



Reprinted  
February 19, 2003

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## SENATE BILL No. 451

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DIGEST OF SB 451 (Updated February 18, 2003 2:27 PM - DI 108)

**Citations Affected:** IC 32-27.

**Synopsis:** Home builders opportunity to cure defects. Requires a home owner to allow a construction professional an opportunity to cure alleged defects prior to initiating legal action. Requires a construction professional who is notified by a home owner of an alleged construction defect to respond to the home owner within a certain period.

**Effective:** July 1, 2003.

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**Alting, Lewis, Skillman**

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January 21, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.  
February 6, 2003, amended, reported favorably — Do Pass.  
February 11, 2003, read second time, amended, ordered engrossed.  
February 12, 2003, engrossed.  
February 17, 2003, returned to second reading.  
February 18, 2003, reread second time, amended, ordered engrossed.

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SB 451—LS 7789/DI 108+



Reprinted  
February 19, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 451

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-27-3 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]:

4 **Chapter 3. Notice and Opportunity to Repair**

5 **Sec. 1. The definitions in this section apply throughout this**  
6 **chapter.**

7 (1) "Action" means any civil lawsuit or action in contract or  
8 tort for damages or indemnity brought against a construction  
9 professional to assert a claim, whether by complaint,  
10 counterclaim, or cross claim, for damage or the loss of use of  
11 real or personal property caused by a defect in the  
12 construction of a residence or in the substantial remodeling of  
13 a residence. "Action" does not include:

14 (A) a claim in bankruptcy; or

15 (B) any civil action in tort alleging personal injury to or  
16 wrongful death of a person or persons resulting from a  
17 construction defect.

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(2) "Association" means an association of co-owners (as defined in IC 32-25-2-2).

(3) "Claimant" means a home owner who or an association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodeling of a residence.

(4) "Construction professional" means an architect, a builder, a builder vendor, a contractor, a subcontractor, or an engineer, including but not limited to any person performing or furnishing the design, supervision, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, a partnership, a corporation, or another business entity that contracts with the home owner to build the residence. A construction professional is not a home owner under this chapter unless the construction professional occupies the residence that is the basis for the claimed defect.

(5) "Defect" or "construction defect" means damage or deficiency in the residential construction, design, specifications, surveying, planning, supervision, testing, inspection, or observation of construction.

(6) "Home owner" means:  
(A) any person, company, firm, partnership, corporation, association, or other business entity that:  
(i) is owner of the residence; and  
(ii) contracts with a construction professional for the construction, sale, or construction and sale of a residence; or  
(B) a subsequent purchaser of a residence from a home owner as defined in clause (A).

(7) "Residence" means a:  
(A) single family house;  
(B) duplex;  
(C) triplex;  
(D) quadraplex; or  
(E) unit in a multiple unit residential structure in which title to the individual unit is transferred to the owner under a condominium or cooperative system.

For purposes of clause (E), the term includes common areas and facilities (as defined in IC 32-25-2-4).

(8) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

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1           (9) "Substantial remodeling" means a remodeling of a  
2           residence, the total cost of which exceeds fifty percent (50%)  
3           of the assessed value under IC 6-1.1-1-3(a)(2) of the residence  
4           at the time that the contract for the remodeling work was  
5           made.

6           Sec. 2. (a) At least sixty (60) days before filing a construction  
7           defect action against a construction professional, the claimant must  
8           serve written notice of claim on the construction professional. The  
9           notice of claim must state that the claimant asserts a construction  
10          defect claim against the construction professional and must  
11          describe the claim in reasonable detail sufficient to determine the  
12          general nature of the defect.

13          (b) Within twenty-one (21) days after service of a notice of claim  
14          under subsection (a), the construction professional must serve a  
15          written response on the claimant. The written response must do  
16          one (1) of the following:

17           (1) Propose to inspect the residence that is the subject of the  
18           claim and complete the inspection within a specified time  
19           frame. A response made under this subdivision must include  
20           the statement that the construction professional shall, based  
21           on the inspection, offer to remedy the defect, compromise by  
22           payment, or dispute the claim.

23           (2) Offer to compromise and settle the claim by monetary  
24           payment without inspection. A construction professional's  
25           offer under this subdivision may include, but is not limited to,  
26           an express offer to purchase the claimant's residence that is  
27           the subject of the claim and to pay the claimant's reasonable  
28           relocation costs.

29           (3) State that the construction professional disputes the claim  
30           and will neither remedy the construction defect nor  
31           compromise and settle the claim.

32          (c) A home owner is not required to serve an additional written  
33          notice for any additional defects discovered after the home owner  
34          has served an initial written notice of a construction defect in  
35          accordance with this section.

36          Sec. 3. (a) If the construction professional disputes the claim or  
37          does not respond to the claimant's notice of claim within the time  
38          set forth in section 2(b) of this chapter, the claimant may bring an  
39          action against the construction professional for the claim described  
40          in the notice of claim without further notice.

41          (b) If the construction professional makes:

42           (1) a proposal to inspect the residence under section 2(b)(1) of

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1           **this chapter; or**

2           **(2) an offer to compromise and settle the claim by monetary**  
 3           **payment without inspection under under section 2(b)(2) of**  
 4           **this chapter;**

5           **and the claimant rejects the proposal or offer, the claimant must**  
 6           **serve written notice of the rejection on the construction**  
 7           **professional. After service of the rejection, the claimant may bring**  
 8           **an action against the construction professional for the construction**  
 9           **defect claim described in the notice of claim.**

10           **(c) If the construction professional does not receive from the**  
 11           **claimant either an acceptance or rejection of the construction**  
 12           **professional's inspection proposal or settlement offer within sixty**  
 13           **(60) days after the claimant's receipt of the construction**  
 14           **professional's response, the construction professional may**  
 15           **terminate the proposal or offer by serving written notice on the**  
 16           **claimant.**

17           **(d) If the construction professional terminates a proposal or**  
 18           **offer under subsection (c), the claimant may bring an action**  
 19           **against the construction professional for the construction defect**  
 20           **claim described in the notice of claim.**

21           **Sec. 4. (a) If the construction professional makes a proposal to**  
 22           **inspect the residence under section 2(b)(1) of this chapter and the**  
 23           **claimant elects to allow the construction professional to inspect in**  
 24           **accordance with the construction professional's proposal, the**  
 25           **claimant must provide the construction professional and the**  
 26           **construction professional's contractors or other agents reasonable**  
 27           **access to the claimant's residence during normal working hours to**  
 28           **inspect the premises and the claimed defect.**

29           **(b) Within fourteen (14) days after the completion of an**  
 30           **inspection pursuant to a proposal under section 2(b)(1) of this**  
 31           **chapter, the construction professional must serve on the claimant:**

32           **(1) a written offer to remedy the construction defect at no cost**  
 33           **to the claimant, including a report of the scope of the**  
 34           **inspection, the findings and results of the inspection, a**  
 35           **description of the additional construction necessary to remedy**  
 36           **the defect described in the claim, and a timetable for the**  
 37           **completion of such construction;**

38           **(2) a written offer to compromise and settle the claim by**  
 39           **monetary payment under section 2(b)(2) of this chapter; or**

40           **(3) a written statement that the construction professional will**  
 41           **not proceed further to remedy the defect.**

42           **(c) If the construction professional:**

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1 (1) makes a written offer to remedy the construction defect  
 2 under subsection (b)(1) but does not proceed further to  
 3 remedy the construction defect within the agreed timetable;  
 4 or

5 (2) fails to serve a written offer or statement on the claimant  
 6 under subsection (b);

7 the claimant may bring an action against the construction  
 8 professional for the claim described in the notice of claim without  
 9 further notice.

10 (d) If the construction professional makes an offer under  
 11 subsection (b)(1) or (b)(2) to remedy the construction defect or to  
 12 compromise and settle the claim by monetary payment and the  
 13 claimant rejects the offer, the claimant shall serve written notice  
 14 of the claimant's rejection on the construction professional. After  
 15 service of the rejection notice, the claimant may bring an action  
 16 against the construction professional for the construction defect  
 17 claim described in the notice of claim.

18 (e) If the construction professional makes an offer under  
 19 subsection (b)(1) or (b)(2) and does not receive an acceptance or  
 20 rejection of the offer from the claimant within sixty (60) days after  
 21 the claimant's receipt of the construction professional's response,  
 22 the construction professional may terminate the offer by serving  
 23 written notice on the claimant.

24 Sec. 5. (a) To accept the offer of a construction professional to  
 25 remedy the construction defect under section (4)(b)(1) of this  
 26 chapter, the claimant must serve on the construction professional  
 27 a written notice of acceptance within a reasonable time period  
 28 after receipt of the offer, and not later than sixty (60) days after  
 29 receipt of the offer.

30 (b) A claimant who accepts a construction professional's offer  
 31 under section 4(b)(1) of this chapter must provide the construction  
 32 professional and the construction professional's contractors or  
 33 other agents reasonable access to the claimant's residence during  
 34 normal working hours to perform and complete the construction  
 35 by the timetable stated in the offer.

36 (c) After the acceptance of an offer under section 4(b)(1) of this  
 37 chapter, the claimant and construction professional may, by  
 38 written mutual agreement, alter the extent of construction or the  
 39 timetable for completion of construction stated in the offer,  
 40 including but not limited to construction to repair additional  
 41 defects.

42 Sec. 6. Any action commenced by a claimant before compliance

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1 with the requirements of this chapter is subject to dismissal  
 2 without prejudice, and may not be recommenced until the claimant  
 3 complies with the requirements of this section.

4 **Sec. 7.** Nothing in this section may be construed to prevent a  
 5 claimant from commencing an action on the construction defect  
 6 claim described in the notice of claim if the construction  
 7 professional fails to perform the construction agreed upon, fails to  
 8 remedy the defect, or fails to perform according to the timetable  
 9 agreed upon under section 4(b)(1) or 5 of this chapter.

10 **Sec. 8. (a)** Before commencing any action alleging a construction  
 11 defect, or after the dismissal of any action without prejudice under  
 12 section 6 of this chapter, the claimant may amend the notice of  
 13 claim to include construction defects discovered after the service  
 14 of the original notice of claim.

15 **(b)** The service of an amended notice of claim relates back to the  
 16 original notice of claim for purposes of section 2 of this chapter and  
 17 the applicable statutes of limitations and repose.

18 **Sec. 9. (a)** If a claimant:

19 **(1)** unreasonably rejects a reasonable written offer of  
 20 settlement made under this chapter; or

21 **(2)** does not permit the construction professional a reasonable  
 22 opportunity to inspect or to repair the defect under a  
 23 reasonable offer of settlement;

24 and thereafter commences an action governed by this chapter, the  
 25 court may deny the claimant attorney's fees and costs and award  
 26 attorney's fees and costs to the construction professional. However,  
 27 a homeowner is not required to accept an offer to repair the defect  
 28 when the defect is caused by the construction professional's  
 29 noncompliance with applicable building codes.

30 **(b)** Any sums paid under a homeowners warranty, other than  
 31 sums paid in satisfaction of claims that are collateral to any  
 32 coverage issued to or by the construction professional, must be  
 33 deducted from any recovery.

34 **(c)** If a construction professional fails to comply with the  
 35 requirements of this chapter, the claimant is not obligated to  
 36 comply further with the provisions of this chapter.

37 **Sec. 10.** If a construction professional unreasonably:

38 **(1)** disputes a home owner's claim;

39 **(2)** fails to remedy or compromise and settle the claim;

40 **(3)** fails to repair the construction defect within a reasonable  
 41 time, subject to the nature of the repair or some unforeseen  
 42 event not caused by the construction professional; or

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1           (4) fails to respond to a notice;  
2 and the claimant commences an action governed by this chapter  
3 and prevails in the action, the court may award attorney's fees and  
4 costs to the claimant.

5           Sec. 11. (a) In every action brought against a construction  
6 professional, the claimant must file with the court and serve on the  
7 defendant a list of known construction defects in accordance with  
8 this section.

9           (b) The list of known construction defects must contain a  
10 description of the construction that the claimant alleges to be  
11 defective. The list of known construction defects must be filed with  
12 the court and served on the defendant within sixty (60) days after  
13 the commencement of the action or within such longer period as  
14 the court in its discretion may allow.

15           (c) The list of known construction defects may be amended by  
16 the claimant to identify additional construction defects as they  
17 become known to the claimant.

18           (d) The list of known construction defects must specify, to the  
19 extent known to the claimant, the construction professional  
20 responsible for each alleged defect identified by the claimant.

21           (e) If a subcontractor or supplier is added as a party to an  
22 action under this section, the party making the claim against the  
23 subcontractor or supplier must serve on the subcontractor or  
24 supplier the list of construction defects in accordance with this  
25 section within sixty (60) days after service of the complaint against  
26 the subcontractor or supplier, or within such period as the court in  
27 its discretion may allow.

28           Sec. 12. (a) Upon entering into a contract for sale, construction,  
29 or substantial remodeling of a residence, a construction  
30 professional must provide notice to each home owner of the  
31 construction professional's right to offer to cure construction  
32 defects before a home owner may commence litigation against the  
33 construction professional. The notice must be conspicuous and may  
34 be included as part of the underlying contract signed by the home  
35 owner.

36           (b) The notice required by this section must be in substantially  
37 the following form:

38           "IC 32-27-3 CONTAINS IMPORTANT REQUIREMENTS  
39 YOU MUST FOLLOW BEFORE YOU MAY FILE A  
40 LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST  
41 THE CONTRACTOR OR BUILDER OF YOUR HOME.  
42 SIXTY (60) DAYS BEFORE YOU FILE YOUR LAWSUIT,

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1           **YOU MUST DELIVER TO THE CONTRACTOR OR**  
2           **BUILDER A WRITTEN NOTICE OF ANY**  
3           **CONSTRUCTION CONDITIONS YOU ALLEGE ARE**  
4           **DEFECTIVE AND PROVIDE YOUR CONTRACTOR OR**  
5           **BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO**  
6           **REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT**  
7           **OBLIGATED TO ACCEPT ANY OFFER MADE BY THE**  
8           **BUILDER OR CONTRACTOR. HOWEVER, IF YOU**  
9           **UNREASONABLY REJECT A REASONABLE WRITTEN**  
10          **OFFER AND COMMENCE AN ACTION AGAINST THE**  
11          **BUILDER OR CONTRACTOR, A COURT MAY AWARD**  
12          **ATTORNEY'S FEES AND COSTS TO THE BUILDER OR**  
13          **CONTRACTOR. THERE ARE STRICT DEADLINES AND**  
14          **PROCEDURES UNDER STATE LAW, AND FAILURE TO**  
15          **FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE**  
16          **A LAWSUIT."**

17          **(c) This chapter does not preclude or bar any action if notice is**  
18          **not given to the home owner as required by this section.**

19          **Sec. 13. Nothing in this chapter shall be construed to hinder or**  
20          **otherwise affect the employment, agency, or contractual**  
21          **relationship between and among home owners and construction**  
22          **professionals during the process of construction or remodeling and**  
23          **does not preclude the termination of those relationships as allowed**  
24          **under current law. Nothing in this chapter shall negate or**  
25          **otherwise restrict a construction professional's right to access or**  
26          **inspection provided by law, covenant, easement, or contract.**

27          **Sec. 14. If a written notice of claim is served under section 2 of**  
28          **this chapter within the time prescribed for the filing of an action**  
29          **against a construction professional based on an alleged**  
30          **construction defect, the applicable statute of limitations for**  
31          **construction related claims is tolled with respect to the alleged**  
32          **construction defect described in the notice of claim from the day on**  
33          **which the notice of claim is served until sixty (60) days after the**  
34          **period of time during which the filing of an action is barred under**  
35          **this chapter.**

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SENATE MOTION

Mr. President: I move that Senator Skillman be added as coauthor of Senate Bill 451.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 451, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 13, delete "include" and insert "**include:**

**(A) a claim in bankruptcy; or**

**(B)".**

Page 2, line 6, after "subcontractor," insert "**or**".

Page 2, line 7, delete "or an inspector,".

Page 2, line 8, delete "inspection,".

Page 2, line 12, delete "entity." and insert "**entity that contracts with the home owner to build the residence. A construction professional is not a home owner under this chapter unless the construction professional occupies the residence that is the basis for the claimed defect.**".

Page 2, between line 12 and 13, begin a new line block indented and insert:

**"(5) "Defect" or "construction defect" means damage or deficiency in the residential construction, design, specifications, surveying, planning, supervision, testing, inspection, or observation of construction."**

Page 2, line 13, delete "(5)" and insert "**(6)**".

Page 2, line 15, delete "that" and insert "**that:**

**(i) is owner of the residence; and**

**(ii)".**

Page 2, line 17, after "residence;" insert "**or**".

Page 2, delete line 18.

Page 2, line 19, delete "**(C)**" and insert "**(B)**".

Page 2, line 20, delete "**or (B)**".

Page 2, line 21, delete "**(6)**" and insert "**(7)**".

Page 2, line 31, delete "**(7)**" and insert "**(8)**".

Page 2, line 33, delete "**(8)**" and insert "**(9)**".

Page 3, between line 21 and 22, begin a new paragraph and insert:

**"(c) A home owner is not required to serve an additional written notice for any additional defects discovered after the home owner has served an initial written notice of a construction defect in accordance with this section."**

Page 3, line 37, delete "**After service of the**".

Page 3, delete lines 38 through 40.

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Page 4, line 28, delete "to".

Page 6, line 3, delete "The claimant must comply with the".

Page 6, delete lines 4 through 5.

Page 6, line 7, after "purposes of" insert "section 2 of this chapter and".

Page 6, line 8, delete "Claims for defects discovered after the".

Page 6, delete lines 9 through 12.

Page 6, line 26, delete "contractor" and insert "construction professional".

Page 6, between line 28 and 29, begin a new paragraph and insert:

**"Sec. 10. If a construction professional unreasonably:**

**(1) disputes a home owner's claim;**

**(2) fails to remedy or compromise and settle the claim;**

**(3) fails to repair the construction defect within a reasonable time, subject to the nature of the repair or some unforeseen event not caused by the construction professional; or**

**(4) fails to respond to a notice;**

**and the claimant commences an action governed by this chapter and prevails in the action, the court may award attorney's fees and costs to the claimant."**

Page 6, line 29, delete "10." and insert "11."

Page 6, line 30, delete ", including a construction professional".

Page 6, line 31, delete "asserting a claim against another construction professional,".

Page 7, line 11, delete "11." and insert "12."

Page 7, line 19, delete "subsection" and insert "section".

Page 7, line 24, delete "SELLER" and insert "CONTRACTOR".

Page 7, line 26, delete "SELLER" and insert "CONTRACTOR".

Page 7, line 29, delete "SELLER" and insert "CONTRACTOR".

Page 7, line 32, delete "SELLER." and insert "CONTRACTOR."

**HOWEVER, IF YOU UNREASONABLY REJECT A REASONABLE WRITTEN OFFER AND COMMENCE AN ACTION AGAINST THE BUILDER OR CONTRACTOR, A COURT MAY AWARD ATTORNEY'S FEES AND COSTS TO THE BUILDER OR CONTRACTOR."**

Page 7, line 38, delete "Sec. 12." and insert "Sec. 13."

Page 8, line 4, delete "Sec. 13. (a)" and insert "Sec. 14."

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Page 8, delete lines 13 through 21.  
and when so amended that said bill do pass.  
(Reference is to SB 451 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Mr. President: I move that Senate Bill 451 be amended to read as follows:

Page 3, line 42, after "residence under" delete "under".

(Reference is to SB 451 as printed February 7, 2003.)

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SENATE MOTION

Mr. President: I move that Senate Bill 451 be amended to read as follows:

Page 6, line 26, after "." insert "**However, a homeowner is not required to accept an offer to repair the defect when the defect is caused by the construction professional's noncompliance with applicable building codes.**".

(Reference is to SB 451 as reprinted February 12, 2003.)

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