

*Corrected*  
*SESSION OF 2003*

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR HOUSE BILL NO. 2294**

As Recommended by House Committee on Judiciary

**Brief\***

Sub. for HB 2294 deals with the filing of a lawsuit based on construction defects. The provisions of the bill will not apply to actions arising from personal injury or death or when the defect of the construction is substantial enough to be uninhabitable.

If an action by a claimant is filed with no required service of notice, the action will be dismissed without prejudice, upon the motion of the contractor filed within 60 days of service of process. An action cannot be refiled until the parties have complied with the provisions of the bill. The statute of limitations will be tolled if the claimant gives notice of the claim within 90 days of the dismissal. If the statute of limitations would expire during the time period necessary for parties to comply with the provisions of the bill, the claimant's notice of claim will toll the statute of limitations for 180 days after the latest of the following:

- ! The date the claimant serves or mails notice of the claim;
- ! The date agreed upon for the contractor to make payments; or
- ! The date agreed upon for the contractor to completely remedy the construction defect.

Other provisions of the bill include the following:

- ! Before filing can occur the claimant must serve written notice of claim on the contractor.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

- ! Within 15 days of the notice of claim the contractor must serve a copy of the notice to each subcontractor.
- ! Within 30 days after the notice of claim each contractor who received the notice must serve a written response on the claimant. The written response must do the following:
  - " propose to inspect the dwelling, or
  - " offer to remedy the defect at no cost to the claimant with a specification of the date when the work is to begin and a date when the work will be completed, or
  - " offer to compromise and settle the claim by monetary payment, or
  - " state that the contractor disputes the claim and will neither remedy the alleged defect nor compromise and settle the claim.
- ! If the contractor refuses service of notice, disputes the claim, does not respond to the notice within the allocated time, does not begin or complete work on the defect, or does not make the payment in the time allowed, the claimant may bring an action without further notice.
- ! The bill contains the procedure to be followed when the claimant accepts or rejects the offers of the contractor.
- ! Other procedures are outlined in the bill for the remodel of a dwelling and situations involving a property manager of an association.

## **Background**

Those appearing in support of the original bill included representatives of Kansas Building Industry, the Wichita Area Builders Association, and the Home Builders Association. Opposition to the bill, as drafted, was expressed on behalf of the Kansas Trial Lawyers Association.

The fiscal note indicates no fiscal impact.