

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on
Housing
(AC-Ho)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

Published Documents

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

*Information Collected For Or
Against Proposal*

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

**

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr_ab1031_AC-Ho_pt01**

➤ Miscellaneous ... Misc

➤ **



AXLEY BRYNELSON, LLP

MEMORANDUM

TO: ASSEMBLY HOUSING COMMITTEE

FROM: Jerry Deschane, Wisconsin Builders Association
Brad Boycks, Wisconsin Builders Association
Charles V. Sweeney, Axley Brynelson, LLP
Robert C. Procter, Axley Brynelson, LLP

DATE: February 22, 2006

RE: AB 1031 -- Right to Repair Legislation
SUMMARY OF SUBSTITUTE AMENDMENT
Our File: 12557.56638

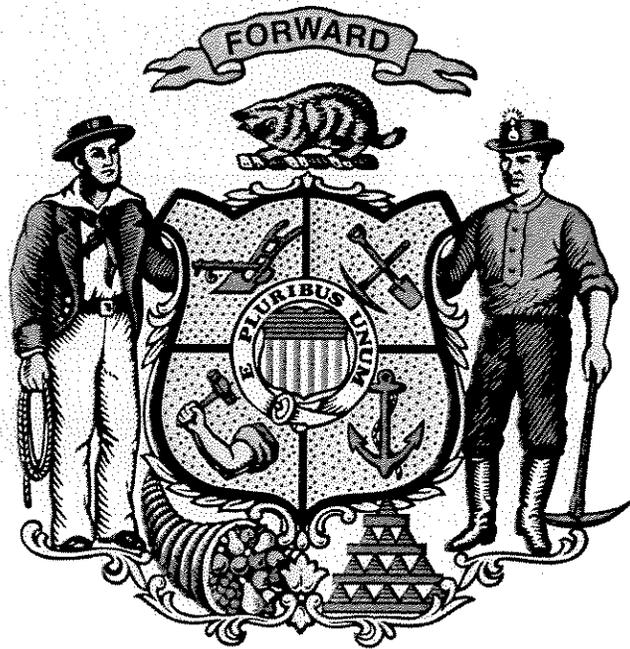
This memorandum is intended to summarize the revisions to AB 1031, the Right to Repair Legislation (the "Right to Repair Bill"). The original Right to Repair Bill has been substantially modified in response to requests from the Department of Agriculture, Trade and Consumer Protection ("DATCP") and the Wisconsin Realtors Association ("WRA"). There are three main types of revisions:

1. Simplified Alternative Dispute Resolution Procedure To Allow Consumers To Complete The Process Without An Attorney.
2. Eliminating Limited Liability Provisions.
3. Correcting Drafting Errors.

ALTERNATIVE DISPUTE RESOLUTION. The heart of the Right to Repair Bill is the Alternative Dispute Resolution ("ADR") procedure, which requires claimants, contractors and suppliers to engage in formal, written settlement discussions regarding building defects. Based on discussions with DATCP and the WRA, the ADR procedure was revised to include: (i) mutuality between the requirements of consumers and the requirements of contractors during the ADR procedure and (ii) notice requirements that are more understandable to the lay person and simpler to complete. The revisions ensure that the Right to Repair Bill not only benefits contractors and suppliers but also benefits consumers by providing consumers a mandatory procedure to address construction defects.

LIMITED LIABILITY PROVISIONS. To limit the Right to Repair Bill to its main function, which is to create an ADR procedure for builders and consumers to resolve disputes regarding building defects, the revised bill eliminates a number of limited liability provisions. Originally, the bill had two purposes: (i) to require the ADR process and (ii) to limit certain types of frivolous, abusive lawsuits that builders and suppliers have experienced in other states. The limited liability sections were an attempt by the builders and suppliers to proactively cut off these types of abusive actions before such practices damage the home building industry in Wisconsin. DATCP objected to such limitations because of the effect the limitations could have on consumer rights without justification because such abuses have not been reported in Wisconsin. Based on DATCP's objections, the limited liability sections were eliminated. The elimination was a concession by the builders to preserve the main goal, which was passing a bill that provided the builder notice and an opportunity to repair any construction defect.

CORRECT DRAFTING ERRORS. Finally, due to the number of structural and substantive changes, the original bill had a number of drafting errors where the language needed to be revised to precisely reflect the intent of the bill. The Substitute Amendment fully reflects all of the revisions agreed to by the parties.



**Testimony of State Representative
Steve Wieckert**

Assembly Bill 1031 – Right to Cure Legislation
Assembly Committee on Housing
400 Northeast – February 22, 2006

Good morning Chairman John Townsend and committee members. I am pleased to come before you today to discuss Assembly Bill 1031, regarding Right to Cure Legislation.

Buying a new home is one of the most exciting and happy times of people's lives. Owning your own home is certainly part of the American dream. Here in the Midwest and especially in Wisconsin the quality and value of a home is hard to top. We have one of the best and most professional home building industries in the nation.

Occasionally when purchasing a new home, a homeowner may find a thing or two that they think is not quite right. Sometimes new home buyers may feel there is no other choice but to take the homebuilder immediately to court. It has been said that generally one of the best ways to prevent or solve problems is through communication. This bill provides a temporary alternative from going to court by setting up a communication structure which gives the homeowner the ability to get very rapid responses from the homebuilder to determine the problem and try to work something out. This is a pro consumer protection piece of legislation.

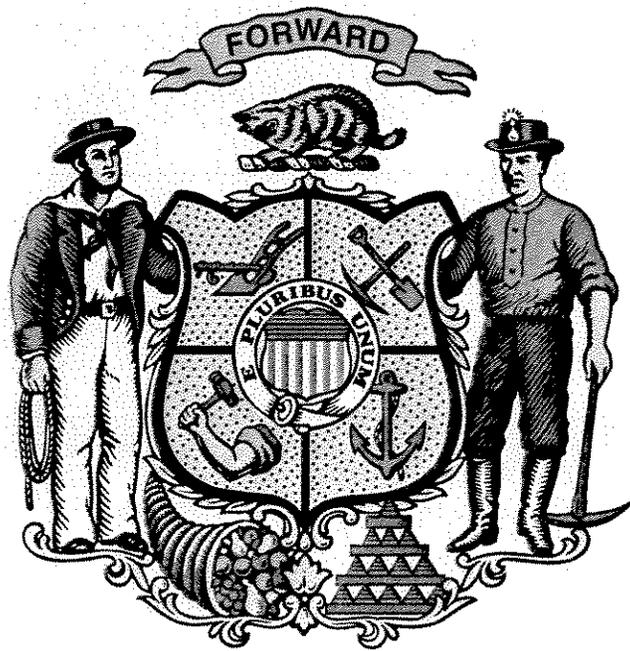
After going through this process if the homeowner still wants to go to court because they are unhappy with the proposed solutions, the homeowner may still do so.

Sometimes the first time a homebuilder knows that something is wrong with the home he has built is when he gets notice to appear in court. In most cases the homebuilder would have been glad to inspect the problem and repair it if he had the opportunity. This process could lead to a homebuyer getting a more rapid solution to his problem. It would also help unclog our courts of an overburden of legal cases. This type of communication program has worked well in

other states. It is often referred to as "Right to Cure," or "Notice of Repair" legislation.

This legislation is supported by the Wisconsin Builders Association, the Wisconsin Coalition for Civil Justice, the Wisconsin Insurance Alliance, and the Wisconsin Window & Door Manufacturers Coalition.

Thank you. At this time I would be happy to answer any questions of the committee.





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

February 22, 2006

Representative Steve Wieckert
Chair
Assembly Committee on Housing

Re: AB 1031 relating to contractors' notices, claims against certain contractors and suppliers of dwellings, and providing a penalty.

Dear Representative Wieckert:

Thank you for the opportunity to share with you the thoughts of the Bureau of Consumer Protection at the Department of Agriculture, Trade and Consumer Protection. We present these thoughts for information.

At the outset, let me say that we have had multiple meetings with the interest groups supporting this legislation and we have been able to mutually resolve a great many of the concerns that the Bureau saw with the bill. We greatly appreciate being a part of the dialogue on this legislation and trust that the bill before you today is better for our having worked together.

Despite the changes that have been made in the bill, changes that are beneficial to consumers, we cannot support it for one fundamental reason - it mandates that a consumer engage in a mediation process before that consumer may file a court action relating to a newly constructed or remodeled home, including manufactured homes. While we agree with the general principle that potential litigants should attempt to resolve the dispute themselves before heading to court, we cannot agree that such attempted resolution should be a necessary pre-condition for commencing an action in court.

In our experience, few consumers file legal actions without first attempting to resolve the matter with the other side. All, including attorneys, recognize that resolution without court action is preferable to the time, expense, and risk of litigation. However, we can think of no legitimate reason why consumers should be compelled to engage in a mediation process prior to commencing a lawsuit, particularly when it is very likely that a court will refer the matter to alternative dispute resolution prior to even entertaining a request for a trial.

The only difference between this legislation and current practice is whether the attempt to formally resolve the dispute **must** take place before a legal action is commenced or during the time a legal action is pending. Since both parties to a dispute already have the ability

Agriculture generates \$51.5 billion for Wisconsin

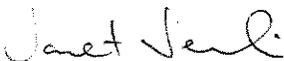
to meet and attempt to resolve their differences before commencing legal action and will have the further opportunity, and often the requirement, to more engage in formal mediation once the action is filed, we do not think a requirement for pre-litigation mediation should be imposed on consumers.

We are also concerned that the bill's requirement that parties engage in dispute resolution prior to the commencement of any action is one sided. It applies to consumers, but not to builders. It is axiomatic that one major way in which consumers alert their builders/remodelers to the consumer's problems with the construction is to withhold payment of funds until the dispute is resolved in a mutually acceptable manner. If a builder believes that the construction project was properly completed in all respects, the builder is likely to commence an action against the consumer to recover all amounts remaining due on the contract. However, this bill does not require the builder to engage in any type of dispute resolution before commencing a legal action. Rather, the builder may proceed directly to litigation.

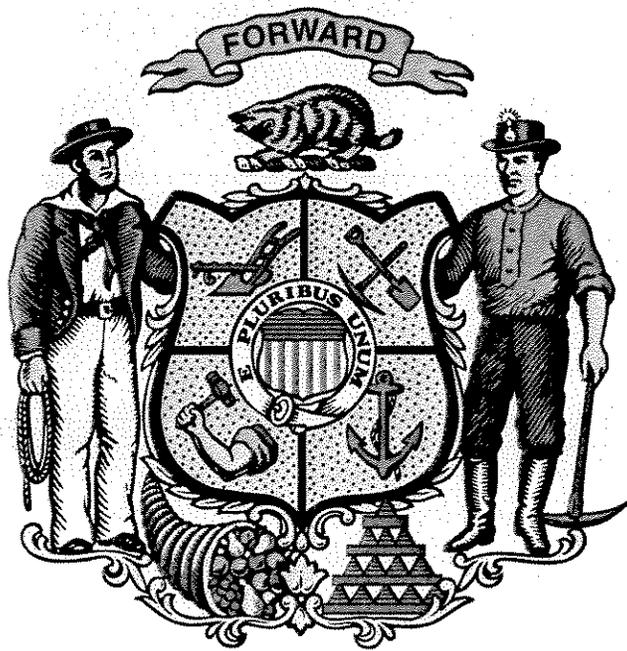
In our view, the bill unfairly singles consumers out as the group that must "jump through the hoops" before commencing action, but continues to permit builders to file an action without any attempts to settle with the consumer. If the purpose of the bill is to require meaningful settlement discussions prior to court action, the requirement of pre-litigation dispute resolution should apply to both parties. We encourage the committee to consider making pre-litigation mediation a mutual requirement.

Again, I thank the committee for the opportunity to present our views.

Respectfully,



Janet Jenkins
Administrator
Division of Trade & Consumer Protection



Wisconsin Window and Door Manufacturers Coalition

Consumer Right to Repair Bill

AB 1031

SB 448

The Wisconsin Window and Door Manufacturers Coalition is a coalition of window and door manufacturers based in Wisconsin. Members of the WWDMC have over 5,000 employees in Wisconsin. They also provide business to a significant number of glass manufacturers and other companies located in Wisconsin.

The members of the WWDMC are supporting the passage of the Consumer Right to Repair bill (also known as the Right to Cure bill and as Notice and Opportunity to Repair legislation). This legislation would establish a clear process for homeowners to follow to communicate with builders and window and door suppliers about construction problems, along with a defined process for homeowners, builders, and window and door suppliers to follow to remedy any problems that arise.

Builders and window and door manufacturers in Wisconsin are now in a situation where they may have to get involved in lengthy and costly litigation regarding construction defect claims when the claims could easily be remedied to everybody's satisfaction before litigation is started. Litigation drives up insurance premiums and increases housing costs. It would be beneficial to all parties to have a well-defined dispute resolution process to encourage remedies before litigation is started.

The process in the Consumer Right to Repair bill would work as follows:

1. A homeowner would be required to provide written notice to a builder of a claim regarding any construction problem before filing a lawsuit.
2. After a claim is filed, the builder and any window and door suppliers which are involved would then respond to the homeowner with an offer to repair the problem, an offer to settle with a monetary payment, or a rejection of the claim. (If necessary, the builder and window and door suppliers would be able to inspect the property.)
3. If an offer to repair or settle is accepted by the homeowner, the claim would be resolved.
4. If the builder and window and door suppliers reject the claim, or if the homeowner rejects an offer to repair or settle, the homeowner would be able to file a lawsuit.

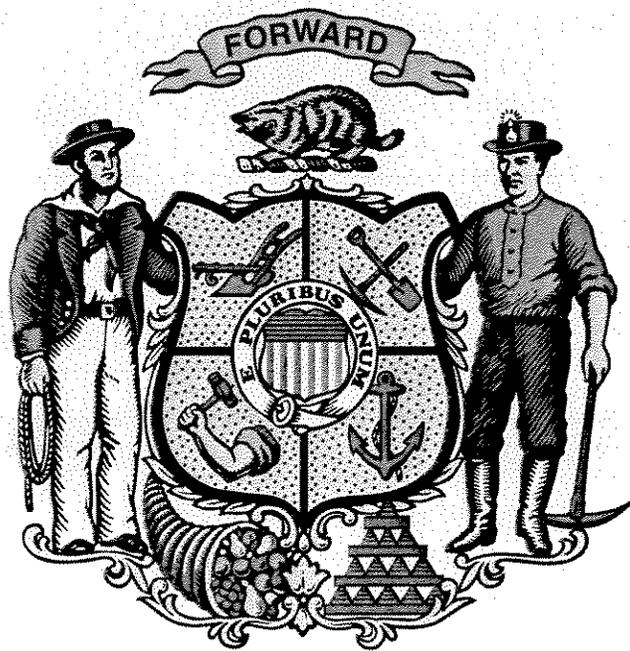
There are 27 states which have enacted Consumer Right to Repair legislation, and another 11 states are considering such legislation. The members of the Wisconsin Window and Door Manufacturers Coalition, their employees, their Wisconsin suppliers and their Wisconsin dealers encourage you to support the Consumer Right to Repair bill in Wisconsin.

For further information, contact:

**Richard Chandler, Chandler Consulting, LLC, Madison
Jesse Bolder, Ruder Ware, Attorneys, Wausau**

**(608) 628-0433
(715) 845-4336**

February 22, 2006





NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS



Notice & Opportunity to Repair Laws in 27 States

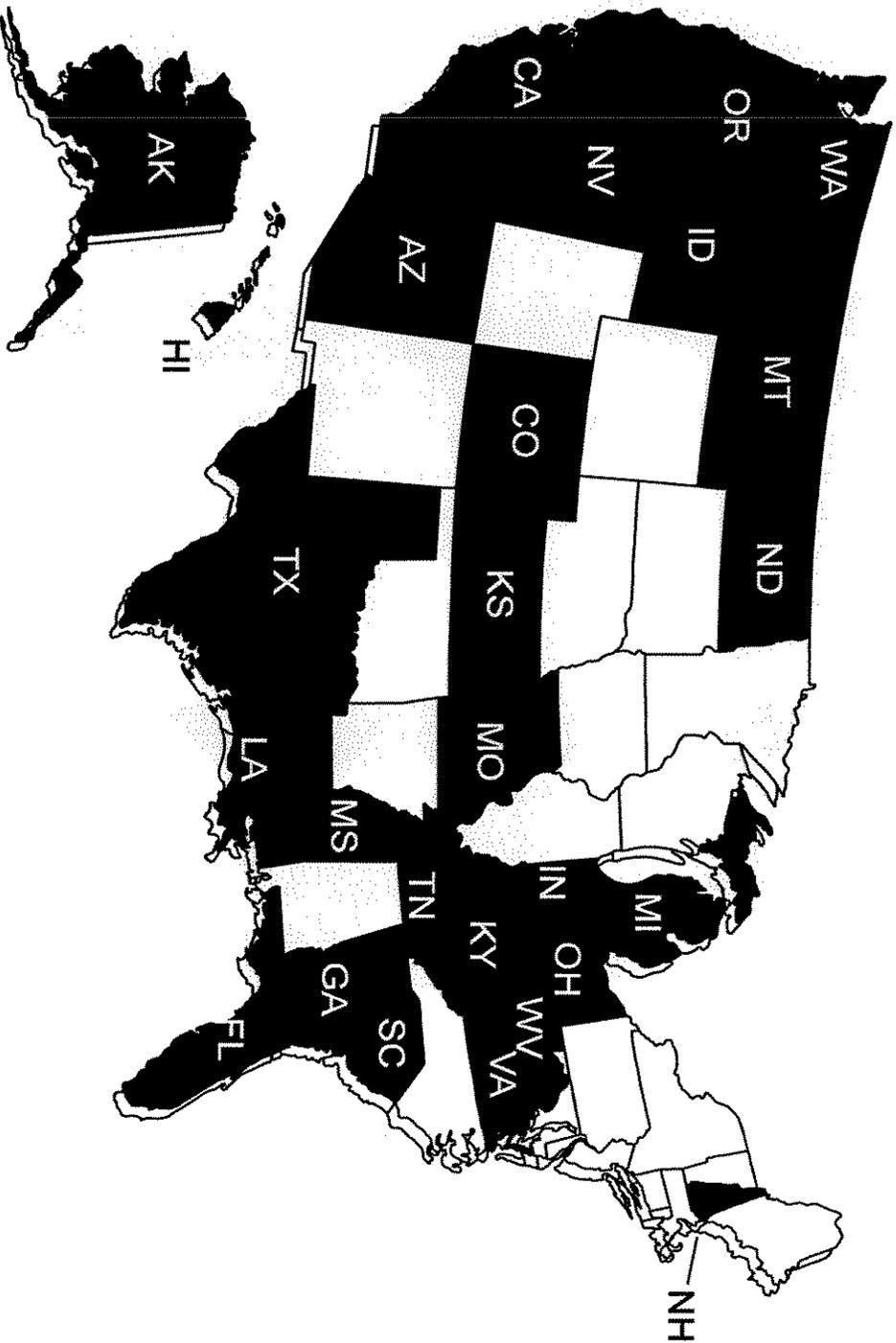
State	Enactment	
Alaska	2003/Murkowski (R)	2004/Murkowski (R)
Arizona	2002/Hull (R)	2004/Napolitano (D)
California	2002/Davis (D)	
Colorado	2003/Owens (R)	
Florida	2003/Bush (R)	2004/Bush (R)
Georgia	2004/Purdue (R)	
Hawaii	2004/Lingle (R)	
Idaho	2003/Kempthorne (R)	
Indiana	2003/O'Bannon (D)	
Kansas	2003/Sebelius (D)	
Kentucky	2003/Patton (D)	
Louisiana	1986/Edwards (D)	
Michigan	1980/Milliken (R)	
Mississippi	2004/Barbour (R)	
Missouri	2005/Blunt (R)	
Montana	2003/Martz (R)	
Nevada	1995/97/Miller (D)	2003/Guinn (R)
New Hampshire	2005/Lynch (D)	
North Dakota	2005/Hoeven (R)	
Ohio	2004/Taft (R)	
Oregon	2003/Kulongoski (D)	
South Carolina	2003/Sanford (R)	
Tennessee	2004/Bredesen (D)	
Texas	1989/Clements (R)	2003/Perry (R)
Virginia	1979/Dalton (R)	
Washington	2002/Locke (D)	2003/Locke (D)
West Virginia	2003/Wise (D)	

States Actively Considering Legislation in 2006

Alabama	Oklahoma
Iowa	Pennsylvania
Maine	South Dakota
Massachusetts	Vermont
Minnesota	Wisconsin

States with NOR Laws

As of 2005, 27 states have enacted NOR statutes



Consumer Right to Repair Law in Colorado

According to a study commissioned by the National Association of Home Builders (NAHB) to study the consumer right to repair process in Colorado (also known as the Notice and Opportunity to Repair, or NOR, process), only a year and a half after passage **“the NOR process has reduced litigation, is more accessible than litigation and has resolved cases more quickly.”**

Prior to enactment of the NOR law, the three most active construction defect law firms in Colorado collectively filed **six cases a month, on average.**

The average monthly number of suits filed by these same law firms after passage of the NOR law in Colorado **dropped by 60 percent to about two and a half cases a month.**

The rate of litigation filings has declined since the NOR law came into effect. Yet, the NOR law has not prevented homeowners opportunities from being able to remedy construction defects. On the contrary, homeowners are making use of the easier NOR procedure.

20 percent more homeowners filed NOR claims during the first year after the NOR law took effect compared with the number of homeowners who filed suits in the prior year.

Facts mentioned above taken from NAHB's study "Construction Defect Disputes, Getting to Yes without Going to Court". Copies of this complete study are available on demand.

Consumer Right to Repair Legislation, February 2006

Timeline for Resolution of Claims Under AB 1031/SB 448

The timeline for filing and resolving claims under the Consumer Right to Repair legislation (AB 1031/SB 448) would be as follows:

If a Supplier is <u>not</u> involved	If a Supplier is involved	Step in Process
0	0	Claim is filed against builder by homeowner.
-	5	Builder must file contribution claim (if any) against supplier within 5 days after homeowner's claim is filed.
-	20	Supplier must respond to builder's contribution claim within 15 days. Supplier can offer to repair, offer to make monetary payment, ask to inspect property, or reject contribution claim.
15	25	Builder must respond to homeowner's claim within 15/25 days (depending on whether a supplier is involved). Builder can offer to repair, offer to make monetary payment, ask to inspect property, or reject claim. If claim is rejected by builder, homeowner may bring an action.
30	40	Any inspection of property must take place within 15 days after builder's response.
40	50	After inspection, builder has 10 days to offer to repair, offer to make monetary payment, or reject claim. If claim is rejected by builder, homeowner may bring an action.
55	65	Homeowner has 15 days to respond to builder's offer.
60	70	If homeowner rejects offer, builder has 5 days to make supplemental offer.
75	85	Homeowner has 15 days to respond to builder's supplemental offer. If homeowner rejects offer, homeowner can bring an action.



BIELINSKISM
homes
WISCONSIN'S
NUMBER ONE
HOME BUILDER

January 24, 2006

Senate Committee on Housing and Financial Institutions
State of Wisconsin
PO Box 7882
Madison, Wisconsin 53707-7882

Re: Consumer Right to Repair Act - SB 448

Dear State Senators:

Bielinski Homes supports the passage of the Consumer Right to Repair Act - SB 448 and asks each of you to support this important legislation. This legislation takes an approach to correcting construction defects that will benefit consumers and contractors alike. Bielinski Homes believes that construction defect issues will be resolved quicker and more efficiently once this legislation becomes law. We request that you each join Bielinski Homes in your support of the Consumer Right to Repair Act - SB 448.

Sincerely,

Frank Bielinski

Harry Bielinski

Waukesha, WI 53187-1615

Mail to: P.O. Box 1615

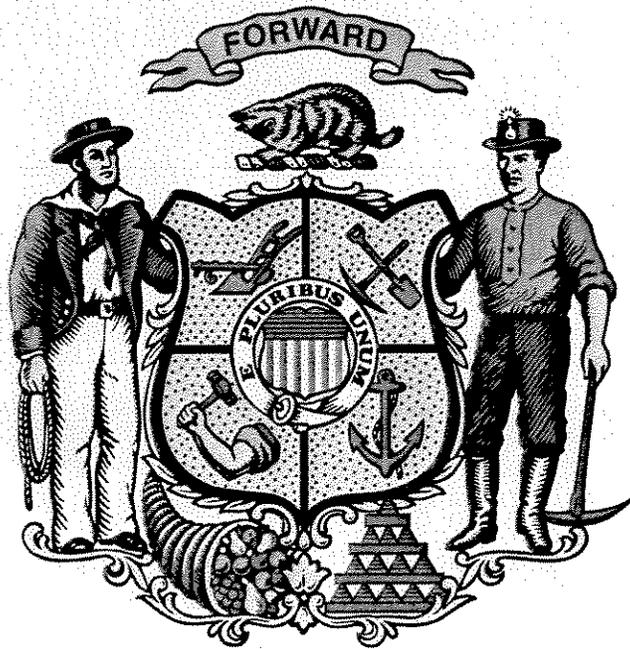
bielinski.com

888.542.9494

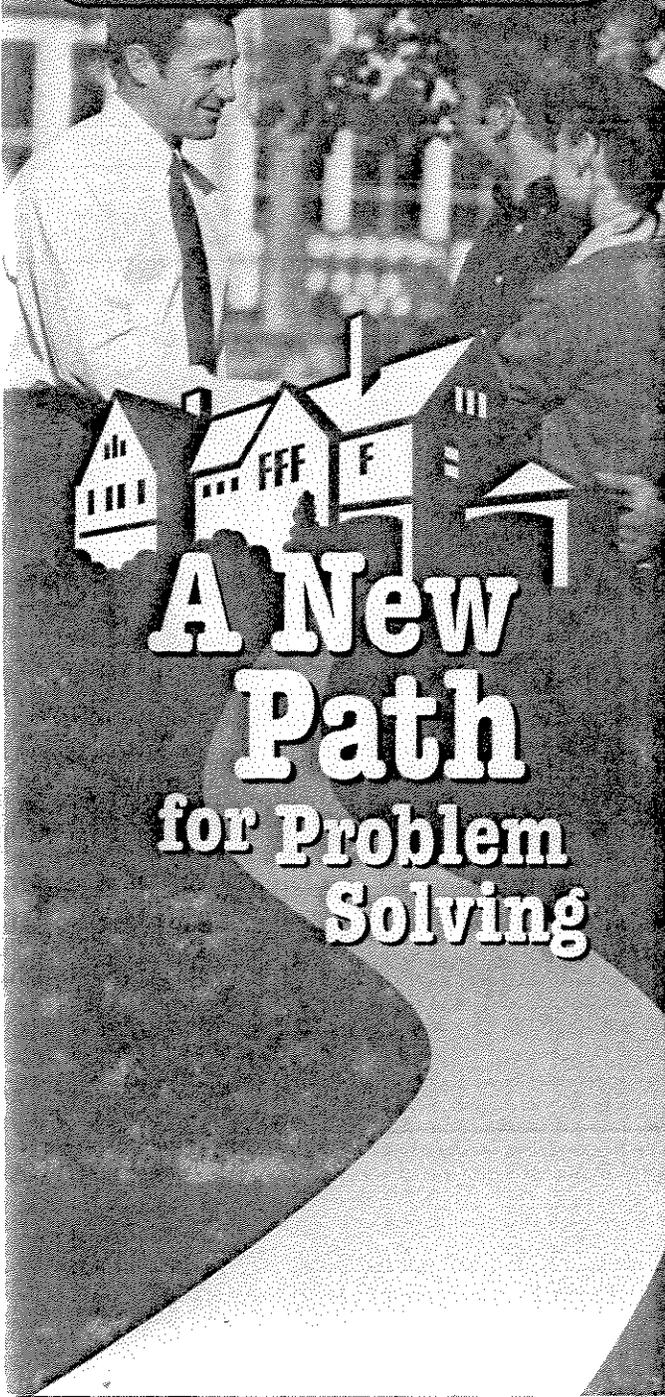
262.542.9494

Waukesha, WI 53188-1108

N16 W23377 Stone Ridge Drive



**CONSUMER RIGHT TO
REPAIR ACT 2005**



**A New
Path
for Problem
Solving**



Building a Sense of Security

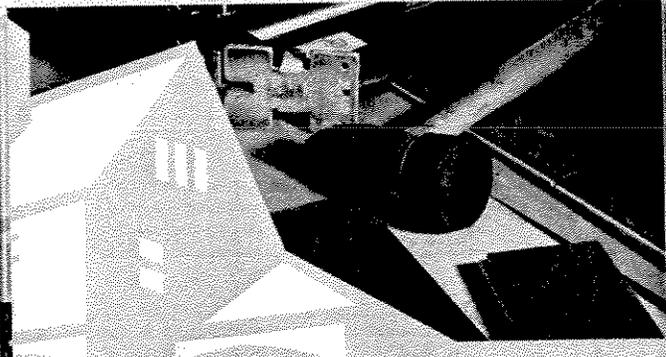
These days, new home buyers can look forward to settling down in houses and condominiums with features that would have been unimaginable just a few years ago.

From high quality materials to advanced construction techniques, today's homes are built to last. They're built for busy families to enjoy.

So when a problem arises, the last thing home buyers want is a hassle.

The Consumer Right to Repair Act, being introduced by State Rep. Steve Wieckert, R-Appleton, and Sen. Luther Olsen, R-Ripon, establishes a fair path to quickly identify problems and make repairs.

Similar legislation has been passed in 27 other states, giving home owners and builders a sensible set of procedures and a reasonable timeline to follow in resolving disputes. Here in Wisconsin, the proposal will help assure buyers that the home of their dreams remains a solid investment.



Benefits for the Community

Affordable housing has become a pressing concern in communities throughout Wisconsin. One factor driving prices is the high cost of liability insurance for builders.

Large and small builders alike have seen their liability insurance premiums soar in recent years due to costly construction defect litigation. Yet according to a nationwide study by NERA Economic Consulting, of White Plains, N.Y., litigation ensures neither a timely resolution to disputes nor compensation sufficient for homeowners to make needed repairs.

The result in many communities has been an increase in housing costs and a chilling effect on construction of affordable multi-family housing, including condominium projects.

Housing construction is a powerful force in Wisconsin's economy and home ownership is a critical factor in helping families build wealth.

Supporting legislation to resolve disputes in a timely way promises to help home buyers, local builders and the communities in which they live and work.

Success in Other States

Legislation similar to the Consumer Right to Repair Act has received widespread support across the country. Often called Opportunity to Repair laws, these measures have been approved in 27 states during the past three years.

Another 11 states, including Wisconsin, will be considering such legislation this session.

Under the laws, consumers must notify builders of construction defects before commencing litigation. The process gives builders the opportunity to inspect any defects and offer to make repairs or to compensate the home owner financially.

The legislation aims to reduce the need for expensive, unpredictable and time-consuming lawsuits. Under Wisconsin's Consumer Right to Repair Act, home owners would retain the right to take builders to court if they are unsatisfied with the settlement offer.



Notice and Opportunity

A Step-by-

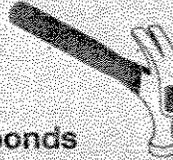
Step 1



 Home owner gives builder written notice of defect claim

▲ Experience in other states where similar legislation is law shows the majority of claims are resolved after this initial step.

Step 2



 Builder responds to home owner in writing

- ✓ Response must be one of the following:
- A request to inspect
 - An offer of monetary payment without inspection
 - An offer to make repairs without inspecting
 - An offer to make repairs and a monetary payment without inspection

ty to Repair process

Step Guide

Step 3



Builder may inspect dwelling

- ✓ **After inspection builder must provide a response to home owner**
 - An offer to settle the claim by monetary payment
 - An offer to make repairs and a monetary payment
 - Rejection of consumer claim

Step 4

If the builder rejects the claim and will not remedy or settle or does not respond to the home owner's notice of claim, the home owner may bring an action against the builder without further notice.

A New Path to Peace of Mind

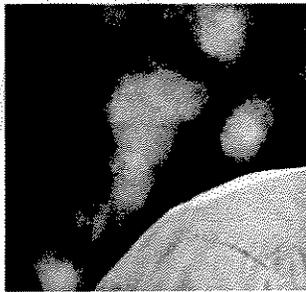
The process for resolving construction disputes should provide consumers with a clear sense that their concerns are being addressed. The proposed Consumer Right to Repair Act will do just that, by requiring builders to respond to home owners in writing within 15/25 days of receiving a written defect notice.

The law will give home buyers new leverage in resolving disputes before turning to the costly court system. At the same time, it will preserve the right to commence legal action if builders fail to respond or remedy the problem.

Building a home or buying a condominium represents one of the largest financial transactions most consumers ever undertake. At the same time, the home itself serves as a sanctuary from the hectic pace of work and family life.

Home buyers deserve the peace of mind that comes with knowing there's a way to resolve issues before turning to the courts. The proposed Consumer Right to Repair Act creates a fair path for both consumers and builders to follow.





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