

By the Committee on Regulated Industries; and Senator Bennett

315-2165-03

1 A bill to be entitled
2 An act relating to construction defects;
3 providing legislative findings and declaration;
4 providing definitions; providing for the
5 dismissal of dwelling actions under certain
6 circumstances; providing for notice and
7 opportunity to repair; providing prerequisites
8 to bringing an action based on alleged
9 construction defects; providing for
10 inspections; providing evidentiary
11 presumptions; providing for tolling a statute
12 of limitations; providing for certain
13 notifications to the purchaser at the time of
14 sale; providing for requirements before
15 condominium, cooperative, or homeowners'
16 associations may bring lawsuits relating to
17 construction defects; creating a crime relating
18 to instigating litigation; providing penalties;
19 requiring use of a contractor to perform
20 destructive testing; providing responsibility
21 for repairing damage caused by testing;
22 providing severability; providing an effective
23 date.

24

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

26

27 Section 1. Legislative findings and declaration.--The
28 Legislature finds, declares, and determines that an effective
29 alternative dispute resolution mechanism in certain
30 construction defect matters should involve the claimant filing
31 a notice of claim with the contractor, subcontractor,

1 supplier, or design professional that the claimant asserts is
2 responsible for the defect, and provide the contractor,
3 subcontractor, supplier, or design professional with an
4 opportunity to resolve the claim without resort to further
5 legal process.

6 Section 2. Definitions.--As used in this act, the
7 term:

8 (1) "Action" means any civil action or arbitration
9 proceeding for damages or indemnity asserting a claim for
10 damage to or loss of a dwelling or personal property caused by
11 an alleged construction defect.

12 (2) "Association" has the same meaning as set forth in
13 section 718.103(2), section 719.103(2), section 720.301(7), or
14 section 723.025, Florida Statutes.

15 (3) "Claimant" means a homeowner, including a
16 subsequent purchaser, tenant, or association who asserts a
17 claim against a contractor, subcontractor, supplier, or design
18 professional concerning a defect in the design, construction,
19 condition, or sale of a dwelling or in the remodel of a
20 dwelling. The term "claimant" does not include a contractor,
21 subcontractor, supplier, or design professional.

22 (4) "Construction defect" means a deficiency in, or a
23 deficiency arising out of, the design, specifications,
24 surveying, planning, supervision, observation of construction,
25 or construction or remodeling of a dwelling resulting from any
26 of the following:

27 (a) Defective material, products, or components used
28 in the construction or remodeling of a dwelling;

29 (b) A violation of the applicable codes in effect at
30 the time of construction or remodeling of a dwelling;

31

1 (c) A failure of the design of a dwelling to meet the
2 applicable professional standards of care at the time of
3 governmental approval; or

4 (d) A failure to construct or remodel a dwelling in
5 accordance with accepted trade standards for good and
6 workmanlike construction at the time of construction. Except
7 to the extent the claimant's contract for construction or
8 remodeling requires compliance with standards that exceed
9 those set forth in the applicable codes in effect at the time
10 of construction or remodeling, compliance with the applicable
11 codes in effect at the time of construction or remodeling
12 shall conclusively establish construction or remodeling in
13 accordance with accepted trade standards for good and
14 workmanlike construction, with respect to all matters
15 specified in those codes.

16 (5) "Contractor" means any person, firm, partnership,
17 corporation, association, or other organization that is
18 legally engaged in the business of designing, developing,
19 constructing, manufacturing, selling, or remodeling of a
20 dwelling or attachments thereto.

21 (6) "Design professional" means a person licensed in
22 the state as an architect, interior designer, landscape
23 architect, engineer, or surveyor.

24 (7) "Dwelling" means a single-family house,
25 manufactured or modular home, duplex, or multifamily unit
26 building designed for residential use and includes common
27 areas and improvements that are owned or maintained by an
28 association or by members of an association. A dwelling
29 includes the systems, other components, and improvements that
30 are part of a single-family house, manufactured or modular
31

1 home, duplex, or multifamily residential building at the time
2 of completion of construction.

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

5 (9) "Subcontractor" means a contractor who performs
6 work on behalf of another contractor in the construction or
7 remodeling of a dwelling.

8 (10) "Supplier" means a person who provides materials,
9 equipment, or other supplies for the construction or
10 remodeling of a dwelling.

11 Section 3. Action; dismissal without prejudice.--If a
12 claimant files an action without first complying with the
13 provisions of this act, on motion by a party to the action,
14 the court shall dismiss the action, without prejudice, and the
15 action may not be refiled until the claimant has complied with
16 the requirements of this act.

17 Section 4. Notice and opportunity to repair.--

18 (1) In every action brought against a contractor,
19 subcontractor, supplier, or design professional related to an
20 alleged construction defect, the claimant shall, no later than
21 60 days before filing an action, serve written notice of claim
22 on the contractor. The notice of claim must describe the claim
23 in reasonable detail sufficient to determine the general
24 nature of each alleged construction defect and a description
25 of the damage or loss resulting from each alleged construction
26 defect, if known. The claimant shall endeavor to serve the
27 notice of claim within 15 days after the claimant's discovery
28 of the alleged construction defect, but the claimant's failure
29 to serve the notice of claim within that 15-day period does
30 not bar the filing of an action under section 3 of this act if
31

1 the claimant complies with the other requirements of this
2 section.

3 (2) Within 5 business days after service of the notice
4 of claim required in subsection (1), the contractor,
5 subcontractor, supplier, or design professional may inspect
6 the dwelling to assess each alleged construction defect. The
7 claimant shall provide the contractor, subcontractor,
8 supplier, or design professional and its contractors or agents
9 reasonable access to the claimant's dwelling during normal
10 working hours to inspect the dwelling to determine the nature
11 and cause of each alleged construction defect and the nature
12 and extent of any repairs or replacements necessary to remedy
13 each alleged construction defect. The inspection may include
14 destructive testing. Prior to performing any destructive
15 testing, the contractor, subcontractor, supplier, or design
16 professional who desires to perform the testing shall notify
17 the claimant of the type of testing to be performed, the
18 anticipated damage to the dwelling which will be caused by the
19 testing, and the anticipated repairs that will be necessary to
20 repair any damage to the dwelling caused by the testing. The
21 contractor, subcontractor, supplier, or design professional
22 performing the testing shall be responsible, at his or her
23 sole expense, for repairing any damage to the dwelling caused
24 by the testing.

25 (3) Within 10 days after service of the notice of
26 claim required in subsection (1), the contractor,
27 subcontractor, supplier, or design professional shall forward
28 a copy of the notice of claim to each subcontractor, supplier,
29 and design professional who it reasonably believes is
30 responsible for each alleged construction defect specified in
31 the notice of claim and shall include with the notice the

1 specific alleged construction defect for which it believes the
2 subcontractor, supplier, or design professional is
3 responsible. Each such subcontractor, supplier, and design
4 professional may inspect the dwelling as provided in
5 subsection (2) within 5 business days after service of a copy
6 of the notice of claim to such subcontractor, supplier, or
7 design professional under this subsection.

8 (4) On the request of the contractor, subcontractor,
9 supplier, or design professional who has received a notice of
10 claim pursuant to subsection (1) or subsection (3), the
11 claimant shall provide to the contractor, subcontractor,
12 supplier, or design professional any evidence that depicts the
13 nature and cause of the alleged construction defect and the
14 nature and extent of repairs necessary to remedy the alleged
15 construction defect, including expert reports, photographs,
16 and videotapes, if that evidence would be discoverable under
17 the Florida Rules of Civil Procedure. However, this section
18 does not require the claimant to obtain or create any such
19 evidence.

20 (5) Within 5 business days following service of a copy
21 of the notice of claim to a subcontractor, supplier, or design
22 professional pursuant to subsection (3), each subcontractor,
23 supplier, or design professional who has been served a copy of
24 the notice of claim shall serve a written response to the
25 contractor, subcontractor, supplier, or design professional
26 who served a copy of the notice of claim. The written response
27 shall include a report of the scope of the inspection of the
28 dwelling, if any, the findings and results of the inspection,
29 a statement of whether the subcontractor, supplier, or design
30 professional is willing to make repairs to the dwelling or
31 whether he or she disputes the claim, a description of any

1 repairs he or she is willing to make to remedy the alleged
2 construction defect, and a timetable for the completion of
3 such repairs.

4 (6) Within 25 days after service of the notice of
5 claim required in subsection (1), each contractor,
6 subcontractor, supplier, or design professional that has
7 received a notice of claim from the claimant shall serve a
8 written response on the claimant. The written response must
9 provide:

10 (a) A written offer to remedy the alleged construction
11 defect at no cost to the claimant, including a report of the
12 scope of the inspection, the findings and results of the
13 inspection, a description of the repairs necessary to remedy
14 the alleged construction defect, and a timetable for the
15 completion of such repairs;

16 (b) A written offer to compromise and settle the claim
17 by monetary payment to be paid within 30 days after the
18 claimant's acceptance of the offer; or

19 (c) A written statement that the contractor,
20 subcontractor, supplier, or design professional disputes the
21 claim and will not proceed further to remedy the alleged
22 construction defect or to compromise and settle the claim.

23
24 If the contractor, subcontractor, supplier, or design
25 professional's written response offers to remedy the alleged
26 construction defect pursuant to paragraph (a) or compromise
27 and settle the claim by monetary payment pursuant to paragraph
28 (b), the written response shall contain a statement that the
29 claimant shall be deemed to have accepted the offer if, within
30 15 days following service of such written response, the
31 claimant does not serve a written rejection of the offer on

1 the contractor, subcontractor, supplier, or design
2 professional.

3 (7) If the contractor, subcontractor, supplier, or
4 design professional disputes the claim pursuant to subsection
5 (6)(c) and will neither remedy the alleged construction defect
6 nor compromise and settle the claim, or does not respond to
7 the claimant's notice of claim within the time stated in
8 subsection (6), the claimant may, without further notice,
9 bring an action against the contractor, subcontractor,
10 supplier, or design professional for the claim described in
11 the notice of claim.

12 (8) If the claimant intends to reject a settlement
13 offer made by the contractor, subcontractor, supplier, or
14 design professional pursuant to paragraph (6)(a) or paragraph
15 (6)(b), the claimant shall serve written notice of the
16 claimant's rejection on the contractor, subcontractor,
17 supplier, or design professional within 15 days following
18 service of the settlement offer. The claimant's rejection
19 shall contain the settlement offer with the word "rejected"
20 printed on the settlement offer. After service of the
21 rejection required by this subsection, the claimant may bring
22 an action against the contractor, subcontractor, supplier, or
23 design professional for the claims described in the notice of
24 claim required by subsection (1) without further notice.

25 (9) If the claimant accepts the offer of a contractor,
26 subcontractor, supplier, or design professional made pursuant
27 to paragraph (6)(a) or paragraph (6)(b) and the contractor,
28 subcontractor, supplier, or design professional does not
29 proceed to make the monetary payment or repair the alleged
30 construction defect within the agreed timetable and in the
31 agreed manner, the claimant may, without further notice, bring

1 an action against the contractor, subcontractor, supplier, or
2 design professional for the claim described in the notice of
3 claim required by subsection (1). If a claimant accepts a
4 contractor, subcontractor, supplier, or design professional's
5 offer made pursuant to paragraph (6)(a) or paragraph (6)(b)
6 and the contractor, subcontractor, supplier, or design
7 professional proceeds to make the monetary payment or repair
8 the alleged construction defect within the agreed time and in
9 the agreed manner, the claimant shall thereafter be barred
10 from bringing an action against the contractor, subcontractor,
11 supplier, or design professional for the claim described in
12 the notice of claim required by subsection (1).

13 (10) If the claimant accepts the offer of a
14 contractor, subcontractor, supplier, or design professional to
15 repair an alleged construction defect pursuant to paragraph
16 (6)(a), the claimant shall provide the contractor,
17 subcontractor, supplier, or design professional and its
18 contractors or other agents reasonable access to the
19 claimant's dwelling during normal working hours to perform and
20 complete the repair by the agreed timetable.

21 (11) The failure of a claimant or a contractor,
22 subcontractor, supplier, or design professional to follow the
23 procedures set forth in this section is admissible in an
24 action. However, this section does not prohibit or limit the
25 claimant from making any necessary emergency repairs to the
26 claimant's dwelling. In addition, the offer of a contractor,
27 subcontractor, supplier, or design professional to remedy an
28 alleged construction defect or to compromise and settle the
29 claim by monetary payment pursuant to subsection (5),
30 paragraph (6)(a), or paragraph (6)(b) does not constitute an
31

1 admission of liability with respect to the alleged
2 construction defect.

3 (12) A claimant's written notice of claim under
4 subsection (1) tolls the applicable statute of limitations
5 until the later of:

6 (a) Sixty days after the contractor, subcontractor,
7 supplier, or design professional receives the notice of claim;
8 or

9 (b) Thirty days after the end of the repair timetable
10 stated in the offer of a contractor, subcontractor, supplier,
11 or design professional made pursuant to paragraph (6)(a) if
12 the claimant has accepted the offer. By stipulation of the
13 parties, the foregoing period may be extended and the statute
14 of limitations is tolled during the extension.

15 (13) The procedures set forth in this section apply to
16 each alleged construction defect. However, a claimant may
17 include multiple alleged construction defects in one notice of
18 claim pursuant to subsection (1).

19 (14) Sections 1 through 4 of this act do not:

20 (a) Bar or limit any rights, causes of action, or
21 theories on which liability may be based except as
22 specifically provided in this act;

23 (b) Bar or limit any defense, or create any new
24 defense, except as specifically provided in this act; or

25 (c) Create any new rights, causes of action, or
26 theories on which liability may be based.

27 Section 5. Contract of sale; provisions.--

28 (1) Upon entering into a contract for sale,
29 construction, or remodel of a dwelling, the contractor,
30 subcontractor, supplier, or design professional shall provide
31 notice to the owner of the dwelling of the contractor,

1 subcontractor, supplier, or design professional's right to
2 offer to cure construction defects or pay to settle alleged
3 construction defects before a claimant may commence an action
4 against the contractor, subcontractor, supplier, or design
5 professional. Such notice must be conspicuous and may be
6 included as part of the underlying contract.

7 (2) The notice required by subsection (1) must be in
8 substantially the following form:

9
10 FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU
11 MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR
12 DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR,
13 SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL
14 FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR
15 HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT,
16 YOU MUST DELIVER TO THE CONTRACTOR,
17 SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL
18 A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS
19 YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR
20 CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS,
21 OR DESIGN PROFESSIONALS THE OPPORTUNITY TO
22 INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND
23 MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED
24 CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO
25 ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY
26 SUBCONTRACTORS, SUPPLIERS, OR DESIGN
27 PROFESSIONALS. THERE ARE STRICT DEADLINES AND
28 PROCEDURES UNDER FLORIDA LAW, AND FAILURE TO
29 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A
30 LAWSUIT.
31

1 Section 6. Actions of associations.--

2 (1) A person may not provide or offer to provide
3 anything of value to a property manager of a condominium
4 association as defined in section 718.103, Florida Statutes, a
5 cooperative association as defined in section 719.103, Florida
6 Statutes, a homeowners' association as defined in section
7 720.301 or section 723.075, Florida Statutes, or to a member
8 or officer of the board of directors of such association to
9 induce the property manager, member, or officer to either
10 encourage or discourage the filing of a claim by the
11 association for damages arising from a construction defect.

12 (2) A property manager of a condominium association as
13 defined in section 718.103 or section 723.075, Florida
14 Statutes, a cooperative association as defined in section
15 719.103, Florida Statutes, or a homeowners' association as
16 defined in section 720.301, Florida Statutes, may not accept
17 anything of value given to him or her in exchange for
18 encouraging or discouraging the filing of a claim by the
19 association that he or she manages for damages arising from a
20 construction defect.

21 (3) A member or officer of the board of directors of a
22 condominium association as defined in section 718.103, Florida
23 Statutes, a cooperative association as defined in section
24 719.103, Florida Statutes, or a homeowners' association as
25 defined in section 720.301 or section 723.075, Florida
26 Statutes, may not accept anything of value given to him or her
27 in exchange for encouraging or discouraging the filing of a
28 claim by the association of which he or she is a member or
29 officer for damages arising from a construction defect.

30 (4) A person who willfully violates subsection (1),
31 subsection (2), or subsection (3) commits a misdemeanor of the

1 second degree, punishable as provided for in section 775.082
2 or section 775.083, Florida Statutes.

3 (5) An association or an attorney for an association
4 may not employ a person to perform destructive tests to
5 determine any damage or injury to a unit, common element, or
6 limited common element caused by a constructional defect
7 unless:

8 (a) The person is licensed as a contractor;

9 (b) The association has obtained the prior written
10 approval of each unit's owner whose unit or interest in the
11 common element or limited common element will be affected by
12 such testing;

13 (c) The person performing the tests has provided a
14 written schedule for repairs;

15 (d) The person performing the tests is required to
16 repair all damage resulting from such tests in accordance with
17 state laws and local ordinances relating thereto; and

18 (e) The association or the person so employed obtains
19 all permits required to conduct such tests and to repair any
20 damage resulting from such tests.

21 (6) If an action is brought by an association to
22 recover damages resulting from construction defects in any of
23 the units, common elements, or limited common elements of the
24 common-interest community, the attorney representing the
25 association shall provide to the board of directors of the
26 association and to each unit's owner a statement that
27 includes, in reasonable detail:

28 (a) The defects and damages or injuries to the units,
29 common elements, or limited common elements;

30 (b) The cause of the defects, if the cause is known;

31

1 (c) The nature and extent that is known of the damage
2 or injury resulting from the defects;

3 (d) The location of each defect within the units,
4 common elements, or limited common elements, if known;

5 (e) A reasonable estimate of the cost of the action,
6 including reasonable attorney's fees; and

7 (f) An explanation of the potential benefits of the
8 action and the potential adverse consequences if the
9 association does not commence the action or if the outcome is
10 not favorable to the association.

11 (7) An association may commence an action only upon a
12 vote or written agreement of the owners of the units to which
13 at least a majority of the votes of the members of the
14 association are allocated. In such a case, the association
15 shall provide written notice to the owner of each unit of the
16 meeting at which the commencement of an action is to be
17 considered or action is to be taken at least 21 calendar days
18 before the meeting.

19 Section 7. If any provision of this act or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of this act which can be given effect without the
23 invalid provision or application, and to this end the
24 provisions of this act are declared severable.

25 Section 8. This act shall take effect upon becoming a
26 law.

27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1286

4 The Committee Substitute clarifies the legislative findings
5 and declaration. It clarifies that the definition of an action
6 applies to damages to or loss of a dwelling; and it makes
7 technical changes to the definitions of contractor and
8 dwelling. It requires the construction professional to notify
9 a homeowner of the need for destructive testing, the damage
10 and repairs that will be caused, and that the construction
11 professional will fully repair any and all damage caused by
12 the testing. It clarifies that the construction professional
13 has a right to inspection within 5 business days after service
14 of the notice of claim. It clarifies that the claimant is not
15 required to obtain or create any evidence. It clarifies that
16 a construction professional also has 5 business days to
17 inspect the dwelling after receiving a copy of the notice of
18 claim from another construction professional. It changes the
19 number of days that a construction professional has to respond
20 to the claimant from 20 to 25 days, requires payment to the
21 claimant within 30 days of the claimant's acceptance of any
22 offer, and requires that the claimant shall be deemed to have
23 accepted an offer to settle if the claimant does not reject
24 the offer within 15 days of its receipt. It clarifies that
25 the claimant may proceed with an action after the claimant
26 writes the word "rejected" on the offer and serves the
27 construction professional with the rejection. It provides
28 that if a claimant accepts an offer to settle, the claimant is
29 barred from bringing an action against the construction
30 professional for the claim described in the notice of claim.
31 It clarifies that the bill does not bar, limit, or create any
rights, causes of action, or theories of liability.