

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB448)

Received: **02/07/2006**

Received By: **rnelson2**

Wanted: **02/08/2006**

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:

Right to remedy construction defect

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 02/07/2006	kfollett 02/07/2006		_____			
/1			chaugen 02/08/2006	_____	mbarman 02/08/2006	mbarman 02/08/2006	
/2	rnelson2 02/08/2006	kfollett 02/08/2006	pgreensl 02/08/2006	_____	sbasford 02/08/2006	sbasford 02/08/2006	

FE Sent For:

<END>

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/?	rnelson2 02/07/2006	kfollett 02/07/2006		_____			
/1		1/2 kjf 2/800	chaugen 02/08/2006	2/8 selb	mbarman 02/08/2006	mbarman 02/08/2006	

FE Sent For:

<END>

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Subject: Courts - miscellaneous

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Submit via email: YES

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/?	rnelson2	1/15/06	2/7/06	OK 2/18/06			
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Handwritten notes: 1/15/06, 2/7/06, and initials.

Handwritten notes: OK 2/18/06 and initials.

FE Sent For:

<END>

Nelson, Robert P.

From: Robert Procter [RProcter@axley.com]
Sent: Monday, February 06, 2006 5:58 PM
To: Nelson, Robert P.
Cc: richard chandler; rickstaff@rickstaff.com; bboycks@wisbuild.org; Jerry Deschane; Charles V. Sweeney; Theo, Mike - VP Public Affairs/Legal
Subject: FW: Right to Repair Legislation

Bob:

Please also make the two changes listed below in addition to the ones included in the memoranda.

Thanks.

Robert C. Procter
Axley Brynelson, LLP
2 East Mifflin Street, Suite 200
Madison, WI 53703
(608) 283-6762 (direct)
(800) 368-5661 (toll free)
(608) 257-5444 (fax)

From: richard chandler [mailto:rgcwis@charter.net]
Sent: Monday, February 06, 2006 5:44 PM
To: Robert Procter
Cc: bboycks@wisbuild.org; jdeschane@wisbuild.org; Charles V. Sweeney
Subject: Right to Repair Legislation

We agree to making the following changes we discussed to the bill:

- ✓ Page 4, line 20: After "warranty," add "to a consumer."
- ✓ Page 4, lines 21-22: Delete "specifications, planning, supervision."

Rick Chandler

----- Original Message -----

From: Robert Procter
To: richard chandler
Sent: Monday, February 06, 2006 3:56 PM
Subject: RE: Contribution claim

Any word on the warranty part?

Robert C. Procter
Axley Brynelson, LLP
2 East Mifflin Street, Suite 200
Madison, WI 53703
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(800) 368-5661 (toll free)
(608) 257-5444 (fax)

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From: Jerry Deschane
Sent: Monday, February 06, 2006 9:15 AM
To: Brad Boycks; 'Robert Procter'
Subject: FW: Call

Please distribute to anyone else who needs it. Also, Brad, do you want to make copies so that we're all reviewing the same document?

-----Original Message-----

From: Theo, Mike - VP Public Affairs/Legal [mailto:mtheo@wra.org]
Sent: Monday, February 06, 2006 8:57 AM
To: Jerry Deschane
Subject: FW: Call

I just got. Haven't read. Have a 9:00 meeting. Please distribute. See you at 10.

[Theo, Mike - VP Public Affairs]

-----Original Message-----

From: Rick Staff [mailto:rickstaff@rickstaff.com]
Sent: Monday, February 06, 2006 6:02 AM
To: 'Theo, Mike - VP Public Affairs/Legal'
Subject: RE: Call

Here you go:

Rick Staff

Rick Staff Consulting
A service of Richard Staff, LLC
237 South 10th St.
La Crosse, WI 54601

rickstaff@rickstaff.com
Phone: 608-785-7525
http://www.rickstaff.com

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From: Theo, Mike - VP Public Affairs/Legal [mailto:mtheo@wra.org]
Sent: Sunday, February 05, 2006 8:00 PM
To: Jerry Deschane (E-mail); Richard Staff
Subject: Call

Are we having a conference call meeting at 10:00 tomorrow to discuss right to cure outstanding issues?

Michael Theo

Vice President for Public Affairs

Wisconsin REALTORS Association
4801 Forest Run Rd. Suite 201
Madison, WI 53704

Phone: 608-241-2047
Fax: 608-241-5168

www.wra.org <<http://www.wra.org/>>

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



AXLEY BRYNELSON, LLP

MEMORANDUM

TO: Robert L. Nelson
FROM: Robert C. Procter, Wisconsin Builders Association
DATE: February 7, 2006
RE: Right to Repair Legislation
Our File: 12557.56638

This memorandum is intended to specify the revisions to the Right to Repair Legislation (the "Legislation") which the Wisconsin Builders Association (the "WBA") intends to submit as an amendment to the Legislation as a result of our discussions with the Department of Trade, Agriculture and Consumer Protection and the Window and Door Manufacturers Coalition.

The changes relate to Senate Substitute Amendment to 2005 Senate Bill 448.

- ✓ (1) In the analysis section, page 2: the second full paragraph should be deleted to reflect the fact that that section of the bill is being deleted.
- ✓ (2) Page 4, lines 5 – 6: Insert a period after the word "supplier" and delete the remaining part of the sentence (through the word "damages").
- ✓ (3) Page 5, line 24: the phrase "the results of the construction defect" should be deleted as redundant.
- ✓ (4) Page 6, line 1: the phrase "a description of the alleged construction defect and include" should be deleted as redundant.
- ✓ (5) Page 7, lines 19-20, and page 14, lines 13-14: Delete the words "receipt of all" and "results".
- ✓ (6) Page 8, line 25 through page 9, line 3: Delete the portion beginning with the phrase "The claimant" through the end of the paragraph to reflect our understanding that no settlement offers by either side will be filed with the court.
- ✓ (7) Page 9, line 12. The entire section (k) should be deleted.
- ✓ (8) Page 10, line 5: Change "the supplier" to "a supplier."

Nelson, Robert P.

From: Robert Procter [RProcter@axley.com]
Sent: Monday, February 06, 2006 5:05 PM
To: Nelson, Robert P.
Cc: Jerry Deschane; Charles V. Sweeney; Bryan Brooks (E-mail); bboycks@wisbuild.org; richard chandler; rickstaff@rickstaff.com; Theo, Mike - VP Public Affairs/Legal; Smith, Heather
Subject: Memorandums
Attachments: Memo. revisions per WRA (2006 02-06) (00149518-2).DOC; Memo. revisions per DATCP (2006 02-06) (00149784).DOC

Dear Bob Nelson:

Attached are two memorandums that include changes we would like you to make to the substitute amendment. The first memorandum addresses the concerns of Rick Staff at the Wisconsin Realtors Association discussed today, and the second includes the agreed to revisions between DATCP, the Window and Door Manufacturer Coalition and the WBA.

Please call me with any questions.

Thanks.

Robert C. Procter
Axley Brynerson, LLP
2 East Mifflin Street, Suite 200
Madison, WI 53703
(608) 283-6762 (direct)
(800) 368-5661 (toll free)
(608) 257-5444 (fax)

From: Brad Boycks [mailto:bboycks@wisbuild.org]
Sent: Monday, February 06, 2006 9:20 AM
To: Theo, Mike - VP Public Affairs/Legal; richard chandler; Rickstaff@rickstaff.com; Robert Procter; Smith, Heather; Robert.Nelson@legis.state.wi.us
Cc: Jerry Deschane
Subject: FW: Call

Enclosed are comments from Rick Staff who is working with WRA.

This will be the first topic of today's 10 am meeting.

Thanks-

Brad Boycks
Director of Political Affairs
Wisconsin Builders Association
W: 608-242-5151
C: 608-692-5157

-----Original Message-----

05/18/1

Wanted 1/8 8:30 AM

stays

SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 448

D-N

January 25, 2006 - Offered by Senator OLSEN.

Regen

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

to deliver to

Analysis by the Legislative Reference Bureau

person

This substitute amendment requires contractors that contract to construct or remodel a person's residence to provide the dwelling's owner a brochure explaining the procedures created in this substitute amendment and giving written notice that he or she must follow those procedures before suing a contractor or window or door supplier. Under the substitute amendment, if the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The substitute amendment requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

to file

After the contractor receives the notice, the substitute amendment 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 substitute amendment, if the claim is rejected at this point, or if the contractor fails to respond timely to the claim, the owner can start a court action against the

contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection. The substitute amendment requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to inspect the alleged construction defect. After inspection, the substitute amendment allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the substitute amendment allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as for the original offer.

If the property is inspected and requires some destructive testing, the substitute amendment requires the contractor to return the dwelling to its condition before the inspection. If the owner of a dwelling agrees to a contractor's settlement offer and the contractor does not follow through as agreed, the substitute amendment allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

Under the substitute amendment, if an owner of a dwelling rejects a reasonable settlement offer or does not permit the contractor to repair the defect under an agreed settlement offer, the owner's damages are limited to the fair market value of the costs of the repairs, or the amount of the monetary offer of settlement, and the owner may not recover punitive damages, costs, or attorney fees incurred after the rejection.

The substitute amendment allows an owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety.

If the dwelling owner begins a court action but fails to follow the procedures, and the contractor has provided the owner with the proper notice and brochure, under the substitute amendment the court must dismiss the action without prejudice. If the dwelling owner begins a court action but fails to follow the procedures, and the contractor does not provide the owner with the proper notice and brochure, under the substitute amendment the court stays the action and orders the parties to comply with the substitute amendment's provisions.

Under the substitute amendment, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the substitute amendment similar to those that apply to the contractor and owner 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 substitute amendment requires the Department of Commerce to prepare a draft of a brochure that explains the process in this substitute amendment and to provide that draft to contractors. Contractors are required to give a copy of the brochure to the owner of a dwelling if the contractor and owner contract to construct or remodel a dwelling.

person whom contracts with

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

SECTION 1

Contract with a contractor to construct or remodel

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

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

3 (a) "Consumer" means ~~the owner, tenant, or lessee of a dwelling, or an~~
4 *a person who enters into a written or oral*
5 association or other entity with control over the common areas appurtenant to a
6 dwelling.

7 (b) "Contractor" means a person who enters into a written or oral contract with
8 a consumer to construct or remodel a dwelling.

9 *(c) insert 3-70e*
10 (c) "Dwelling" means any premises or portion of a premises that is used as a
11 home or a place of residence and that part of the lot or site on which the dwelling is
12 situated that is devoted to residential use. "Dwelling" includes other existing
13 structures on the immediate residential premises such as driveways, sidewalks,
14 swimming pools, terraces, patios, fences, porches, garages, and basements.

15 *(e)* (d) "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not
16 include maintenance *or repair* work.

17 (2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written
18 contract to construct or remodel a dwelling, or, if the parties enter into an oral
19 contract, as soon as reasonably possible, but before commencing any work to
20 construct or remodel a dwelling, the contractor shall *give* ^{*deliver to*} the consumer a copy of the
21 brochure prepared under s. 895.07 (13) and a notice worded substantially as follows:

22 NOTICE CONCERNING CONSTRUCTION

23 DEFECTS

24 Wisconsin law contains important requirements you must follow before you
25 may file a lawsuit for defective construction against the contractor who constructed
your dwelling or completed your remodeling project or against a window or door
supplier or manufacturer. For example, section 895.07 (2) and (3) of the Wisconsin

1 statutes requires you to deliver to the contractor a written notice of any construction
 2 conditions you allege are defective before you file your lawsuit, and you must provide
 3 your contractor or window or door supplier the opportunity to make an offer to repair
 4 or ~~pay for~~ ^{remedy alleged} the construction defects. You are not obligated to accept any offer made
 5 by the contractor or window or door supplier, ~~but failure to accept a reasonable offer~~
 6 ~~may limit your recoverable damages.~~ All parties are bound by applicable warranty
 7 provisions.

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

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

11 **895.07 Claims against contractors and suppliers.** (1) DEFINITIONS. In this
 12 section:

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

14 ^(c) ~~(b)~~ "Claim" means a request or demand to remedy a construction defect caused
 15 by a contractor or supplier related to the construction or remodeling of a dwelling.

16 ^(d) ~~(c)~~ "Claimant" means the owner, tenant, or lessee of a dwelling, or an
 17 association, ~~such as a condominium association or homeowners association,~~ who has
 18 standing to sue a contractor or supplier regarding a construction defect.

19 ^(e) ~~(d)~~ "Construction defect," in those cases when the contractor or supplier has
 20 provided a warranty, ^{to a consumer} means the definition of "defect" in the warranty. In all other
 21 cases, "construction defect" means a deficiency in the ~~specifications, planning,~~
 22 ~~supervision,~~ construction or remodeling of a dwelling that results from any of the
 23 following:

- 24 1. Defective material.
- 25 2. Violation of applicable codes.

move from
P 11, 15 10-14

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

2 (f) ~~(e)~~ ^{insert 4-15} "Contractor" means a person that enters into a written or oral contract with
3 a ~~potential claimant~~ ^{consumer} to construct or remodel a dwelling.

4 (h) ~~(f)~~ "Dwelling" means any premises or portion of a premises that is used as a
5 home or a place of residence and that part of the lot or site on which the dwelling is
6 situated that is devoted to residential use. "Dwelling" includes other existing
7 structures on the immediate residential premises such as driveways, sidewalks,
8 swimming pools, terraces, patios, fences, porches, garages, and basements.

9 (i) ~~(g)~~ "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not
10 include maintenance work.

11 (j) ~~(h)~~ "Serve" or "service" means personal service or delivery by certified mail,
12 return receipt requested, to the last-known address of the addressee.

13 (k) ~~(i)~~ "Supplier" means a person that manufactures or provides windows or doors
14 for a dwelling.

15 (l) ~~(j)~~ "Working day" means any day except Saturday, Sunday, and holidays
16 designated in s. 230.35 (4) (a). ^(insert 5-17)

17 (2) NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than 90 working days before
18 initiating an action against a contractor or supplier, a claimant shall serve written
19 notice of claim on the contractor. Before initiating an action against a contractor or
20 supplier, a claimant shall provide the contractor or supplier with the opportunity to
21 respond to the claim and repair the ^{alleged} construction defect under this section. The notice
22 of claim shall state that the claimant asserts a construction defect claim. The notice
23 of claim shall describe the claim in sufficient detail to explain the nature of the
24 alleged construction defect and the results of the construction defect and shall offer
25 the opportunity to correct the construction defect. The claimant shall include in the

1 notice of claim ~~a description of the alleged construction defect and include~~ a
2 comprehensive description of all evidence that the claimant knows or possesses,
3 including expert reports, that substantiates the nature and cause of the alleged
4 construction defect.

5 (b) Within 15 working days after the claimant serves notice of claim under par.
6 (a), or within 25 working days if the contractor makes a claim for contribution from
7 a supplier under sub. (7) (a), each contractor that has received the notice of claim
8 shall serve on the claimant any of the following:

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

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

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

15 4. A written statement that the contractor rejects the claim ~~and the~~ ^{the} contractor
16 shall state in the written response to the claim the reason for rejecting the claim and
17 include a comprehensive description of all evidence the contractor knows or
18 possesses, including expert reports, that substantiates the reason for rejecting the
19 claim. The contractor shall also include in the written response to the claim any
20 settlement offer received from a supplier.

21 5. A proposal for ~~the~~ inspection of the dwelling under par. (c).

22 (c) If a proposal for inspection is made under par. (b), the claimant shall, within
23 15 working days of receiving the contractor's proposal, provide the contractor and
24 any supplier on whom a contribution claim has been made and its agents, experts,
25 and consultants reasonable access to the dwelling to inspect the dwelling, document

1 any alleged construction defects, and perform any testing required to evaluate fully
2 the nature, extent, and cause of the claimed construction defects and the nature and
3 extent of any repairs or replacements that may be necessary to remedy them. If
4 destructive testing is required, the contractor shall ^{deliver} ~~give~~ the claimant and all persons
5 on whom a notice of claim or contribution claim has been served advance notice of
6 the testing at least 5 working days before commencement of the testing and shall,
7 after completion of the testing, return the dwelling to its pre-testing condition within
8 a reasonable time after completion of the testing, at the contractor's expense. If any
9 inspection or testing reveals a condition that requires additional testing to allow the
10 contractor to evaluate fully the nature, cause, and extent of the construction defect,
11 the contractor shall ^{deliver} ~~provide~~ notice to the claimant and all persons on whom a notice
12 of claim or contribution claim has been served of the need for the additional testing
13 and the claimant shall provide reasonable access to the dwelling. If a claim is
14 asserted on behalf of the owners of multiple dwellings, then the contractor shall be
15 entitled to inspect each of the dwellings ^{subject to the claim}. The claimant shall either provide a specific
16 day for the inspection upon reasonable notice for an inspection or require the
17 contractor to request in writing a date for the inspection, at least 3 working days
18 before the inspection.

19 (d) Within 10 working days following completion of the inspection and ^{receipt} ~~of~~
20 ^{of all testing results} ~~of all testing results~~ under par. (c), the contractor shall serve on the claimant a notice
21 that includes any of the offers or statements under par. (b) 1. to 4.

22 (e) If the claimant rejects a settlement offer made by the contractor, the
23 claimant shall, within 15 working days after receiving the offer, serve written notice
24 of that rejection to the contractor. The notice shall include the reasons for the
25 claimant's rejection of the contractor's offer. If the claimant believes that the

1 settlement offer omits reference to any portion of the claim, or was unreasonable, the
2 claimant's written notice shall include those items that the claimant believes were
3 omitted and set forth the reasons why the claimant believes the settlement offer is
4 unreasonable. The contractor shall ~~forward~~^{deliver} the claimant's response to a supplier
5 upon whom a contribution claim has been made.

6 (f) Upon receipt of a claimant's rejection and the reasons for the rejection, the
7 contractor shall, within 5 working days after receiving the rejection, ~~make a~~
8 ~~supplemental offer of repair or monetary payment to the claimant~~^(insert 8-7) or serve on the
9 claimant written notice that no additional offer will be made.

10 (g) If the claimant rejects the supplemental offer made by the contractor under
11 par. (f) to remedy the construction defect or to settle the claim by monetary payment
12 or a combination of each, the claimant shall serve written notice of the claimant's
13 rejection on the contractor within 15 working days after receipt of the supplemental
14 offer. The notice shall include the reasons for the claimant's rejection of the
15 contractor's supplemental settlement offer. If the claimant believes the contractor's
16 supplemental settlement offer is unreasonable, the claimant shall set forth ~~in detail~~
17 ~~all~~^{the} reasons why the claimant believes the supplemental settlement offer is
18 unreasonable. If the contractor declines to make a supplemental offer, or if the
19 claimant rejects the supplemental offer, the claimant may bring an action against
20 the contractor for the claim described in the notice of claim without further notice.

21 (h) If a claimant accepts any offer made under this subsection, and the
22 contractor or supplier does not proceed to make the agreed ~~upon~~^{to} monetary payment
23 or ~~remedy~~^{agreed to repair of} the construction defect within the agreed upon timetable, the claimant
24 may bring an action against the contractor for the claim described in the notice of
25 claim without further notice. ~~The claimant may file the contractor's offer and~~

1 claimant's acceptance in the circuit court action, and the offer and acceptance create
2 a 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 accepts a contractor's offer to repair a construction defect
5 described in a notice of claim, the claimant shall provide the contractor and its
6 agents, experts, and consultants reasonable access to the dwelling to perform and
7 complete the construction by the timetable stated in the settlement offer.

8 (j) If a claimant receives a written statement that the contractor rejects the
9 claim, or if the contractor does not respond to the claimant's notice, the claimant may
10 bring an action against the contractor for the claim described in the notice of claim
11 without further notice.

12 (k) If a claimant rejects a reasonable offer or reasonable supplemental offer or
13 fails to comply in good faith with the requirements under this subsection, or does not
14 permit the contractor to repair the construction defect pursuant to an accepted offer
15 of settlement, the claimant may not recover an amount in excess of the fair market
16 value of the cost of the repairs or the amount of a monetary offer of settlement. The
17 trier of fact shall determine the reasonableness of an offer of settlement. If the
18 claimant has rejected a reasonable offer or reasonable supplemental offer or fails to
19 comply in good faith with the requirements of this subsection, and any other law
20 allows the claimant to recover punitive damages, costs, and attorney fees, then the
21 claimant may not recover those punitive damages, or the costs or attorney fees
22 incurred after the date of its rejection. However, if the trier of fact determines that
23 the contractor did not make a reasonable offer or supplemental offer or comply in
24 good faith with the requirements of this subsection, the claimant may pursue claims

1 under any other law that allows the claimant to recover punitive damages, costs, and
2 attorney fees.

insert 10-3

3 (K) (4) If the claimant has served a contractor with a notice of claim relating to a
4 construction defect and the contractor has rejected or not responded to the claim, the
5 claimant shall, before filing an action against the supplier for a construction defect,
6 serve the supplier with a copy of the notice of claim and provide the supplier with the
7 opportunity to respond to the claim and repair the construction defect in the same
8 manner as provided a contractor under this subsection.

9 (3) ACTION; DISMISSAL WITHOUT PREJUDICE. If the claimant ^{commences} files an action but fails
10 to comply with the requirements of sub. (2) (a) and the contractor or supplier
11 establishes that the claimant was provided the notice and brochure under s. 101.148
12 (2), the circuit court ^{or arbitrator} shall dismiss the action without prejudice. If the claimant ^{commences} files
13 an action but fails to comply with the requirements of sub. (2) (a) and the contractor
14 or supplier cannot establish that the claimant ^{was delivered to} was provided the notice and brochure
15 under s. 101.148 (2), the circuit court ^{or arbitrator} shall stay the action and order the parties to
16 comply with the requirements of sub. (2) (a) and s. 101.148 (2). Before ^{commencing} filing an action
17 against a supplier seeking contribution for a claim that a claimant has served on a
18 contractor, the contractor shall serve the supplier with a notice of contribution claim
19 under sub. (7). If the contractor ^{commences} files an action against a supplier but fails to serve
20 the notice of contribution claim ^{or arbitrator} from the claimant, the circuit court shall stay the
21 action until the contractor has complied with the requirements of this subsection and
22 sub. (7).

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

1 (5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.

2 A construction defect that is discovered after an initial claim or contribution claim
3 notice has been provided may not be alleged in an action until the claimant or
4 contractor has ~~given~~ ^{served} the contractor or supplier that performed the original
5 construction work or provided supplies written notice of the new claim or
6 contribution claim regarding the alleged new construction defect ~~based on the~~
7 ~~claimant's or contractor's most current records.~~ The contractor or supplier shall have
8 an opportunity to resolve the notice of the new claim or contribution claim in the
9 manner provided in subs. (2) and (7). ^{(c5) contractor or supplier. (insert 11-10)}

10 (6) ACTION OF ASSOCIATIONS. ~~(a) In this subsection,~~ "association" means a
11 homeowner's association, condominium association under s. 703.02 (1m), unit
12 owner's association, or a nonprofit corporation created to own and operate portions
13 of a planned community that may assess unit owners for the costs incurred in the
14 performance of the association's obligations. ^{move to p 4, after line 13}

15 (b) A person may not provide or offer to provide anything of value, directly or
16 indirectly, to a property manager of an association or to a member or officer of an
17 association to induce the property manager, member, or officer to encourage the
18 association to file or discourage the association from filing a claim for damages
19 arising from a construction defect. ^{move}

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

24 ~~(d) A person who knowingly violates par. (b) or (c) may be fined not more than~~
25 ~~\$500 or imprisoned not more than 30 days, or both.~~ ^{(a) (b)}

1 ~~(e)~~ An association may bring an action against a contractor or supplier to
2 recover damages that result from construction defects in any of the common
3 elements or limited common elements of a condominium, as defined in s. 703.02 (2)
4 and (10) or to the extent it has standing to sue on behalf of its members.

5 ~~(7)~~ CONTRIBUTION. (a) ~~A contractor may not seek~~ contribution from a supplier
6 for a claim that a claimant makes against the contractor, ~~unless~~ the contractor
7 ~~provides~~ ^{shall serve} the supplier with a written notice of the claimant's claim and the
8 contribution claim within 5 working days after the contractor's receipt of the claim,
9 except that a contractor may make a contribution claim later than 5 days after the
10 contractor's receipt of the initial claim if the contractor has not done any of the
11 following:

- 12 1. Taken any action to repair the defect.
- 13 2. Performed destructive testing.
- 14 3. Authorized the claimant to take any action to repair the defect.
- 15 4. Interfered ^{materially} with or altered the property that is the subject of the claim.
- 16 5. ~~Taken steps that would preclude~~ ^{Materially} a supplier's ability to offer to remedy the
17 defect by making repairs.

18 (b) ^(insert 12-18) The contractor shall include in the notice of claim a description of the alleged
19 construction defect and include a comprehensive description of all evidence that the
20 contractor knows or possesses, including expert reports, that substantiates the
21 nature and cause of the alleged construction defect.

22 (c) Within 15 working days after a supplier has received notice that a contractor
23 is seeking contribution under par. (a), the supplier shall serve the contractor with
24 any of the following:

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

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

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

7 4. A written statement that the supplier rejects the claim, ^{The} and the supplier
8 shall state in the written response to the claim the reason for rejecting the claim and
9 include a comprehensive description of all evidence the supplier knows or possesses,
10 including expert reports, that substantiates the reason for rejecting the claim.

11 5. A proposal for the inspection of the dwelling, following the procedures under
12 par. (e).

13 (d) The contractor shall forward the supplier's response to the claimant. The
14 supplier and contractor shall use their best efforts to coordinate their responses to
15 claims and contribution claims.

16 (e) If a supplier proposes to inspect the dwelling that is the subject of the
17 contribution claim, the contractor and claimant shall, within 15 working days after
18 receiving the supplier's proposal, provide the supplier and its agents, experts, and
19 consultants reasonable access to the dwelling to inspect the dwelling, document any
20 alleged construction defects, and perform any testing required to evaluate fully the
21 nature, extent, and cause of the claimed construction defects and the nature and
22 extent of any repairs or replacements that may be necessary to remedy them. If
23 destructive testing is required, the supplier shall give the contractor and claimant
24 and all persons on whom a notice of claim or contribution claim has been served
25 advance notice of the testing at least 5 working days before commencement of the

1 testing and shall, after completion of the testing, return the dwelling to its
2 pre-testing condition within a reasonable time after completion of the testing, at the
3 supplier's expense. If any inspection or testing reveals a condition that requires
4 additional testing to allow the supplier to evaluate fully the nature, cause, and extent
5 of the construction defect, the supplier shall provide notice to the contractor and
6 claimant and all persons on whom a notice of claim or contribution claim has been
7 served of the need for the additional testing and the contractor and claimant shall
8 provide reasonable access to the dwelling. If a claim is asserted on behalf of the
9 contractor of multiple dwellings, then the supplier shall be entitled to inspect each
10 of the dwellings. The contractor and claimant shall provide a specific day for the
11 inspection upon reasonable notice for an inspection or require the supplier to request
12 in writing a date for the inspection, at least 3 working days before the inspection.

13 (f) Within 10 working days following completion of the inspection and receipt
14 of all testing results under par. (e), the supplier shall serve on the contractor a notice
15 that includes any of the offers or statements under par. (c) 1. to 4.

16 (g) If the contractor rejects a settlement offer made by the supplier, the
17 contractor shall, within 15 working days after receiving the offer, send written notice
18 of that rejection to the supplier. The notice shall include the reasons for the
19 contractor's rejection of the supplier's offer. If the contractor believes that the
20 settlement offer omits reference to any portion of the claim, or was unreasonable, the
21 contractor's written notice shall include those items that the contractor believes were
22 omitted and set forth the reasons why the contractor believes the settlement offer is
23 unreasonable.

24 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the
25 supplier shall, within 5 working days of receiving the rejection, make a supplemental

1 offer of repair or monetary payment to the contractor or serve on the contractor
2 written notice that no additional offer will be made.

3 (i) If the contractor rejects the supplemental offer made by the supplier to
4 remedy the construction defect or to settle the claim by monetary payment or a
5 combination of each, the contractor shall, within 15 working days after receiving the
6 offer, serve written notice of the contractor's rejection on the supplier. The notice
7 shall include the reasons for the contractor's rejection of the supplier's supplemental
8 settlement offer. If the contractor believes the supplier's supplemental settlement
9 offer is unreasonable, the contractor shall set forth the reasons why the contractor
10 believes the supplemental settlement offer is unreasonable. If supplier declines to
11 make a supplemental offer, or if the contractor rejects the supplemental offer, the
12 contractor may bring an action against the supplier for the claim described in the
13 notice of claim without further notice.

14 (j) If a contractor accepts any offer made under this subsection, and the supplier
15 does not proceed to make the monetary payment or remedy the construction defect
16 within the agreed upon timetable, the contractor may bring an action against the
17 supplier for the claim described in the notice of claim without further notice. The
18 contractor may also file the supplier's offer and contractor's acceptance in the circuit
19 court action, and the offer and acceptance create a rebuttable presumption that a
20 binding and valid settlement agreement has been created and should be enforced by
21 the court.

22 (k) If a contractor accepts a supplier's offer to repair a construction defect
23 described in a notice of claim, the contractor, when appropriate, and the claimant
24 shall provide the supplier and its agents, experts, and consultants reasonable access

1 to the dwelling to perform and complete the construction by the timetable stated in
2 the settlement offer. *insert 16-3*

3 (L) If a contractor rejects a reasonable offer, including any reasonable
4 supplemental offer, made as provided under this subsection or does not permit the
5 supplier to repair the construction defect pursuant to an accepted offer of settlement,
6 the contractor may not recover an amount in excess of the fair market value of the
7 cost of the repairs, or the amount of a monetary offer of settlement. The trier of fact
8 shall determine the reasonableness of an offer of settlement. If the contractor has
9 rejected a reasonable offer, including any reasonable supplemental offer, and any
10 other law allows the contractor to recover punitive damages, costs, or attorney fees,
11 then the contractor may not recover those punitive damages, or any costs or attorney
12 fees incurred after the date of its rejection. However, if the trier of fact determines
13 that the supplier did not make a reasonable offer or supplemental offer or comply in
14 good faith with the requirements of this subsection, the contractor may pursue
15 claims under any other law that allows the contractor to recover punitive damages,
16 costs, and attorney fees.

17 (m) A contractor who is seeking contribution from a supplier and who elects to
18 inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the
19 inspection date and dwelling address, and whether destructive testing is
20 contemplated, at least 5 working days before the inspection.

21 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to respond to any notice
22 served under this section, then any offer made in that notice is rejected.

23 (9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer,
24 acceptance, or repair process, an applicable limitation period would otherwise
25 expire, the limitation period is tolled pending completion of the notice of claim

(9) ...

1 process described in this section. This subsection shall not be construed to revive a
2 limitation period that has expired before the date on which a claimant's written
3 notice of claim is served or extend any applicable statute of repose.

4 **(10) ALTERATION OF PROCEDURE.** After service of the initial notice of claim and
5 initial contribution claim, a claimant, a contractor, and a supplier may, by written
6 mutual agreement, alter the procedure for the notice of claim process described in
7 this section.

8 **(11) APPLICATION TO OTHERS.** This section does not apply to a contractor's or
9 supplier's right to seek contribution, indemnity, or recovery against any party other
10 than a supplier for a claim made against a contractor or supplier.

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

14 **(13) BROCHURE.** The department of commerce shall prepare a brochure
15 explaining the process under this section and shall provide that brochure to
16 contractors.

17 **SECTION 3. Initial applicability.**

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

20 **SECTION 4. Effective date.**

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

23 (END)

D-Note



AXLEY BRYNELSON, LLP

Inserts
4-15
3-7

MEMORANDUM

TO: Robert L. Nelson

FROM: Robert C. Procter, Wisconsin Builders Association

DATE: February 7, 2006

RE: Right to Repair Legislation
Our File: 12557.56638

add to
No definition
of consumer
in s. 895.07

This memorandum is intended to specify the revisions to the Right to Repair Legislation (the "Legislation") which the Wisconsin Builders Association (the "WBA") intends to submit as an amendment to the Legislation as a result of our discussions with Rick Staff of the Wisconsin Realtors Association (the "WRA").

The changes relate to Senate Substitute Amendment, to 2005 Senate Bill 448.

- ✓ (1) Page 3, lines 3 – 5: The term "Consumer" should be deleted and restated as:

Insert 4-15

"Consumer" means a person who enters into a written or oral contract with a contractor to construct or remodel a dwelling.

same
97. ✓

- (2) Page 3, lines 6 – 8, and Page 5, lines 2 – 3: The term "Contractor" should be restated as:

"Contractor" means a person who enters into a written or oral contract with a consumer to construct or remodel a dwelling.

- ✓ (3) Page 3, line 14: Insert the phrase "or repair" after the word maintenance.

- (4) Page 3 and page 5 (add to both statutes), add at the appropriate place the following definition (**Bob, please provide us your opinion as to this section**):

Insert
3-7

"Deliver" means any of the following: ^{P. 1.} (i) Depositing the document or written notice ~~postage or fees prepaid~~ in the U.S. Mail or ~~fees prepaid or charged to an account~~ with a commercial delivery service, addressed to the applicable person ^{or} (ii) Giving the document or written notice personally to the applicable person. _{P. 2.}

- ✓ (5) Page 3, line 18: Delete the word give and substitute the phrase "deliver to".

Inserts
5-17
8-7

- ✓ (6) Page 4, line 20: Insert the phrase "to a consumer" after the word "warranty" appears for the first time.
- ✓ (7) Page 4, line 4: Delete the phrase "pay for", and substitute the phrase "to remedy". Insert the word "alleged" in front of the word "construction".
- ✓ (8) Page 4, line 13: After the definition for Action, include the definition for "Association", which should be taken from sec. 895.07(6).
- ✓ (9) Page 5, lines 2 – 3: Substitute the definition of contractor with the definition stated above.
- (10) Page 5, line 17. Delete subsection (2), ^{cal?} and replace with the following language **(Bob – please give us your opinion as to whether this section is more clear or the section as written):**

Insert 5-17
a claimant shall do all of the following:
1.

on the contractor *before commencing an*
 (2) NOTICE AND OPPORTUNITY TO REPAIR OR TO REMEDY. (a) ~~No action may be commenced or maintained~~ ^{cal?} against a contractor or supplier regarding a construction defect unless ~~(i)~~ ^{the} no later than 90 working days before commencing ~~an~~ ^{the} action, written notice containing the circumstances of the claim in sufficient detail to explain the nature of the alleged defect and a description of the evidence that the claimant knows or possesses, including expert reports, that substantiates the nature and cause of the alleged construction defect ~~is served on the contractor; and (ii)~~ ^{with} the contractor or supplier is ~~provided~~ ^{delivered} the opportunity to repair or to remedy the alleged construction defect.

- ✓ (11) Page 6, line 9: Delete the phrase "to remedy fully or partially", and substitute "to repair or to remedy"
- ✓ (12) Page 7, line 3: Delete the word "give" and substitute the word "deliver".
- ✓ (13) Page 7, line 11: Delete the word "provide" and substitute the word "deliver."
- ✓ (14) Page 7, line 15: After the phrase "each of the dwellings" add the phrase "subject to the claim."
- ✓ (15) Page 8, line 4: Delete the word "forward" and substitute the word "deliver".
- ✓ (16) Page 8, line 6: Delete sub paragraph (f) and substitute the following:

insert 8-7

(f) Upon receipt of a claimant's rejection and the reasons for the rejection, the contractor shall, within 5 working days after receiving the rejection, serve the claimant a written supplemental offer to repair or to remedy the construction defect or serve the claimant written notice that no additional offer will be made.

- ✓ (17) Page 8, lines 16 – 17: Delete the phrase "in detail all" and substitute the word "the".
- ✓ (18) Page 8, line 22: Delete the word "upon" and substitute the word "to".
- ✓ (19) Page 8, line 23: Delete the word remedy and insert the phrase "agreed to repair of".

Insert
10-3

(20) Page 10, paragraph (L), delete paragraph (L) and substitute with the following:

~~(L)~~ If a claimant commences an action against a supplier and the supplier has not been provided notice of the claim by the contractor and an opportunity to repair or to remedy the claim pursuant to subsection (7), the claimant shall, before commencing and maintaining a direct action against a supplier for a construction defect, serve the supplier with a copy of the notice of claim and provide the supplier an opportunity to repair or to remedy the construction defect in the same manner as provided a contractor under this section.

Insert
10-3

- ✓ (21) Page 10, line 9: Substitute the word “commences” for the word “files”.
- ✓ (22) Page 10, line 12: Add the phrase “or arbitrator” after the phrase “circuit court.”
- ✓ (23) Page 10, line 12: Substitute the word “commences” for the word “files”.
- ✓ (24) Page 10, line 14: Substitute the “delivered” for the word “provided.”
- ✓ (25) Page, 10, line 15: Add the phrase “or arbitrator” after the phrase “circuit court.”
- ✓ (26) Page 10, line 16: Substitute the word “commences” for the word “files”.
- ✓ (27) Page 10, line 20: Add the phrase “or arbitrator” after the phrase “circuit court.”
- ✓ (28) Page 11, line 4: Substitute the word “serve” for the word “given.”
- ✓ (29) Page 11, lines 4 – 5: Delete the phrase “that performed the original construction work or provided supplies”.
- ✓ (30) Page 11, lines 6 – 7: Delete the phrase: “based on the claimant’s or contractor’s most current records.”
- ✓ (31) Page 11, line 10: Paragraph (6)(a) should be deleted and made a definition under subsection (1).
- ✓ (32) Page 11: Paragraphs (6)(b), (6)(c), (6)(d) and (6)(e) should be deleted. ~~(6) is gone!~~
- not needed ✓ (33) Page 11: Substitute the phrase “commence an action seeking” for the word “seek.”
- ✓ (34) Page 12, line 7: Substitute the word “serves” for the word “provides”.
- ✓ (35) Page 12, line 15: Insert the word “materially” after the word “Interfered”.
- ✓ (36) Page 12, line 16: Delete the phrase “Taken steps that would” and insert the word “Materially” prior to the preclude.

Inserts
12-18
16-3
11-10

X No ✓

P-Note
Concerning
an action -
cite change

- ✓ (9) Page 10, line 20: Delete "from the claimant."
- ✓ (10) Page 12, line 5: Delete "seek" and insert in its place "initiate an action seeking."
- ✓ (11) Page 12, line 7: At the end of the line, replace "the" with "a."
- (12) Page 12, line 18: Before "The contractor," insert the following:

Insert
12-18

commences
 "Before ~~initiating~~ an action against a supplier, a contractor shall provide the supplier with the opportunity to respond to the contribution claim and repair the alleged construction defect under this section. The notice of contribution claim shall state that the contractor asserts a construction defect claim. The notice of contribution claim shall describe the contribution claim in sufficient detail to explain the nature of the alleged construction defect and shall offer the opportunity to correct the construction defect."

- (13) Page 16, line 2: Delete (7)(L) and replace with the following:

Insert
16-3

~~(L)~~ "If a contractor receives a written statement that the supplier rejects the claim, or if the supplier does not respond to the contractor's notice, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice."

- ✓ (14) Page 6, line 15 and page 13, line 7: Insert a period after "claim"; delete the word "and"; capitalize the word "The".
- ✓ (15) Page 6, line 21: Delete the word "the" before the word "inspection".
- ✓ (16) Page 5, line 21: Insert the word "alleged" before "construction defect".
- (17) Add the following as a separate subsection:

Insert
11-10

No #

in which
 "In any action initiated by a contractor or supplier ~~wherein~~ ^{in which} a claimant raises an affirmative defense or counterclaim alleging a construction defect, the claimant ~~shall~~ ^{is} not be required to comply with this section."

Date

LRBS05/8/1dn
RPN:kg

D- Note

In a number of places language was suggested saying that "no action may be commenced before ...". I did not use that language because the statutes cannot, as a practical matter, prevent a person from commencing an action. Instead, I said "Before commencing an action ...". See ss. 895.07 (2) (a) and (b) and (c).

2/95

RPN

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0518/1dn
RPN:kjf:pg

February 7, 2006

In a number of places language was suggested saying that "...no action may be commenced before...." I did not use that language because the statutes cannot, as a practical matter, prevent a person from commencing an action. Instead, I said "Before commencing an action...." See ss. 895.07 (2) (a) and (7) (a) and (b).

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

2
LRBs0518/1
RPN&RNK:kjf&wlj/pg
stays

SENATE SUBSTITUTE AMENDMENT,
TO 2005 SENATE BILL 448

Nowish

p. 4

Regen

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

Analysis by the Legislative Reference Bureau

This substitute amendment requires contractors that contract to construct or remodel a person's residence to deliver to the person a brochure explaining the procedures created in this substitute amendment and that he or she must follow those procedures before suing a contractor or window or door supplier. Under the substitute amendment, if the dwelling owner, which may be a condominium association, is concerned about a possible construction defect, the owner must give a written notice of claim to the contractor at least 90 working days before starting a court action against the contractor. The substitute amendment requires the written notice to detail the nature of the alleged construction defect, including any evidence that the owner of the dwelling has that substantiates the nature and cause of the defect.

After the contractor receives the notice, the substitute amendment 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 substitute amendment, if the claim is rejected at this point, or if the contractor fails to respond timely to the claim, the owner can start a court action against the

contractor. If the contractor makes a settlement offer and the owner rejects the offer, the owner must do so with a written statement that includes the reasons for the rejection. The substitute amendment requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to inspect the alleged construction defect. After inspection, the substitute amendment allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the substitute amendment allows the contractor to submit a timely supplemental offer and requires the owner to respond to the supplemental offer under the same procedures as for the original offer.

If the property is inspected and requires some destructive testing, the substitute amendment requires the contractor to return the dwelling to its condition before the inspection. If the owner of a dwelling agrees to a contractor's settlement offer and the contractor does not follow through as agreed, the substitute amendment allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

The substitute amendment allows an owner to repair a construction defect immediately without giving notice if the repair is necessary for health or safety.

If the dwelling owner begins a court action but fails to follow the procedures, and the contractor has provided the owner with the proper notice and brochure, under the substitute amendment the court must dismiss the action without prejudice. If the dwelling owner begins a court action but fails to follow the procedures, and the contractor does not provide the owner with the proper notice and brochure, under the substitute amendment the court stays the action and orders the parties to comply with the substitute amendment's provisions.

Under the substitute amendment, a contractor may obtain contribution from a window or door supplier for the cost of repairing the construction defect if the contractor follows procedures in the substitute amendment similar to those that apply to the contractor and owner 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 substitute amendment requires the Department of Commerce to prepare a draft of a brochure that explains the process in this substitute amendment and to provide that draft to contractors. Contractors are required to give a copy of the brochure to the person whom the contractor contracts with to construct or remodel a dwelling.

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:

1 (a) “Consumer” means a person who enters into a written or oral contract with
2 a contractor to construct or remodel a dwelling.

3 (b) “Contractor” means a person who enters into a written or oral contract with
4 a consumer to construct or remodel a dwelling.

5 (c) “Deliver” means any of the following:

6 1. Depositing the document or written notice in the U.S. mail or with a
7 commercial delivery service, addressed to the applicable person.

8 2. Giving the document or written notice personally to the applicable person.

9 (d) “Dwelling” means any premises or portion of a premises that is used as a
10 home or a place of residence and that part of the lot or site on which the dwelling is
11 situated that is devoted to residential use. “Dwelling” includes other existing
12 structures on the immediate residential premises such as driveways, sidewalks,
13 swimming pools, terraces, patios, fences, porches, garages, and basements.

14 (e) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not
15 include maintenance or repair work.

16 (2) NOTICE REQUIRED AT TIME OF CONTRACTING. (a) Before entering into a written
17 contract to construct or remodel a dwelling, or, if the parties enter into an oral
18 contract, as soon as reasonably possible, but before commencing any work to
19 construct or remodel a dwelling, the contractor shall deliver to the consumer a copy
20 of the brochure prepared under s. 895.07 (13) and a notice worded substantially as
21 follows:

22 NOTICE CONCERNING CONSTRUCTION

23 DEFECTS

24 Wisconsin law contains important requirements you must follow before you
25 may file a lawsuit for defective construction against the contractor who constructed

1 your dwelling or completed your remodeling project or against a window or door
2 supplier or manufacturer. For example, section 895.07 (2) and (3) of the Wisconsin
3 statutes requires you to deliver to the contractor a written notice of any construction
4 conditions you allege are defective before you file your lawsuit, and you must provide
5 your contractor or window or door supplier the opportunity to make an offer to repair
6 or remedy the alleged construction defects. You are not obligated to accept any offer
7 made by the contractor or window or door supplier. All parties are bound by
8 applicable warranty 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 consumer.

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

12 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this
13 section:

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

15 (b) "Association" means a homeowner's association, condominium association
16 under s. 703.02 (1m), unit owner's association, or a nonprofit corporation created to
17 own and operate portions of a planned community that may assess unit owners for
18 the costs incurred in the performance of the association's obligations.

19 (c) "Claim" means a request or demand to remedy a construction defect caused
20 by a contractor or supplier related to the construction or remodeling of a dwelling.

21 (d) "Claimant" means the owner, tenant, or lessee of a dwelling, or an
22 association, who has standing to sue a contractor or supplier regarding a construction
23 defect.

24 (e) "Construction defect," in those cases when the contractor or supplier has
25 provided a warranty to a consumer, means the definition of "defect" in the warranty.

1 In all other cases, “construction defect” means a deficiency in the construction or
2 remodeling of a dwelling that results from any of the following:

3 1. Defective material.

4 2. Violation of applicable codes.

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

6 (f) “Consumer” means a person who enters into a written or oral contract with
7 a contractor to construct or remodel a dwelling.

8 (g) “Contractor” means a person that enters into a written or oral contract with
9 a consumer to construct or remodel a dwelling.

10 (h) “Dwelling” means any premises or portion of a premises that is used as a
11 home or a place of residence and that part of the lot or site on which the dwelling is
12 situated that is devoted to residential use. “Dwelling” includes other existing
13 structures on the immediate residential premises such as driveways, sidewalks,
14 swimming pools, terraces, patios, fences, porches, garages, and basements.

15 (i) “Remodel” means to alter or reconstruct a dwelling. “Remodel” does not
16 include maintenance work.

17 (j) “Serve” or “service” means personal service or delivery by certified mail,
18 return receipt requested, to the last-known address of the addressee.

19 (k) “Supplier” means a person that manufactures or provides windows or doors
20 for a dwelling.

21 (L) “Working day” means any day except Saturday, Sunday, and holidays
22 designated in s. 230.35 (4) (a).

23 **(2) NOTICE AND OPPORTUNITY TO REPAIR.** (a) Before commencing an action
24 against a contractor or supplier regarding a construction defect, a claimant shall do
25 all of the following:

1 1. No later than 90 working days before commencing the action, deliver written
2 notice on the contractor containing the circumstances of the claim in sufficient detail
3 to explain the nature of the alleged defect and a description of the evidence that the
4 claimant knows or possesses, including expert reports, that substantiates the nature
5 and cause of the alleged construction defect.

6 2. Provide the contractor or supplier with the opportunity to repair or to remedy
7 the alleged construction defect.

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. (7) (a), each contractor that has received the notice of claim
11 shall serve on the claimant any of the following:

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

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

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

18 4. A written statement that the contractor rejects the claim. The contractor
19 shall state in the written response to the claim the reason for rejecting the claim and
20 include a comprehensive description of all evidence the contractor knows or
21 possesses, including expert reports, that substantiates the reason for rejecting the
22 claim. The contractor shall also include in the written response to the claim any
23 settlement offer received from a supplier.

24 5. A proposal for inspection of the dwelling under par. (c).

1 (c) If a proposal for inspection is made under par. (b), the claimant shall, within
2 15 working days of receiving the contractor's proposal, provide the contractor and
3 any supplier on whom a contribution claim has been made and its agents, experts,
4 and consultants reasonable access to the dwelling to inspect the dwelling, document
5 any alleged construction defects, and perform any testing required to evaluate fully
6 the nature, extent, and cause of the claimed construction defects and the nature and
7 extent of any repairs or replacements that may be necessary to remedy them. If
8 destructive testing is required, the contractor shall deliver the claimant and all
9 persons on whom a notice of claim or contribution claim has been served advance
10 notice of the testing at least 5 working days before commencement of the testing and
11 shall, after completion of the testing, return the dwelling to its pre-testing condition
12 within a reasonable time after completion of the testing, at the contractor's expense.
13 If any inspection or testing reveals a condition that requires additional testing to
14 allow the contractor to evaluate fully the nature, cause, and extent of the
15 construction defect, the contractor shall deliver notice to the claimant and all persons
16 on whom a notice of claim or contribution claim has been served of the need for the
17 additional testing and the claimant shall provide reasonable access to the dwelling.
18 If a claim is asserted on behalf of the owners of multiple dwellings, then the
19 contractor shall be entitled to inspect each of the dwellings subject to the claim. The
20 claimant shall either provide a specific day for the inspection upon reasonable notice
21 for an inspection or require the contractor to request in writing a date for the
22 inspection, at least 3 working days before the inspection.

23 (d) Within 10 working days following completion of the inspection and testing
24 under par. (c), the contractor shall serve on the claimant a notice that includes any
25 of the offers or statements under par. (b) 1. to 4.

1 (e) If the claimant rejects a settlement offer made by the contractor, the
2 claimant shall, within 15 working days after receiving the offer, serve written notice
3 of that rejection to the contractor. The notice shall include the reasons for the
4 claimant's rejection of the contractor's offer. If the claimant believes that the
5 settlement offer omits reference to any portion of the claim, or was unreasonable, the
6 claimant's written notice shall include those items that the claimant believes were
7 omitted and set forth the reasons why the claimant believes the settlement offer is
8 unreasonable. The contractor shall deliver the claimant's response to a supplier
9 upon whom a contribution claim has been made.

10 (f) Upon receipt of a claimant's rejection and the reasons for the rejection, the
11 contractor shall, within 5 working days after receiving the rejection, serve the
12 claimant a written supplemental offer to repair or to remedy the construction defect
13 or serve on the claimant written notice that no additional offer will be made.

14 (g) If the claimant rejects the supplemental offer made by the contractor under
15 par. (f) to remedy the construction defect or to settle the claim by monetary payment
16 or a combination of each, the claimant shall serve written notice of the claimant's
17 rejection on the contractor within 15 working days after receipt of the supplemental
18 offer. The notice shall include the reasons for the claimant's rejection of the
19 contractor's supplemental settlement offer. If the claimant believes the contractor's
20 supplemental settlement offer is unreasonable, the claimant shall set forth the
21 reasons why the claimant believes the supplemental settlement offer is
22 unreasonable. If the contractor declines to make a supplemental offer, or if the
23 claimant rejects the supplemental offer, the claimant may bring an action against
24 the contractor for the claim described in the notice of claim without further notice.

1 (h) If a claimant accepts any offer made under this subsection, and the
2 contractor or supplier does not proceed to make the agreed to monetary payment or
3 agreed to repair of the construction defect within the agreed upon timetable, the
4 claimant may bring an action against the contractor for the claim described in the
5 notice of claim without further notice.

6 (i) If a claimant accepts a contractor's offer to repair a construction defect
7 described in a notice of claim, the claimant shall provide the contractor and its
8 agents, experts, and consultants reasonable access to the dwelling to perform and
9 complete the construction by the timetable stated in the settlement offer.

10 (j) If a claimant receives a written statement that the contractor rejects the
11 claim, or if the contractor does not respond to the claimant's notice, the claimant may
12 bring an action against the contractor for the claim described in the notice of claim
13 without further notice.

14 (k) If a claimant commences an action against a supplier and the supplier has
15 not been provided notice of the claim by the contractor and an opportunity to repair
16 or to remedy the claim pursuant to sub. (7), the claimant shall, before commencing
17 and maintaining a direct action against a supplier for a construction defect, serve the
18 supplier with a copy of the notice of claim and provide the supplier an opportunity
19 to repair or to remedy the construction defect in the same manner as provided a
20 contractor under this section.

21 **(3) ACTION; DISMISSAL WITHOUT PREJUDICE.** If the claimant commences an action
22 but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier
23 establishes that the claimant was provided the notice and brochure under s. 101.148
24 (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the
25 claimant commences an action but fails to comply with the requirements of sub. (2)

1 (a) and the contractor or supplier cannot establish that the notice and brochure was
2 delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall
3 stay the action and order the parties to comply with the requirements of sub. (2) (a)
4 and s. 101.148 (2). Before commencing an action against a supplier seeking
5 contribution for a claim that a claimant has served on a contractor, the contractor
6 shall serve the supplier with a notice of contribution claim under sub. (7). If the
7 contractor commences an action against a supplier but fails to serve the notice of
8 contribution claim, the circuit court or arbitrator shall stay the action until the
9 contractor has complied with the requirements of this subsection and sub. (7).

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

13 (5) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.
14 A construction defect that is discovered after an initial claim or contribution claim
15 notice has been provided may not be alleged in an action until the claimant or
16 contractor has served the contractor or supplier written notice of the new claim or
17 contribution claim regarding the alleged new construction defect. The contractor or
18 supplier shall have an opportunity to resolve the notice of the new claim or
19 contribution claim in the manner provided in subs. (2) and (7).

20 (6) ACTION OF CONTRACTOR OR SUPPLIER. In any action initiated by a contractor
21 or supplier in which a claimant raises an affirmative defense or counterclaim
22 alleging a construction defect, the claimant is not required to comply with this
23 section.

24 (7) CONTRIBUTION. (a) Before commencing an action seeking contribution from
25 a supplier for a claim that a claimant makes against the contractor, the contractor

1 shall serve the supplier with a written notice of the claimant's claim and a
2 contribution claim within 5 working days after the contractor's receipt of the claim,
3 except that a contractor may make a contribution claim later than 5 days after the
4 contractor's receipt of the initial claim if the contractor has not done any of the
5 following:

- 6 1. Taken any action to repair the defect.
- 7 2. Performed destructive testing.
- 8 3. Authorized the claimant to take any action to repair the defect.
- 9 4. Interfered materially with or altered the property that is the subject of the
10 claim.
- 11 5. Materially precluded a supplier's ability to offer to remedy the defect by
12 making repairs.

13 (b) Before commencing an action against a supplier, a contractor shall provide
14 the supplier with the opportunity to respond to the contribution claim and repair the
15 alleged construction defect under this section. The notice of contribution claim shall
16 state that the contractor asserts a construction defect claim. The notice of
17 contribution claim shall describe the contribution claim in sufficient detail to explain
18 the nature of the alleged construction defect and shall offer the opportunity to correct
19 the construction defect. The contractor shall include in the notice of claim a
20 description of the alleged construction defect and include a comprehensive
21 description of all evidence that the contractor knows or possesses, including expert
22 reports, that substantiates the nature and cause of the alleged construction defect.

23 (c) Within 15 working days after a supplier has received notice that a contractor
24 is seeking contribution under par. (a), the supplier shall serve the contractor with
25 any of the following:

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

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

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

7 4. A written statement that the supplier rejects the claim. The supplier shall
8 state in the written response to the claim the reason for rejecting the claim and
9 include a comprehensive description of all evidence the supplier knows or possesses,
10 including expert reports, that substantiates the reason for rejecting the claim.

11 5. A proposal for the inspection of the dwelling, following the procedures under
12 par. (e).

13 (d) The contractor shall forward the supplier's response to the claimant. The
14 supplier and contractor shall use their best efforts to coordinate their responses to
15 claims and contribution claims.

16 (e) If a supplier proposes to inspect the dwelling that is the subject of the
17 contribution claim, the contractor and claimant shall, within 15 working days after
18 receiving the supplier's proposal, provide the supplier and its agents, experts, and
19 consultants reasonable access to the dwelling to inspect the dwelling, document any
20 alleged construction defects, and perform any testing required to evaluate fully the
21 nature, extent, and cause of the claimed construction defects and the nature and
22 extent of any repairs or replacements that may be necessary to remedy them. If
23 destructive testing is required, the supplier shall give the contractor and claimant
24 and all persons on whom a notice of claim or contribution claim has been served
25 advance notice of the testing at least 5 working days before commencement of the

1 testing and shall, after completion of the testing, return the dwelling to its
2 pre-testing condition within a reasonable time after completion of the testing, at the
3 supplier's expense. If any inspection or testing reveals a condition that requires
4 additional testing to allow the supplier to evaluate fully the nature, cause, and extent
5 of the construction defect, the supplier shall provide notice to the contractor and
6 claimant and all persons on whom a notice of claim or contribution claim has been
7 served of the need for the additional testing and the contractor and claimant shall
8 provide reasonable access to the dwelling. If a claim is asserted on behalf of the
9 contractor of multiple dwellings, then the supplier shall be entitled to inspect each
10 of the dwellings. The contractor and claimant shall provide a specific day for the
11 inspection upon reasonable notice for an inspection or require the supplier to request
12 in writing a date for the inspection, at least 3 working days before the inspection.

13 (f) Within 10 working days following completion of the inspection and testing
14 under par. (e), the supplier shall serve on the contractor a notice that includes any
15 of the offers or statements under par. (c) 1. to 4.

16 (g) If the contractor rejects a settlement offer made by the supplier, the
17 contractor shall, within 15 working days after receiving the offer, send written notice
18 of that rejection to the supplier. The notice shall include the reasons for the
19 contractor's rejection of the supplier's offer. If the contractor believes that the
20 settlement offer omits reference to any portion of the claim, or was unreasonable, the
21 contractor's written notice shall include those items that the contractor believes were
22 omitted and set forth the reasons why the contractor believes the settlement offer is
23 unreasonable.

24 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the
25 supplier shall, within 5 working days of receiving the rejection, make a supplemental

1 offer of repair or monetary payment to the contractor or serve on the contractor
2 written notice that no additional offer will be made.

3 (i) If the contractor rejects the supplemental offer made by the supplier to
4 remedy the construction defect or to settle the claim by monetary payment or a
5 combination of each, the contractor shall, within 15 working days after receiving the
6 offer, serve written notice of the contractor's rejection on the supplier. The notice
7 shall include the reasons for the contractor's rejection of the supplier's supplemental
8 settlement offer. If the contractor believes the supplier's supplemental settlement
9 offer is unreasonable, the contractor shall set forth the reasons why the contractor
10 believes the supplemental settlement offer is unreasonable. If supplier declines to
11 make a supplemental offer, or if the contractor rejects the supplemental offer, the
12 contractor may bring an action against the supplier for the claim described in the
13 notice of claim without further notice.

14 (j) If a contractor accepts any offer made under this subsection, and the supplier
15 does not proceed to make the monetary payment or remedy the construction defect
16 within the agreed upon timetable, the contractor may bring an action against the
17 supplier for the claim described in the notice of claim without further notice. The
18 contractor may also file the supplier's offer and contractor's acceptance in the circuit
19 court action, and the offer and acceptance create a rebuttable presumption that a
20 binding and valid settlement agreement has been created and should be enforced by
21 the court.

22 (k) If a contractor accepts a supplier's offer to repair a construction defect
23 described in a notice of claim, the contractor, when appropriate, and the claimant
24 shall provide the supplier and its agents, experts, and consultants reasonable access

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

3 (L) If a contractor receives a written statement that the supplier rejects the
4 claim, or if the supplier does not respond to the contractor's notice, the contractor
5 may bring an action against the supplier for the claim described in the notice of claim
6 without further notice.

7 (m) A contractor who is seeking contribution from a supplier and who elects to
8 inspect a dwelling under sub. (2) (b) shall serve the supplier written notice of the
9 inspection date and dwelling address, and whether destructive testing is
10 contemplated, at least 5 working days before the inspection.

11 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to respond to any notice
12 served under this section, then any offer made in that notice is rejected.

13 (9) LIMITATION PERIOD. If, during the pendency of the notice, inspection, offer,
14 acceptance, or repair process, an applicable limitation period would otherwise
15 expire, the limitation period is tolled pending completion of the notice of claim
16 process described in this section. This subsection shall not be construed to revive a
17 limitation period that has expired before the date on which a claimant's written
18 notice of claim is served or extend any applicable statute of repose.

19 (10) ALTERATION OF PROCEDURE. After service of the initial notice of claim and
20 initial contribution claim, a claimant, a contractor, and a supplier may, by written
21 mutual agreement, alter the procedure for the notice of claim process described in
22 this section.

23 (11) APPLICATION TO OTHERS. This section does not apply to a contractor's or
24 supplier's right to seek contribution, indemnity, or recovery against any party other
25 than a supplier for a claim made against a contractor or supplier.

