

1 A bill to be entitled
 2 An act relating to residential construction
 3 warranties; creating s. 553.835, F.S.; providing
 4 legislative findings; providing legislative intent to
 5 affirm the limitations to the doctrine of implied
 6 warranty of fitness and merchantability or
 7 habitability associated with the construction and sale
 8 of a new home; providing definitions; prohibiting a
 9 cause of action in law or equity based upon the
 10 doctrine of implied warranty of fitness and
 11 merchantability or habitability for off-site
 12 improvements, except as otherwise provided by law;
 13 providing for applicability of the act; providing for
 14 severability; providing an effective date.

15
 16 WHEREAS, the Legislature recognizes and agrees with the
 17 limitations on the applicability of the doctrine of implied
 18 warranty of fitness and merchantability or habitability for a
 19 new home as established in the seminal cases of *Gable v. Silver*,
 20 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. disp., 264
 21 So.2d 418 (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654 (Fla.
 22 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*
 23 *First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),
 24 and does not wish to expand any prospective rights,
 25 responsibilities, or liabilities resulting from these decisions,
 26 and

27 WHEREAS, the recent decision by the Fifth District Court of
 28 Appeal rendered in October of 2010, in *Lakeview Reserve*

HB 1013

2012

29 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902
 30 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty
 31 of fitness and merchantability or habitability for a new home to
 32 the construction of roads, drainage systems, retention ponds,
 33 and underground pipes, which the court described as essential
 34 services, supporting a new home, and

35 WHEREAS, the Florida Legislature finds, as a matter of
 36 public policy, that the *Maronda* case goes beyond the fundamental
 37 protections that are necessary for a purchaser of a new home and
 38 that form the basis for imposing an implied warranty of fitness
 39 and merchantability or habitability for a new home, and creates
 40 uncertainty in the state's fragile real estate and construction
 41 industry, and

42 WHEREAS, it is the intent of the Legislature to reject the
 43 decision by the Fifth District Court of Appeal in the *Maronda*
 44 case insofar as it expands the doctrine of implied warranty and
 45 fitness and merchantability or habitability for a new home to
 46 include essential services as defined by the court, NOW
 47 THEREFORE,

48

49 Be It Enacted by the Legislature of the State of Florida:

50

51 Section 1. Section 553.835, Florida Statutes, is created
 52 to read:

53 553.835 Implied warranties.—

54 (1) The Legislature finds that the courts have reached
 55 different conclusions concerning the scope and extent of the
 56 common law doctrine of implied warranty of fitness and

HB 1013

2012

57 merchantability or habitability for improvements immediately
58 supporting the structure of a new home, which creates
59 uncertainty in the state's fragile real estate and construction
60 industry.

61 (2) It is the intent of the Legislature to affirm the
62 limitations to the doctrine of implied warranty of fitness and
63 merchantability or habitability associated with the construction
64 and sale of a new home.

65 (3) As used in this section, the term:

66 (a) "Habitability" means the condition of a home in which
67 inhabitants can live free of structural defects that will likely
68 cause significant harm to the health or safety of inhabitants.

69 (b) "Off-site improvement" means the street, road,
70 sidewalk, drainage, utilities, or any other improvement or
71 structure that is not located on or under the lot on which a new
72 home is constructed, or that is located on or under the lot but
73 that does not immediately and directly support the habitability
74 of the home itself.

75 (4) There is no cause of action in law or equity available
76 to a person based upon the doctrine of implied warranty of
77 fitness and merchantability or habitability for off-site
78 improvements, except as otherwise provided by law.

79 Section 2. If any provision of the act or its application
80 to any person or circumstance is held invalid, the invalidity
81 does not affect other provisions or applications of the act
82 which can be given effect without the invalid provision or
83 application, and to this end the provisions of this act are
84 severable.

HB 1013

2012

85 Section 3. This act shall take effect July 1, 2012, and
86 applies to all cases accruing before, pending on, or filed after
87 that date.