



2005 ASSEMBLY BILL 1031

February 20, 2006 - Introduced by Representatives WIECKERT, LOEFFELHOLZ, SHILLING, OWENS, MUSSER, KESTELL, JESKEWITZ, F. LASEE, MONTGOMERY, GARD, ALBERS, TOWNSEND, DAVIS, PETROWSKI, PETTIS, NELSON, KREIBICH, OTT, HAHN, SUDER, LAMB, J. FITZGERALD, VOS, LEMAHIEU, GUNDRUM, RHOADES, GRONEMUS, VRUWINK, HUEBSCH, SEIDEL, LOTHIAN and JENSEN, cosponsored by Senators OLSEN, STEPP, HARSDFORF, SCHULTZ, ZIEN, KEDZIE, LAZICH, LEIBHAM, ROESSLER, S. FITZGERALD, DARLING, BROWN and KANAVAS. Referred to Committee on Housing.

- 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 bill 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 bill and that he or she must follow those procedures before suing a contractor or window or door supplier. Under the bill, 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 bill 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 bill gives the contractor time to respond to the notice with a written offer to inspect the property, make repairs, settle the claim with a monetary payment, or reject the claim. Under the bill, if the claim is rejected at this point, 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 bill requires the owner to allow the contractor reasonable access to the dwelling if the contractor wants to

ASSEMBLY BILL 1031

inspect the alleged construction defect. After inspection, the bill allows the contractor to submit a settlement offer or reject the claim. If the owner rejects an offer, the bill 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 bill 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 bill allows the owner to file in the court action the offer and acceptance as rebuttable evidence of an agreement.

The bill 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 bill 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 bill the court stays the action and orders the parties to comply with the bill's provisions.

Under the bill, 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 bill 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 bill requires the Department of Commerce to prepare a draft of a brochure that explains the process in this bill 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:

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

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

7 (c) "Deliver" means any of the following:

ASSEMBLY BILL 1031

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

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

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

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

17 NOTICE CONCERNING CONSTRUCTION

18 DEFECTS

19 Wisconsin law contains important requirements you must follow before you
20 may file a lawsuit for defective construction against the contractor who constructed
21 your dwelling or completed your remodeling project or against a window or door
22 supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes
23 requires you to deliver to the contractor a written notice of any construction
24 conditions you allege are defective before you file your lawsuit, and you must provide
25 your contractor or window or door supplier the opportunity to make an offer to repair

ASSEMBLY BILL 1031**SECTION 1**

1 or remedy the alleged construction defects. You are not obligated to accept any offer
2 made by the contractor or window or door supplier. All parties are bound by
3 applicable warranty provisions.

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

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

7 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this
8 section:

9 (a) “Action” means a civil action or an arbitration under ch. 788.

10 (b) “Association” means a homeowner’s association, condominium association
11 under s. 703.02 (1m), unit owner’s association, or a nonprofit corporation created to
12 own and operate portions of a planned community that may assess unit owners for
13 the costs incurred in the performance of the association’s obligations.

14 (c) “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) “Claimant” means the owner, tenant, or lessee of a dwelling, or an
17 association, who has standing to sue a contractor or supplier regarding a
18 construction defect.

19 (e) “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.
21 In all other cases, “construction defect” means a deficiency in the construction or
22 remodeling of a dwelling that results from any of the following:

23 1. Defective material.

24 2. Violation of applicable codes.

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

ASSEMBLY BILL 1031

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

3 (g) "Contractor" means a person that enters into a written or oral contract with
4 a consumer to construct or remodel a dwelling.

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

10 (i) "Remodel" means to alter or reconstruct a dwelling. "Remodel" does not
11 include maintenance or repair work.

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

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

16 (L) "Working day" means any day except Saturday, Sunday, and holidays
17 designated in s. 230.35 (4) (a).

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

21 1. No later than 90 working days before commencing the action, deliver written
22 notice to the contractor containing a description of the claim in sufficient detail to
23 explain the nature of the alleged defect and a description of the evidence that the
24 claimant knows or possesses, including expert reports, that substantiates the nature
25 and cause of the alleged construction defect.

ASSEMBLY BILL 1031

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

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

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

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

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

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

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

20 (c) If a proposal for inspection is made under par. (b), the claimant shall, within
21 15 working days of receiving the contractor's proposal, provide the contractor and
22 any supplier on whom a contribution claim has been made and its agents, experts,
23 and consultants reasonable access to the dwelling to inspect the dwelling, document
24 any alleged construction defects, and perform any testing required to evaluate fully
25 the nature, extent, and cause of the claimed construction defects and the nature and

ASSEMBLY BILL 1031

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

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

20 (e) If the claimant rejects a settlement offer made by the contractor, the
21 claimant shall, within 15 working days after receiving the offer, serve written notice
22 of that rejection to the contractor. The notice shall include the reasons for the
23 claimant's rejection of the contractor's offer. If the claimant believes that the
24 settlement offer omits reference to any portion of the claim, or was unreasonable, the
25 claimant's written notice shall include those items that the claimant believes were

ASSEMBLY BILL 1031**SECTION 2**

1 omitted and set forth the reasons why the claimant believes the settlement offer is
2 unreasonable. The contractor shall deliver the claimant's response to a supplier
3 upon whom a contribution claim has been made.

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

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

19 (h) If a claimant accepts any offer made under this subsection, and the
20 contractor or supplier does not proceed to repair or remedy the construction defect
21 under the terms of the offer or within the agreed upon timetable, the claimant may
22 bring an action against the contractor or supplier for the claim described in the notice
23 of claim without further notice.

24 (i) If a claimant accepts a contractor's offer to repair a construction defect
25 described in a notice of claim, the claimant shall provide the contractor and its

ASSEMBLY BILL 1031

1 agents, experts, and consultants reasonable access to the dwelling to perform and
2 complete the construction by the timetable stated in the settlement offer.

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

7 (k) If a claimant commences an action against a supplier and the supplier has
8 not been provided notice of the claim by the contractor and an opportunity to repair
9 or remedy the construction defect described in the claim as provided under to sub.
10 (7), the court or arbitrator shall dismiss without prejudice or stay the action until the
11 claimant serves the supplier with a copy of the notice of claim and provides the
12 supplier an opportunity to repair or remedy the construction defect in the same
13 manner as provided a contractor under this section.

14 **(3) ACTION; DISMISSAL WITHOUT PREJUDICE.** If the claimant commences an action
15 but fails to comply with the requirements of sub. (2) (a) and the contractor or supplier
16 establishes that the claimant was provided the notice and brochure under s. 101.148
17 (2), the circuit court or arbitrator shall dismiss the action without prejudice. If the
18 claimant commences an action but fails to comply with the requirements of sub. (2)
19 (a) and the contractor or supplier cannot establish that the notice and brochure was
20 delivered to the claimant under s. 101.148 (2), the circuit court or arbitrator shall
21 stay the action and order the parties to comply with the requirements of sub. (2) (a)
22 and s. 101.148 (2). Before commencing an action against a supplier seeking
23 contribution for a claim that a claimant has served on a contractor, the contractor
24 shall serve the supplier with a notice of contribution claim under sub. (7). If the
25 contractor commences an action against a supplier but fails to serve the notice of

ASSEMBLY BILL 1031**SECTION 2**

1 contribution claim, the circuit court or arbitrator shall stay the action until the
2 contractor has complied with the requirements of this subsection and sub. (7).

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

6 (5) **ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.**
7 A construction defect that is discovered after an initial claim or contribution claim
8 notice has been provided may not be alleged in an action until the claimant or
9 contractor has served the contractor or supplier written notice of the new claim or
10 contribution claim regarding the alleged new construction defect. The contractor or
11 supplier shall have an opportunity to resolve the notice of the new claim or
12 contribution claim in the manner provided in subs. (2) and (7).

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

17 (7) **CONTRIBUTION.** (a) Before commencing an action seeking contribution from
18 a supplier for a claim that a claimant makes against the contractor, the contractor
19 shall serve the supplier with a written notice of the claimant's claim and a
20 contribution claim within 5 working days after the contractor's receipt of the claim,
21 except that a contractor may make a contribution claim later than 5 days after the
22 contractor's receipt of the initial claim if the contractor has not done any of the
23 following:

- 24 1. Taken any action to repair the defect.
- 25 2. Performed destructive testing.

ASSEMBLY BILL 1031

- 1 3. Authorized the claimant to take any action to repair the defect.
- 2 4. Interfered materially with or altered the property that is the subject of the
3 claim.
- 4 5. Materially precluded a supplier's ability to offer to remedy the defect by
5 making repairs.
- 6 (b) Before commencing an action against a supplier, a contractor shall provide
7 the supplier with the opportunity to respond to the contribution claim and repair the
8 alleged construction defect under this section. The notice of contribution claim shall
9 state that the contractor asserts a construction defect claim. The notice of
10 contribution claim shall describe the contribution claim in sufficient detail to explain
11 the nature of the alleged construction defect and shall offer the opportunity to correct
12 the construction defect. The contractor shall include in the notice of claim a
13 description of the alleged construction defect and include a comprehensive
14 description of all evidence that the contractor knows or possesses, including expert
15 reports, that substantiates the nature and cause of the alleged construction defect.
- 16 (c) Within 15 working days after a supplier has received notice that a contractor
17 is seeking contribution under par. (a), the supplier shall serve the contractor with
18 any of the following:
- 19 1. A written offer to remedy fully or partially the construction defect at no cost
20 to the claimant. The offer shall include a description of any additional construction
21 necessary to remedy the construction defect and a timetable for the completion of the
22 construction.
- 23 2. A written offer to settle the claim by monetary payment.
- 24 3. A written offer including a combination of repairs and monetary payment.

ASSEMBLY BILL 1031

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

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

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

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

ASSEMBLY BILL 1031

1 served of the need for the additional testing and the contractor and claimant shall
2 provide reasonable access to the dwelling. If a claim is asserted on behalf of the
3 contractor of multiple dwellings, then the supplier shall be entitled to inspect each
4 of the dwellings. The contractor and claimant shall provide a specific day for the
5 inspection upon reasonable notice for an inspection or require the supplier to request
6 in writing a date for the inspection, at least 3 working days before the inspection.

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

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

18 (h) Upon receipt of a contractor's rejection and the reasons for the rejection, the
19 supplier shall, within 5 working days of receiving the rejection, make a supplemental
20 offer of repair or monetary payment to the contractor or serve on the contractor
21 written notice that no additional offer will be made.

22 (i) If the contractor rejects the supplemental offer made by the supplier to
23 remedy the construction defect or to settle the claim by monetary payment or a
24 combination of each, the contractor shall, within 15 working days after receiving the
25 offer, serve written notice of the contractor's rejection on the supplier. The notice

ASSEMBLY BILL 1031**SECTION 2**

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

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

16 (k) If a contractor accepts a supplier's offer to repair a construction defect
17 described in a notice of claim, the contractor, when appropriate, and the claimant
18 shall provide the supplier and its agents, experts, and consultants reasonable access
19 to the dwelling to perform and complete the construction by the timetable stated in
20 the settlement offer.

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

ASSEMBLY BILL 1031

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

5 (8) FAILURE TO RESPOND TO NOTICE. If a person fails to timely respond to any
6 notice served in a manner required under this section, then any offer made in that
7 notice is rejected.

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

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

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

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

ASSEMBLY BILL 1031

1 (13) BROCHURE. The department of commerce shall prepare a brochure
2 explaining the process under this section and shall provide that brochure to
3 contractors.

4 **SECTION 3. Initial applicability.**

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

7 **SECTION 4. Effective date.**

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

10 (END)