice required under par. (a) shall be conspicuous and in writing and may be included within the contract between the contractor and the potential claimant.

SECTION 2. 895.07 of the statutes is created to read:

895.07 Claims against contractors and suppliers. (1) DEFINITIONS. In this section:

(a) "Action" means a civil action or an arbitration under ch. 788.

(b) "Building" means any structure that is an improvement to land and that is intended for use as a dwelling.

(c) "Claimant" means a homeowner, other than a developer or builder, who asserts a claim against a contractor or supplier concerning a construction defect.

(d) "Construction defect" has the meaning assigned by a written, express warranty provided by the contractor or, if no such meaning is assigned by warranty, means a deficiency in the specifications, planning, supervision, construction, or remodeling of a building or in the remodeling of a manufactured home that results from any of the following:

1. Defective material.

2. Violation of applicable building codes.

3. Failure to follow accepted trade standards for workmanlike construction.

1 (e) "Contractor" means a person including a subcontractor, that enters into a
2 contract with a potential claimant to construct a building or to complete a remodeling
3 project on a building or manufactured home.

4 (f) "Manufactured home" has the meaning given in s. 101.91 (2).

5 (g) "Serve" or "service" means personal service or delivery by certified mail,
6 return receipt requested, to the last–known address of the addressee.

7 (h) "Supplier" means a person that supplies windows or doors for a building.

8 (j) "Working day" means any day except Saturday, Sunday, and holidays
9 designated in s. 230.35 (4) (a).

10 **(2)** ACTION; DISMISSAL WITHOUT PREJUDICE. Before filing an action against a
11 contractor or supplier for a construction defect, the claimant shall serve the
12 contractor with a written notice of the claim that describes the claim in sufficient
13 detail to determine the general nature of the construction defect. If the claimant files
14 an action but fails to serve the notice of claim, the circuit court shall dismiss the
15 action without prejudice, and the action may not be refiled until the claimant has
16 complied with the requirements of this subsection.

17 **(3)** NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than 90 working days before
18 initiating an action against a contractor or supplier under this section, the claimant
19 shall serve written notice of claim under sub. (2) on the contractor. The notice of
20 claim shall state that the claimant asserts a construction defect claim or claims and
21 is providing notice under this paragraph. The notice of claim shall describe the claim
22 or claims in sufficient detail to explain the nature of the alleged construction defect
23 and the results of the construction defect. The claimant shall provide to the
24 contractor all evidence the claimant knows or possesses, including expert reports,
25 photographs, electronic mail, and videotapes that depict the nature and cause of the

1 alleged construction defect. In addition, the claimant shall provide to the contractor
2 any evidence discoverable under ch. 804 that depicts the nature and cause of the
3 construction defect, including expert reports, photographs, and videotapes.

4 (b) Within 15 working days after the claimant serves notice of claim under par.
5 (a), or within 25 working days if the contractor makes a claim for contribution from
6 a supplier under sub. (9) (a), each contractor that has received the notice of claim may
7 serve on the claimant, and on any other contractor that has received the notice of
8 claim and on any supplier that has received a claim for contribution under sub. (9)
9 (a), a written response to the claim or claims that either offers to settle the claim by
10 monetary payment, the making of repairs, or a combination of both, without
11 inspection, or proposes to inspect the building that is the subject of the claim.

12 (c) Within 15 working days after a supplier has received notice that a contractor
13 is seeking contribution under sub. (9) (a), the supplier may serve the contractor with
14 a written response that offers to settle the contribution claim by payment, by repair,
15 or by both payment and repair without inspection or that offers to inspect the
16 building that is the subject of the contribution claim. If a contribution claim is made,
17 the contractor shall forward all responses from the supplier to the claimant. The
18 supplier and contractor shall use their best efforts to coordinate their responses to
19 claims and contribution claims.

20 (d) If the contractor wholly rejects the claim and will neither remedy the alleged
21 construction defect nor settle the claim, or does not respond to the claimant's notice
22 of claim within the time under par. (b), the claimant may bring an action against the
23 contractor for the claims described in the notice of claim without further notice.

24 (e) If the claimant rejects a settlement offer made by the contractor, the
25 claimant shall provide written notice of the claimant's rejection to the contractor.

1 The notice shall include the specific factual and, if known, legal reasons for the
2 claimant's rejection of the contractor's proposal or offer. If the claimant believes that
3 the settlement offer omits reference to any portion of the claim, or was unreasonable,
4 the claimant shall in its written notice include those items that the claimant believes
5 were omitted and set forth in detail all reasons why the claimant believes the
6 settlement offer is unreasonable. The contractor shall forward the claimant's
7 response to a supplier upon whom a contribution claim has been made.

8 (f) If a proposal for inspection is made under par. (b), the claimant shall, within
9 15 working days of receiving the contractor's proposal, provide the contractor and
10 any supplier on whom a contribution claim has been made and its agents, experts,
11 and consultants prompt and complete access to the building to inspect the building,
12 document any alleged construction defects, and perform any testing required to
13 evaluate fully the nature, extent, and cause of the claimed construction defects and
14 the nature and extent of any repairs or replacements that may be necessary to
15 remedy them. If destructive testing is required, the contractor shall give the
16 claimant and all persons on whom a notice of claim or contribution claim has been
17 served advance notice of the testing at least 5 working days before commencement
18 of the testing and shall, after completion of the testing, return the building to its
19 pre–testing condition. If any inspection or testing reveals a condition that requires
20 additional testing to allow the contractor to evaluate fully the nature, cause, and
21 extent of the construction defect, the contractor shall provide notice to the claimant
22 and all persons on whom a notice of claim or contribution claim has been served of
23 the need for the additional testing and the claimant shall provide access under this
24 paragraph. If a claim is asserted on behalf of the owners of multiple buildings, or
25 multiple owners of units within a multifamily complex, then the contractor shall be

1 entitled to inspect each of the buildings or units. The claimant shall either provide
2 a specific day for the inspection upon reasonable notice for an inspection or require
3 the contractor to request in writing a day, at least 3 working days before the
4 inspection.

5 (g) Within 10 working days following completion of the inspection and receipt
6 of all testing results under par. (f), the contractor may serve on the claimant any of
7 the following:

8 1. A written offer to remedy fully or partially the construction defect at no cost
9 to the claimant. The offer shall include a description of any additional construction
10 necessary to remedy the construction defect and a timetable for the completion of the
11 construction.

12 2. A written offer to settle the claim by monetary payment.

13 3. A written offer including a combination of repairs and monetary payment.

14 4. A written statement that the contractor will not proceed further to remedy
15 the construction defect.

16 (h) If a claimant accepts a contractor's offer made under par. (g) within 15
17 working days after receipt of the offer, or if the offer is deemed accepted under par.
18 (n), and the contractor does not proceed to make the monetary payment or remedy
19 the construction defect within the agreed timetable, the claimant may bring an
20 action against the contractor for the claim described in the notice of claim without
21 further notice. The claimant may also file the contractor's offer and claimant's
22 acceptance in the circuit court action, and the offer and acceptance creates a
23 rebuttable presumption that a binding and valid settlement agreement has been
24 created and should be enforced by the court.

1 (i) If a claimant receives a written statement that the contractor will not
2 proceed further to remedy the construction defect, the claimant may bring an action
3 against the contractor for the claim described in the notice of claim without further
4 notice.

5 (j) If the claimant rejects the offer made by the contractor to remedy the
6 construction defect or to settle the claim by monetary payment or a combination of
7 each, the claimant shall serve written notice of the claimant's rejection on the
8 contractor within 15 working days after receipt of the offer. The notice shall include
9 the specific factual and, if known, legal reasons for the claimant's rejection of the
10 contractor's offer. If the claimant believes the contractor's settlement offer is
11 unreasonable, the claimant shall set forth in detail all reasons why the claimant
12 believes the settlement offer is unreasonable.

13 (k) Upon receipt of a claimant's rejection and the reasons for the rejection, the
14 contractor may, within 5 working days after receiving the rejection, make a
15 supplemental offer of repair or monetary payment to the claimant.

16 (L) If the claimant rejects the supplemental offer made by the contractor under
17 par. (k) to remedy the construction defect or to settle the claim by monetary payment
18 or a combination of each, the claimant shall serve written notice of the claimant's
19 rejection on the contractor within 15 working days after receipt of the supplemental
20 offer. The notice shall include the specific factual and, if known, legal reasons for the
21 claimant's rejection of the contractor's supplemental settlement offer. If the claimant
22 believes the contractor's supplemental settlement offer is unreasonable, the
23 claimant shall set forth in detail all reasons why the claimant believes the
24 supplemental settlement offer is unreasonable. If the contractor declines to make
25 a supplemental offer, or if the claimant rejects the supplemental offer, the claimant

may bring an action against the contractor for the claim described in the notice of claim without further notice.

(m) If a claimant rejects a reasonable offer or reasonable supplemental offer made under this subsection, or does not permit the contractor to repair the construction defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of the fair market value of the offer of settlement, or the actual cost of the repairs made, whichever is less, or the amount of a monetary offer of settlement. For purposes of this paragraph, the trier of fact shall determine the reasonableness of an offer of settlement. If the claimant has rejected a reasonable offer or reasonable supplemental offer, and any other law allows the claimant to recover costs and attorney fees, then the claimant may recover no costs or attorney fees incurred after the date of its rejection.

(n) A claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within a reasonable period of time after receipt of the contractor's settlement offer, but no later than 15 working days after receipt of the offer. If no response is served upon the contractor within the 15–working day period, then the offer shall be deemed accepted. If all requirements under this section have been fulfilled, and if the claimant has rejected any outstanding offers, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(o) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its agents, experts, and consultants prompt and unfettered access to the building to

1 perform and complete the construction by the timetable stated in the settlement
2 offer.

3 (p) If, during the pendency of the notice, inspection, offer, acceptance, or repair
4 process, an applicable limitation period would otherwise expire, the limitation
5 period is tolled pending completion of the notice of claim process described in this
6 section. This paragraph shall not be construed to revive a limitation period that has
7 expired before the date on which a claimant's written notice of claim is served or
8 extend any applicable statute of repose.

9 (q) After the sending of the initial notice of claim and initial contribution claim,
10 a claimant, a contractor, and a supplier may, by written mutual agreement, alter the
11 procedure for the notice of claim process described in this section.

12 **(4)** CONTRACTOR OR SUPPLIER NOT LIABLE FOR CERTAIN DAMAGES. In an action
13 relating to a building involving a construction defect, a contractor or supplier shall
14 not be liable for damages involving or caused by any of the following:

15 (a) Normal shrinkage due to drying or settlement of construction components
16 within the tolerance of building standards.

17 (b) The contractor's or supplier's reliance on written information relating to the
18 building that was obtained from official government records or provided by a
19 government entity.

20 (c) Any construction defect known by or disclosed to a claimant in writing before
21 his or her purchase of the building.

22 (d) Any construction defect in a building that is purchased in "as is" condition.

23 (e) If the claimant is not the first owner of the building, any construction defect
24 known by the claimant or that could have been discovered by the claimant through
25 the exercise of reasonable diligence before the claimant's purchase of the building.

1 (f) Refusal of anyone to allow the contractor or supplier or the contractor's or
2 supplier's agents to perform their warranty service work.

3 **(5)** WARRANTY TERMS. The claimant and contractor or supplier are bound by any
4 contractor or supplier warranty terms pertaining to products or services supplied to
5 the building.

6 **(6)** ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.
7 A construction defect that is discovered after an initial claim or contribution claim
8 notice has been provided may not be alleged in an action until the claimant or
9 contractor has given the contractor or supplier who performed the original
10 construction work or provided supplies written notice of the new claim or
11 contribution claim regarding the alleged new construction defect based on the
12 claimant's or contractor's most current records. The contractor or supplier shall have
13 an opportunity to resolve the notice of the new claim or contribution claim in the
14 manner provided in subs. (3) and (9).

15 **(7)** RELEASE; INSURANCE. If a claimant or contractor accepts an offer made in
16 compliance with this section and the contractor or supplier fulfills the offer in
17 compliance with this section, an action brought by the claimant or contractor for the
18 claim described in the notice of claim shall be dismissed with prejudice and the
19 contractor or supplier is, for insurance purposes, legally obligated to make the
20 repairs or the monetary payment as if the claimant or contractor had recovered a
21 judgment against the contractor or supplier in the amount of the cost of the repairs
22 or the amount of the monetary payment.

23 **(8)** ACTION OF ASSOCIATIONS. (a) In this subsection, "association" means a
24 homeowner's association, condominium association under s. 703.02 (1m), unit
25 owner's association, or a nonprofit corporation created to own and operate portions

1 of a planned community that may assess unit owners for the costs incurred in the
2 performance of the association's obligations.

3 (b) A person may not provide or offer to provide anything of value, directly or
4 indirectly, to a property manager of an association or to a member or officer of an
5 association to induce the property manager, member, or officer to encourage the
6 association to file or discourage the association from filing a claim for damages
7 arising from a construction defect.

8 (c) A property manager retained by an association or a member or officer of an
9 association may not accept anything of value, directly or indirectly, in exchange for
10 encouraging to file or discouraging from filing a claim for damages on behalf of the
11 association arising from a construction defect.

12 (d) A person who knowingly violates par. (b) or (c) may be fined not more than
13 $500 or imprisoned not more than 30 days, or both.

14 (e) An association may bring an action against a contractor to recover damages
15 resulting from construction defects in any of the common elements or limited
16 common elements of a condominium, as defined in s. 703.02 (2) and (10). Such an
17 action may be maintained only after all of the following occur:

18 1. The association first obtains the written approval of each unit's owner whose
19 interest in the common elements or limited common elements will be subject of the
20 action.

21 2. A vote is held of the units' owners to which at least a majority of the votes
22 of the members of the association are allocated.

23 3. The full board of directors of the association and the contractor have met in
24 person and conferred in a good faith attempt to resolve the association's claim, or the

1 contractor has definitively declined or ignored the requests to meet with the board
2 of directors of the association.
3 4. The association has otherwise satisfied all of the pre–action requirements
4 for a claimant to commence an action under this section.
5 (f) At least 3 working days in advance of any vote to commence an action by an
6 association to recover damages resulting from construction defects in any of the
7 common elements or limited common elements of a condominium, the attorney
8 representing the association shall provide to each unit's owner a written statement
9 that includes, in reasonable detail all of the following:
10 1. The construction defects and damages or injuries to the common elements
11 or limited common elements.
12 2. The cause of the construction defects, if the cause is known.
13 3. The nature and the extent that is known of the damage or injury resulting
14 from the construction defects.
15 4. The location of each construction defect within the common elements or
16 limited common elements, if known.
17 5. A reasonable estimate of the cost of the action, including reasonable attorney
18 fees and costs, expert fees, and the costs of testing.
19 6. All disclosure that the unit owner is required to make upon the sale of the
20 unit.
21 (g) An association or an attorney for an association may not employ a person
22 to perform destructive tests to determine any damage or injury to a unit, common
23 element, or limited common element caused by a construction defect unless all of the
24 following are true:
25 1. The person has expertise in the testing.

1 2. The association has obtained the prior written approval of each unit's owner
2 whose unit or interest in the common element or limited common element will be
3 affected by the testing.
4 3. The person performing the tests has provided a written schedule for repairs.
5 4. The person performing the tests is required to repair all damage resulting
6 from the tests in accordance with state laws and applicable local ordinances.
7 5. The association or the person so employed obtains all permits required to
8 conduct the tests and to repair any damage resulting from the tests.
9 6. Reasonable prior notice and opportunity to observe the tests is given to the
10 contractor against whom an action may be brought as a result of the tests.
11 (h) An association may commence an action only upon a vote or written
12 agreement of the owners of the units to which at least a majority of the votes of the
13 members of the association are allocated. In such a case, the association shall
14 provide written notice to the owner of each unit of the meeting at which the
15 commencement of an action is to be considered or action is to be taken at least 15
16 working days before the meeting.
17 (i) The board of directors of an association may, without giving notice to the
18 units' owners, employ a contractor and other persons necessary to make immediate
19 repairs to a unit or common element within the condominium as are required to
20 protect the health and safety of the units' owners.
21 **(9)** CONTRIBUTION. (a) A contractor may not seek contribution from a supplier
22 for a claim that a claimant makes against the contractor unless the contractor
23 provides the supplier with a written notice of the claimant's claim and the
24 contribution claim within 5 working days after the contractor's receipt of the claim.
25 The contractor shall explain the contribution claim in sufficient detail to explain the

1 nature and results of the alleged construction defect. The contractor shall provide
2 the supplier all evidence the contractor knows or possesses, including expert reports,
3 photographs, electronic mail, and videotapes that depict the nature and cause of the
4 alleged construction defect. In addition, the contractor shall provide to the supplier
5 any evidence discoverable under ch. 804 that depicts the nature and cause of the
6 alleged construction defect, including expert reports, photographs, and videotapes.
7 The evidence provided to the supplier shall include all of the evidence provided to the
8 contractor by the claimant. The contractor may not later use evidence in an action
9 under this section that the contractor withholds or fails to produce.

10 (b) Within 15 working days after a supplier has received notice that a contractor
11 is seeking contribution under par. (a), the supplier may serve the contractor with a
12 written response that offers to settle the contribution claim by payment, by repair,
13 or by both payment and repair without inspection or that offers to inspect the
14 building that is the subject of the contribution claim. The contractor shall forward
15 the supplier's response to the claimant. The supplier and contractor shall use their
16 best efforts to coordinate their responses to claims and contribution claims.

17 (c) If the supplier wholly rejects the contribution claim and will neither remedy
18 the alleged construction defect nor settle the claim, or does not respond to the
19 contractor's notice of contribution claim within the time under par. (b), the contractor
20 may bring an action against the supplier for the claims described in the notice of
21 contribution claim without further notice.

22 (d) If the contractor rejects a settlement offer made by the supplier, the
23 contractor shall provide written notice of the contractor's rejection to the supplier
24 and, if the supplier is represented by legal counsel, the supplier's attorney. The
25 notice shall include the specific factual and, if known, legal reasons for the

1 contractor's rejection of the supplier's proposal or offer. If the contractor believes that
2 the settlement offer omits reference to any portion of the claim, or was unreasonable,
3 the contractor shall in its written notice include those items that the contractor
4 believes were omitted and set forth in detail all reasons why the contractor believes
5 the settlement offer is unreasonable. In any subsequent action in which the
6 contractor asserts that the settlement offer was unreasonable, the contractor may
7 not raise any reasons that were not included in its response to the supplier.

8 (e) If a supplier proposes to inspect the building that is the subject of the
9 contribution claim, the contractor and claimant shall, within 15 working days after
10 receiving the supplier's proposal, provide the supplier and its agents, experts, and
11 consultants prompt and complete access to the building to inspect the building,
12 document any alleged construction defects, and perform any testing required to
13 evaluate fully the nature, extent, and cause of the claimed construction defects and
14 the nature and extent of any repairs or replacements that may be necessary to
15 remedy them. If destructive testing is required, the supplier shall give the contractor
16 and claimant and all persons on whom a notice of claim or contribution claim has
17 been served advance notice of the testing at least 5 working days before
18 commencement of the testing and shall, after completion of the testing, return the
19 building to its pre–testing condition. If any inspection or testing reveals a condition
20 that requires additional testing to allow the supplier to evaluate fully the nature,
21 cause, and extent of the construction defect, the supplier shall provide notice to the
22 contractor and claimant and all persons on whom a notice of claim or contribution
23 claim has been served of the need for the additional testing and the contractor and
24 claimant shall provide access under this paragraph. If a claim is asserted on behalf
25 of the contractor of multiple buildings, or multiple owners of units within a

1 multifamily complex, then the supplier shall be entitled to inspect each of the
2 buildings or units. The contractor and claimant shall either provide a specific day
3 for the inspection upon reasonable notice for an inspection or require the supplier to
4 request in writing a day, at least 3 working days before the inspection.

5 (f) Within 10 working days following completion of the inspection and receipt
6 of all testing results under par. (e), the supplier may serve on the contractor any of
7 the following:

8 1. A written offer to remedy fully or partially the construction defect at no cost
9 to the contractor. The offer shall include a description of any additional construction
10 necessary to remedy the construction defect and an anticipated timetable for the
11 completion of the construction.

12 2. A written offer to settle the claim by monetary payment.

13 3. A written offer including a combination of repairs and monetary payment.

14 4. A written statement that the supplier will not proceed further to remedy the
15 construction defect.

16 (g) If a contractor accepts a supplier's offer made under par. (f) within 15
17 working days after receipt of the offer, or if the offer is deemed accepted under par.
18 (m), and the supplier does not proceed to make the monetary payment or remedy the
19 construction defect within the agreed timetable, the contractor may bring an action
20 against the supplier for the claim described in the notice of claim without further
21 notice. The claimant may also file the supplier's offer and contractor's acceptance
22 in the circuit court action, and the offer and acceptance creates a rebuttable
23 presumption that a binding and valid settlement agreement has been created and
24 should be enforced by the court.

1 (h) If a contractor receives a written statement that the supplier will not
2 proceed further to remedy the construction defect, the contractor may bring an action
3 against the supplier for the claim described in the notice of claim without further
4 notice.

5 (i) If the contractor rejects the offer made by the supplier to remedy the
6 construction defect or to settle the claim by monetary payment or a combination of
7 each, the contractor shall serve written notice of the contractor's rejection on the
8 supplier. The notice shall include the specific factual and, if known, legal reasons for
9 the contractors rejection of the supplier's offer. If the contractor believes the
10 supplier's settlement offer is unreasonable, the contractor shall set forth in detail all
11 reasons why the claimant believes the settlement offer is unreasonable. In any
12 subsequent action in which the contractor asserts that the settlement offer was
13 unreasonable, the contractor may not raise any new reasons unless the contractor
14 later discovers significant information.

15 (j) Upon receipt of a contractor's rejection and the reasons for the rejection, the
16 supplier may, within 10 working days of receiving the rejection, make a
17 supplemental offer of repair or monetary payment to the contractor.

18 (k) If the contractor rejects the supplemental offer made by the supplier to
19 remedy the construction defect or to settle the claim by monetary payment or a
20 combination of each, the contractor shall serve written notice of the contractor's
21 rejection on the supplier. The notice shall include the specific factual and, if known,
22 legal reasons for the contractor's rejection of the supplier's supplemental settlement
23 offer. If the contractor believes the supplier's supplemental settlement offer is
24 unreasonable, the contractor shall set forth in detail all reasons why the contractor
25 believes the supplemental settlement offer is unreasonable. In any subsequent

1 action in which the contractor asserts that the settlement offer was unreasonable,
2 the contractor may not raise any reasons that were not included in its response to
3 the supplier.

4 (L) If a contractor rejects a reasonable offer, including any reasonable
5 supplemental offer, made as provided under this subsection or does not permit the
6 supplier to repair the construction defect pursuant to an accepted offer of settlement,
7 the contractor may not recover an amount in excess of the fair market value of the
8 offer of settlement, or the actual cost of the repairs made, whichever is less, or the
9 amount of a monetary offer of settlement. For purposes of this paragraph, the trier
10 of fact shall determine the reasonableness of an offer of settlement. If the contractor
11 has rejected a reasonable offer, including any reasonable supplemental offer, and any
12 other law allows the contractor to recover costs and attorney fees, then the contractor
13 may recover no costs or attorney fees incurred after the date of its rejection.

14 (m) A contractor accepting the offer of the supplier to remedy a construction
15 defect shall do so by serving the supplier with a written notice of acceptance within
16 a reasonable period of time after receipt of the supplier's settlement offer, but no later
17 than 15 working days after receipt of the offer. If no response is served upon the
18 supplier within the 15–working day period, then the offer shall be deemed accepted.

19 (n) If a contractor accepts a supplier's offer to repair a construction defect
20 described in a notice of claim, the contractor shall provide the supplier and its agents,
21 experts, and consultants prompt and unfettered access to the building to perform
22 and complete the construction by the timetable stated in the settlement offer.

23 (o) A person who is seeking contribution from a supplier and who elects to
24 inspect a building under sub. (3) shall send to the supplier written notice by certified

1 mail of the inspection date and building address, and whether destruction testing is
2 contemplated, at least 5 working days before the inspection.

3 **(10)** This section does not apply to a contractor's or supplier's right to seek
4 contribution, indemnity, or recovery against any party other than a supplier for a
5 claim made against a contractor or supplier.

6 **(11)** HOMEOWNER REPAIRS. Without giving notice under this section, a
7 homeowner may make immediate repairs to a building to protect the health or safety
8 of its occupants.

9 **(12)** The department of commerce shall prepare a draft of a brochure
10 explaining the process under this section and shall provide that draft to contractors.
11 Contractors shall provide a copy of this brochure to any person who purchases a
12 building from the contractor or who has a contractor remodel a building or
13 manufactured home.

14 **SECTION 3. Initial applicability.**

15 (1) This act first applies to actions commenced on the effective date of this
16 subsection.

17 **SECTION 4. Effective date.**

18 (1) This act takes effect on the first day of the 6th month beginning after
19 publication.

20 **(END)**

Basford, Sarah

From: Smith, Heather
Sent: Thursday, November 03, 2005 4:21 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3973/1 Topic: Claims against contractors and suppliers

It has been requested by <Smith, Heather> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-3973/1 Topic: Claims against contractors and suppliers

3973/2

2005 – 2006 LEGISLATURE

LRB–~~2307/2~~
RPN&RNK:wlj&kjf:~~jf~~

Wanted 1st on 8/14

redraft run maker

note: redraft off of 2307/2

2005 BILL

Regen

AN ACT ***to create*** 101.148 and 895.07 of the statutes; **relating to:** contractor's notices, claims against certain contractors and suppliers of dwellings, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires contractors and subcontractors who contract to construct a home or to remodel a home or manufactured home to provide a notice to the homeowner telling the homeowner that he or she must follow the procedure in this bill before suing a contractor, subcontractor, or door or window supplier. Under the bill, if a homeowner, which includes condominium associations, is concerned about a possible construction defect, the homeowner must give written notice of the claim to the contractor at least 90 working days before starting an action against the contractor. The bill requires the written notice of the claim to detail the nature of the alleged defect, including any evidence and information the homeowner has that depicts the nature and cause of the defect.

After the contractor receives the notice, the bill gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the bill, if the claim is rejected at this point, the homeowner can start an action against the contractor. The bill requires the homeowner to allow the contractor access to the home if the contractor wants to inspect the alleged defect. If the contractor makes a settlement offer and the homeowner rejects the offer, the homeowner must do so with a written statement that includes the factual reasons for the rejection and any known legal

reasons for the rejection. The bill allows the contractor to submit a timely supplemental offer in response to the homeowner's rejection and requires the homeowner to respond to the supplemental offer under the same procedures as he or she responds to an original offer.

If the property is inspected and requires some destructive testing, the bill requires the contractor to return the dwelling to its preinspection condition after finishing the inspection and testing. After the inspection, the bill gives the contractor an opportunity to remedy the defect, settle the claim with a monetary settlement, or refuse to remedy the alleged defect. Under the bill, if the contractor refuses to remedy the alleged defect, after notification the homeowner may start an action regarding the defect. If the homeowner agrees to a contractor's settlement offer, and the contractor does not follow through as agreed, the bill allows the homeowner to include in its court action the offer and acceptance as rebuttable evidence of an agreement.

Under the bill, if a homeowner rejects a reasonable settlement offer or does not permit the contractor to repair the defect, the homeowner's damages are limited to the fair market value of the offer of settlement or the actual costs of the repairs, whichever is less, or the amount of the monetary offer of settlement.

The bill allows a homeowner to repair a defect immediately without giving notice if the repair is necessary for health or safety.

The bill also provides that the contractor or supplier may not be liable for damages for a defect if the damage is caused by normal shrinkage or settlement of the construction, if the contractor or supplier relied on written information from a public agency, if the defect was known by or disclosed to the homeowner before the purchase, the dwelling was purchased "as is," the defect could have been discovered by the homeowner with due diligence before purchasing the dwelling, or the contractor or supplier was not allowed to perform warranty service work.

Condominium associations and other homeowner associations are required by the bill to follow additional procedures before bringing an action for a construction defect, including receiving approval from each unit's owner who is affected by that action, the majority of the unit owners vote for the action, and the association's board of directors negotiated in good faith with the contractor to resolve the defect.

Under the bill, a contractor may obtain contribution from a window or door supplier for the cost of repairing the defect if the contractor follows procedures in the bill similar to those that apply to the contractor and homeowner regarding a defect, including notifying the supplier of the alleged defect and giving the supplier an opportunity to remedy the defect or to make an offer of settlement.

The bill requires the Department of Commerce to prepare a draft of a brochure that explains the process in this bill and provide that draft to contractors. Contractors are required to give a copy of the brochure to homeowners.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.148 of the statutes is created to read:

2 **101.148 Contractor notices. (1)** DEFINITIONS. In this section:

3 (a) "Claimant" has the meaning given in s. 895.07 (1) (c).

4 (b) "Contractor" means a person that enters into a contract with a potential
5 claimant to construct a dwelling on the potential claimant's land, to complete a
6 remodeling project on a dwelling on the potential claimant's land, or to complete a
7 remodeling project on the potential claimant's manufactured home. "Contractor"
8 includes a subcontractor.

9 (c) "Dwelling" means any structure or part of a structure that is intended for
10 use as a home, residence, or sleeping place by one or more persons maintaining a
11 common household, to the exclusion of all others.

12 (d) "Manufactured home" has the meaning given in s. 101.91 (2).

13 (e) "Remodel" does not include maintenance and repair work.

14 (f) "Supplier" means a person that manufactures or supplies windows or doors
15 for a dwelling.

16 **(2)** NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Upon entering into a contract
17 to construct a dwelling, to complete a remodeling project on a dwelling, or to complete
18 a remodeling project on a manufactured home, the contractor shall give the potential
19 claimant, if any, a copy of the brochure prepared under s. 895.07 (12) and a notice
20 worded substantially as follows:

21 NOTICE CONCERNING CONSTRUCTION

22 DEFECTS

23 Wisconsin law contains important requirements you must follow before you
24 may file a lawsuit for defective construction against the contractor who constructed
25 your dwelling or completed your remodeling project or against window or door

1 suppliers. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires
2 you to deliver to the contractor a written notice of any construction conditions you
3 allege are defective before you file your lawsuit, and you must provide your
4 contractor or window or door suppliers the opportunity to make an offer to repair or
5 pay for the construction defects. You are not obligated to accept any offer made by
6 the contractor or window or door suppliers, but failure to accept a reasonable offer
7 may limit your recoverable damages. All parties are bound by applicable warranty
8 provisions.

9 (b) The notice required under par. (a) shall be conspicuous and in writing and
10 may be included within the contract between the contractor and the potential
11 claimant.

12 **SECTION 2.** 895.07 of the statutes is created to read:

13 **895.07 Claims against contractors and suppliers. (1)** DEFINITIONS. In this
14 section:

15 (a) "Action" means a civil action or an arbitration under ch. 788.

16 (b) "Claimant" means a homeowner, other than a developer or builder, who
17 asserts a claim against a contractor or supplier concerning a construction defect.

18 (c) "Construction defect" has the meaning assigned by a written, express
19 warranty provided by the contractor or, if no such meaning is assigned by warranty,
20 means a deficiency in the specifications, planning, supervision, construction, or
21 remodeling of a dwelling or in the remodeling of a manufactured home that results
22 from any of the following:

23 1. Defective material.

24 2. Violation of applicable codes.

25 3. Failure to follow accepted trade standards for workmanlike construction.

1 (d) "Contractor" means a person including a subcontractor, that enters into a
2 contract with a potential claimant to construct a dwelling or to complete a
3 remodeling project on a dwelling or manufactured home.

4 (e) "Dwelling" means any structure or part of a structure that is intended for
5 use as a home, residence, or sleeping place by one or more persons maintaining a
6 common household, to the exclusion of all others.

7 (f) "Manufactured home" has the meaning given in s. 101.91 (2).

8 (g) "Serve" or "service" means personal service or delivery by certified mail,
9 return receipt requested, to the last–known address of the addressee.

10 (h) "Supplier" means a person that manufactures or supplies windows or doors
11 for a dwelling.

12 (j) "Working day" means any day except Saturday, Sunday, and holidays
13 designated in s. 230.35 (4) (a).

14 **(2)** ACTION; DISMISSAL WITHOUT PREJUDICE. Before filing an action against a
15 contractor or supplier for a construction defect, the claimant shall serve the
16 contractor with a written notice of the claim that describes the claim in sufficient
17 detail to determine the general nature of the construction defect. If the claimant files
18 an action but fails to serve the notice of claim, the circuit court shall dismiss the
19 action without prejudice, and the action may not be refiled until the claimant has
20 complied with the requirements of this subsection.

21 **(3)** NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than 90 working days before
22 initiating an action against a contractor or supplier under this section, the claimant
23 shall serve written notice of claim under sub. (2) on the contractor. The notice of
24 claim shall state that the claimant asserts a construction defect claim or claims and
25 is providing notice under this paragraph. The notice of claim shall describe the claim

1 or claims in sufficient detail to explain the nature of the alleged construction defect
2 and the results of the construction defect. The claimant shall provide to the
3 contractor all evidence the claimant knows or possesses, including expert reports,
4 photographs, electronic mail, and videotapes that depict the nature and cause of the
5 alleged construction defect. In addition, the claimant shall provide to the contractor
6 any evidence discoverable under ch. 804 that depicts the nature and cause of the
7 construction defect, including expert reports, photographs, and videotapes.

8 (b) Within 15 working days after the claimant serves notice of claim under par.
9 (a), or within 25 working days if the contractor makes a claim for contribution from
10 a supplier under sub. (9) (a), each contractor that has received the notice of claim may
11 serve on the claimant, and on any other contractor that has received the notice of
12 claim and on any supplier that has received a claim for contribution under sub. (9)
13 (a), a written response to the claim or claims that either offers to settle the claim by
14 monetary payment, the making of repairs, or a combination of both, without
15 inspection, or proposes to inspect the dwelling that is the subject of the claim.

16 (c) Within 15 working days after a supplier has received notice that a contractor
17 is seeking contribution under sub. (9) (a), the supplier may serve the contractor with
18 a written response that offers to settle the contribution claim by payment, by repair,
19 or by both payment and repair without inspection or that offers to inspect the
20 dwelling that is the subject of the contribution claim. If a contribution claim is made,
21 the contractor shall forward all responses from the supplier to the claimant. The
22 supplier and contractor shall use their best efforts to coordinate their responses to
23 claims and contribution claims.

24 (d) If the contractor wholly rejects the claim and will neither remedy the alleged
25 construction defect nor settle the claim, or does not respond to the claimant's notice

1 of claim within the time under par. (b), the claimant may bring an action against the
2 contractor for the claims described in the notice of claim without further notice.
3 (e) If the claimant rejects a settlement offer made by the contractor, the
4 claimant shall provide written notice of the claimant's rejection to the contractor.
5 The notice shall include the specific factual and, if known, legal reasons for the
6 claimant's rejection of the contractor's proposal or offer. If the claimant believes that
7 the settlement offer omits reference to any portion of the claim, or was unreasonable,
8 the claimant shall in its written notice include those items that the claimant believes
9 were omitted and set forth in detail all reasons why the claimant believes the
10 settlement offer is unreasonable. The contractor shall forward the claimant's
11 response to a supplier upon whom a contribution claim has been made.
12 (f) If a proposal for inspection is made under par. (b), the claimant shall, within
13 15 working days of receiving the contractor's proposal, provide the contractor and
14 any supplier on whom a contribution claim has been made and its agents, experts,
15 and consultants prompt and complete access to the dwelling to inspect the dwelling,
16 document any alleged construction defects, and perform any testing required to
17 evaluate fully the nature, extent, and cause of the claimed construction defects and
18 the nature and extent of any repairs or replacements that may be necessary to
19 remedy them. If destructive testing is required, the contractor shall give the
20 claimant and all persons on whom a notice of claim or contribution claim has been
21 served advance notice of the testing at least 5 working days before commencement
22 of the testing and shall, after completion of the testing, return the dwelling to its
23 pre–testing condition. If any inspection or testing reveals a condition that requires
24 additional testing to allow the contractor to evaluate fully the nature, cause, and
25 extent of the construction defect, the contractor shall provide notice to the claimant

and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the claimant shall provide access under this paragraph. If a claim is asserted on behalf of the owners of multiple dwellings, or multiple owners of units within a multifamily complex, then the contractor shall be entitled to inspect each of the dwellings or units. The claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the contractor to request in writing a day, at least 3 working days before the inspection.

(g) Within 10 working days following completion of the inspection and receipt of all testing results under par. (f), the contractor may serve on the claimant any of the following:

1. A written offer to remedy fully or partially the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and a timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the contractor will not proceed further to remedy the construction defect.

(h) If a claimant accepts a contractor's offer made under par. (g) within 15 working days after receipt of the offer, or if the offer is deemed accepted under par. (n), and the contractor does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice. The claimant may also file the contractor's offer and claimant's

1 acceptance in the circuit court action, and the offer and acceptance creates a
2 rebuttable presumption that a binding and valid settlement agreement has been
3 created and should be enforced by the court.

4 (i) If a claimant receives a written statement that the contractor will not
5 proceed further to remedy the construction defect, the claimant may bring an action
6 against the contractor for the claim described in the notice of claim without further
7 notice.

8 (j) If the claimant rejects the offer made by the contractor to remedy the
9 construction defect or to settle the claim by monetary payment or a combination of
10 each, the claimant shall serve written notice of the claimant's rejection on the
11 contractor within 15 working days after receipt of the offer. The notice shall include
12 the specific factual and, if known, legal reasons for the claimant's rejection of the
13 contractor's offer. If the claimant believes the contractor's settlement offer is
14 unreasonable, the claimant shall set forth in detail all reasons why the claimant
15 believes the settlement offer is unreasonable.

16 (k) Upon receipt of a claimant's rejection and the reasons for the rejection, the
17 contractor may, within 5 working days after receiving the rejection, make a
18 supplemental offer of repair or monetary payment to the claimant.

19 (L) If the claimant rejects the supplemental offer made by the contractor under
20 par. (k) to remedy the construction defect or to settle the claim by monetary payment
21 or a combination of each, the claimant shall serve written notice of the claimant's
22 rejection on the contractor within 15 working days after receipt of the supplemental
23 offer. The notice shall include the specific factual and, if known, legal reasons for the
24 claimant's rejection of the contractor's supplemental settlement offer. If the claimant
25 believes the contractor's supplemental settlement offer is unreasonable, the

1 claimant shall set forth in detail all reasons why the claimant believes the
2 supplemental settlement offer is unreasonable. If the contractor declines to make
3 a supplemental offer, or if the claimant rejects the supplemental offer, the claimant
4 may bring an action against the contractor for the claim described in the notice of
5 claim without further notice.

6 (m) If a claimant rejects a reasonable offer or reasonable supplemental offer
7 made under this subsection, or does not permit the contractor to repair the
8 construction defect pursuant to an accepted offer of settlement, the claimant may not
9 recover an amount in excess of the fair market value of the offer of settlement, or the
10 actual cost of the repairs made, whichever is less, or the amount of a monetary offer
11 of settlement. For purposes of this paragraph, the trier of fact shall determine the
12 reasonableness of an offer of settlement. If the claimant has rejected a reasonable
13 offer or reasonable supplemental offer, and any other law allows the claimant to
14 recover costs and attorney fees, then the claimant may recover no costs or attorney
15 fees incurred after the date of its rejection.

16 (n) A claimant accepting the offer of the contractor to remedy a construction
17 defect shall do so by serving the contractor with a written notice of acceptance within
18 a reasonable period of time after receipt of the contractor's settlement offer, but no
19 later than 15 working days after receipt of the offer. If no response is served upon the
20 contractor within the 15–working day period, then the offer shall be deemed
21 accepted. If all requirements under this section have been fulfilled, and if the
22 claimant has rejected any outstanding offers, the claimant may bring an action
23 against the contractor for the claim described in the notice of claim without further
24 notice.

1 (o) If a claimant accepts a contractor's offer to repair a construction defect
2 described in a notice of claim, the claimant shall provide the contractor and its
3 agents, experts, and consultants prompt and unfettered access to the dwelling to
4 perform and complete the construction by the timetable stated in the settlement
5 offer.

6 (p) If, during the pendency of the notice, inspection, offer, acceptance, or repair
7 process, an applicable limitation period would otherwise expire, the limitation
8 period is tolled pending completion of the notice of claim process described in this
9 section. This paragraph shall not be construed to revive a limitation period that has
10 expired before the date on which a claimant's written notice of claim is served or
11 extend any applicable statute of repose.

12 (q) After the sending of the initial notice of claim and initial contribution claim,
13 a claimant, a contractor, and a supplier may, by written mutual agreement, alter the
14 procedure for the notice of claim process described in this section.

15 **(4)** CONTRACTOR OR SUPPLIER NOT LIABLE FOR CERTAIN DAMAGES. In an action
16 relating to a dwelling involving a construction defect, a contractor or supplier shall
17 not be liable for damages involving or caused by any of the following:

18 (a) Normal shrinkage due to drying or settlement of construction components
19 within the tolerance of construction standards.

20 (b) The contractor's or supplier's reliance on written information relating to the
21 dwelling that was obtained from official government records or provided by a
22 government entity.

23 (c) Any construction defect known by or disclosed to a claimant in writing before
24 his or her purchase of the dwelling.

25 (d) Any construction defect in a dwelling that is purchased in "as is" condition.

(e) If the claimant is not the first owner of the dwelling, any construction defect known by the claimant or that could have been discovered by the claimant through the exercise of reasonable diligence before the claimant's purchase of the dwelling.

(f) Refusal of anyone to allow the contractor or supplier or the contractor's or supplier's agents to perform their warranty service work.

(5) WARRANTY TERMS. The claimant and contractor or supplier are bound by any contractor or supplier warranty terms pertaining to products or services supplied for the dwelling.

(6) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR. A construction defect that is discovered after an initial claim or contribution claim notice has been provided may not be alleged in an action until the claimant or contractor has given the contractor or supplier who performed the original construction work or provided supplies written notice of the new claim or contribution claim regarding the alleged new construction defect based on the claimant's or contractor's most current records. The contractor or supplier shall have an opportunity to resolve the notice of the new claim or contribution claim in the manner provided in subs. (3) and (9).

(7) RELEASE; INSURANCE. If a claimant or contractor accepts an offer made in compliance with this section and the contractor or supplier fulfills the offer in compliance with this section, an action brought by the claimant or contractor for the claim described in the notice of claim shall be dismissed with prejudice and the contractor or supplier is, for insurance purposes, legally obligated to make the repairs or the monetary payment as if the claimant or contractor had recovered a judgment against the contractor or supplier in the amount of the cost of the repairs or the amount of the monetary payment.

1 **(8)** ACTION OF ASSOCIATIONS. (a) In this subsection, "association" means a
2 homeowner's association, condominium association under s. 703.02 (1m), unit
3 owner's association, or a nonprofit corporation created to own and operate portions
4 of a planned community that may assess unit owners for the costs incurred in the
5 performance of the association's obligations.

6 (b) A person may not provide or offer to provide anything of value, directly or
7 indirectly, to a property manager of an association or to a member or officer of an
8 association to induce the property manager, member, or officer to encourage the
9 association to file or discourage the association from filing a claim for damages
10 arising from a construction defect.

11 (c) A property manager retained by an association or a member or officer of an
12 association may not accept anything of value, directly or indirectly, in exchange for
13 encouraging to file or discouraging from filing a claim for damages on behalf of the
14 association arising from a construction defect.

15 (d) A person who knowingly violates par. (b) or (c) may be fined not more than
16 $500 or imprisoned not more than 30 days, or both.

17 (e) An association may bring an action against a contractor to recover damages
18 resulting from construction defects in any of the common elements or limited
19 common elements of a condominium, as defined in s. 703.02 (2) and (10). Such an
20 action may be maintained only after all of the following occur:

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

24 2. A vote is held of the units' owners to which at least a majority of the votes
25 of the members of the association are allocated.

1 3. The full board of directors of the association and the contractor have met in
2 person and conferred in a good faith attempt to resolve the association's claim, or the
3 contractor has definitively declined or ignored the requests to meet with the board
4 of directors of the association.

5 4. The association has otherwise satisfied all of the pre–action requirements
6 for a claimant to commence an action under this section.

7 (f) At least 3 working days in advance of any vote to commence an action by an
8 association to recover damages resulting from construction defects in any of the
9 common elements or limited common elements of a condominium, the attorney
10 representing the association shall provide to each unit's owner a written statement
11 that includes, in reasonable detail all of the following:

12 1. The construction defects and damages or injuries to the common elements
13 or limited common elements.

14 2. The cause of the construction defects, if the cause is known.

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

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

19 5. A reasonable estimate of the cost of the action, including reasonable attorney
20 fees and costs, expert fees, and the costs of testing.

21 6. All disclosure that the unit owner is required to make upon the sale of the
22 unit.

23 (g) An association or an attorney for an association may not employ a person
24 to perform destructive tests to determine any damage or injury to a unit, common

element, or limited common element caused by a construction defect unless all of the following are true:

1. The person has expertise in the testing.

2. The association has obtained the prior written approval of each unit's owner whose unit or interest in the common element or limited common element will be affected by the testing.

3. The person performing the tests has provided a written schedule for repairs.

4. The person performing the tests is required to repair all damage resulting from the tests in accordance with state laws and applicable local ordinances.

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

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

(h) An association may commence an action only upon a vote or written agreement of the owners of the units to which at least a majority of the votes of the members of the association are allocated. In such a case, the association shall provide written notice to the owner of each unit of the meeting at which the commencement of an action is to be considered or action is to be taken at least 15 working days before the meeting.

(i) The board of directors of an association may, without giving notice to the units' owners, employ a contractor and other persons necessary to make immediate repairs to a unit or common element within the condominium as are required to protect the health and safety of the units' owners.

(9) CONTRIBUTION. (a) A contractor may not seek contribution from a supplier for a claim that a claimant makes against the contractor unless the contractor

1 provides the supplier with a written notice of the claimant's claim and the
2 contribution claim within 5 working days after the contractor's receipt of the claim.
3 The contractor shall explain the contribution claim in sufficient detail to explain the
4 nature and results of the alleged construction defect. The contractor shall provide
5 the supplier all evidence the contractor knows or possesses, including expert reports,
6 photographs, electronic mail, and videotapes that depict the nature and cause of the
7 alleged construction defect. In addition, the contractor shall provide to the supplier
8 any evidence discoverable under ch. 804 that depicts the nature and cause of the
9 alleged construction defect, including expert reports, photographs, and videotapes.
10 The evidence provided to the supplier shall include all of the evidence provided to the
11 contractor by the claimant. The contractor may not later use evidence in an action
12 under this section that the contractor withholds or fails to produce.

13 (b) Within 15 working days after a supplier has received notice that a contractor
14 is seeking contribution under par. (a), the supplier may serve the contractor with a
15 written response that offers to settle the contribution claim by payment, by repair,
16 or by both payment and repair without inspection or that offers to inspect the
17 dwelling that is the subject of the contribution claim. The contractor shall forward
18 the supplier's response to the claimant. The supplier and contractor shall use their
19 best efforts to coordinate their responses to claims and contribution claims.

20 (c) If the supplier wholly rejects the contribution claim and will neither remedy
21 the alleged construction defect nor settle the claim, or does not respond to the
22 contractor's notice of contribution claim within the time under par. (b), the contractor
23 may bring an action against the supplier for the claims described in the notice of
24 contribution claim without further notice.

(d) If the contractor rejects a settlement offer made by the supplier, the contractor shall provide written notice of the contractor's rejection to the supplier and, if the supplier is represented by legal counsel, the supplier's attorney. The notice shall include the specific factual and, if known, legal reasons for the contractor's rejection of the supplier's proposal or offer. If the contractor believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the contractor shall in its written notice include those items that the contractor believes were omitted and set forth in detail all reasons why the contractor believes the settlement offer is unreasonable. In any subsequent action in which the contractor asserts that the settlement offer was unreasonable, the contractor may not raise any reasons that were not included in its response to the supplier.

(e) If a supplier proposes to inspect the dwelling that is the subject of the contribution claim, the contractor and claimant shall, within 15 working days after receiving the supplier's proposal, provide the supplier and its agents, experts, and consultants prompt and complete access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the supplier shall give the contractor and claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 5 working days before commencement of the testing and shall, after completion of the testing, return the dwelling to its pre–testing condition. If any inspection or testing reveals a condition that requires additional testing to allow the supplier to evaluate fully the nature, cause, and extent of the construction defect, the supplier shall provide notice to the

contractor and claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the contractor and claimant shall provide access under this paragraph. If a claim is asserted on behalf of the contractor of multiple dwellings, or multiple owners of units within a multifamily complex, then the supplier shall be entitled to inspect each of the dwellings or units. The contractor and claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the supplier to request in writing a day, at least 3 working days before the inspection.

(f) Within 10 working days following completion of the inspection and receipt of all testing results under par. (e), the supplier may serve on the contractor any of the following:

1. A written offer to remedy fully or partially the construction defect at no cost to the contractor. The offer shall include a description of any additional construction necessary to remedy the construction defect and an anticipated timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the supplier will not proceed further to remedy the construction defect.

(g) If a contractor accepts a supplier's offer made under par. (f) within 15 working days after receipt of the offer, or if the offer is deemed accepted under par. (m), and the supplier does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice. The claimant may also file the supplier's offer and contractor's acceptance

1 in the circuit court action, and the offer and acceptance creates a rebuttable
2 presumption that a binding and valid settlement agreement has been created and
3 should be enforced by the court.

4 (h) If a contractor receives a written statement that the supplier will not
5 proceed further to remedy the construction defect, the contractor may bring an action
6 against the supplier for the claim described in the notice of claim without further
7 notice.

8 (i) If the contractor rejects the offer made by the supplier to remedy the
9 construction defect or to settle the claim by monetary payment or a combination of
10 each, the contractor shall serve written notice of the contractor's rejection on the
11 supplier. The notice shall include the specific factual and, if known, legal reasons for
12 the contractors rejection of the supplier's offer. If the contractor believes the
13 supplier's settlement offer is unreasonable, the contractor shall set forth in detail all
14 reasons why the claimant believes the settlement offer is unreasonable. In any
15 subsequent action in which the contractor asserts that the settlement offer was
16 unreasonable, the contractor may not raise any new reasons unless the contractor
17 later discovers significant information.

18 (j) Upon receipt of a contractor's rejection and the reasons for the rejection, the
19 supplier may, within 10 working days of receiving the rejection, make a
20 supplemental offer of repair or monetary payment to the contractor.

21 (k) If the contractor rejects the supplemental offer made by the supplier to
22 remedy the construction defect or to settle the claim by monetary payment or a
23 combination of each, the contractor shall serve written notice of the contractor's
24 rejection on the supplier. The notice shall include the specific factual and, if known,
25 legal reasons for the contractor's rejection of the supplier's supplemental settlement

1 offer. If the contractor believes the supplier's supplemental settlement offer is
2 unreasonable, the contractor shall set forth in detail all reasons why the contractor
3 believes the supplemental settlement offer is unreasonable. In any subsequent
4 action in which the contractor asserts that the settlement offer was unreasonable,
5 the contractor may not raise any reasons that were not included in its response to
6 the supplier.

7 (L) If a contractor rejects a reasonable offer, including any reasonable
8 supplemental offer, made as provided under this subsection or does not permit the
9 supplier to repair the construction defect pursuant to an accepted offer of settlement,
10 the contractor may not recover an amount in excess of the fair market value of the
11 offer of settlement, or the actual cost of the repairs made, whichever is less, or the
12 amount of a monetary offer of settlement. For purposes of this paragraph, the trier
13 of fact shall determine the reasonableness of an offer of settlement. If the contractor
14 has rejected a reasonable offer, including any reasonable supplemental offer, and any
15 other law allows the contractor to recover costs and attorney fees, then the contractor
16 may recover no costs or attorney fees incurred after the date of its rejection.

17 (m) A contractor accepting the offer of the supplier to remedy a construction
18 defect shall do so by serving the supplier with a written notice of acceptance within
19 a reasonable period of time after receipt of the supplier's settlement offer, but no later
20 than 15 working days after receipt of the offer. If no response is served upon the
21 supplier within the 15–working day period, then the offer shall be deemed accepted.

22 (n) If a contractor accepts a supplier's offer to repair a construction defect
23 described in a notice of claim, the contractor shall provide the supplier and its agents,
24 experts, and consultants prompt and unfettered access to the dwelling to perform
25 and complete the construction by the timetable stated in the settlement offer.

1 (o) A person who is seeking contribution from a supplier and who elects to
2 inspect a dwelling under sub. (3) shall send to the supplier written notice by certified
3 mail of the inspection date and dwelling address, and whether destruction testing
4 is contemplated, at least 5 working days before the inspection.

5 **(10)** This section does not apply to a contractor's or supplier's right to seek
6 contribution, indemnity, or recovery against any party other than a supplier for a
7 claim made against a contractor or supplier.

8 **(11)** HOMEOWNER REPAIRS. Without giving notice under this section, a
9 homeowner may make immediate repairs to a dwelling to protect the health or safety
10 of its occupants.

11 **(12)** The department of commerce shall prepare a draft of a brochure
12 explaining the process under this section and shall provide that draft to contractors.
13 Contractors shall provide a copy of this brochure to any person who purchases a
14 dwelling from the contractor or who has a contractor remodel a dwelling or
15 manufactured home.

16 **SECTION 3. Initial applicability.**

17 (1) This act first applies to actions commenced on the effective date of this
18 subsection.

19 **SECTION 4. Effective date.**

20 (1) This act takes effect on the first day of the 6th month beginning after
21 publication.

22 **(END)**