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CHAMBER ACTION

The Committee on Business Regulation recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to construction defects; providing legislative findings and declarations; providing definitions; providing for abatement of certain dwelling actions without prejudice under certain circumstances; requiring a notice of claim and an opportunity to repair certain construction defects under certain circumstances; providing procedures and requirements for claim resolution by homeowners and construction professionals; providing for notice and response; providing for offers to compromise and settle, inspections, or disputation of claims; providing for access to a dwelling to inspect for certain purposes; providing for testing; providing for offers to remedy construction defects at no cost or offers to compromise and settle certain claims; providing for refusal to remedy defects; providing for bringing actions against certain persons under certain circumstances; providing for barring certain further actions under certain circumstances; providing for access to a dwelling



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29 | to remedy certain defects; specifying admissibility of
30 | certain failures to comply in certain court actions;
31 | providing for emergency repairs under certain
32 | circumstances; providing for tolling a time limitation;
33 | providing construction and application; requiring certain
34 | contractors, suppliers, and design professionals to
35 | provide to dwelling owners at the time of a sale,
36 | construction, or remodeling contract certain notice of
37 | rights to offer to cure construction defects; specifying
38 | notice form and contents; providing severability;
39 | providing an effective date.

40

41 | Be It Enacted by the Legislature of the State of Florida:

42

43 | Section 1. Legislative findings and declarations.--The
44 | Legislature finds, declares, and determines that an effective
45 | alternative dispute resolution mechanism in certain construction
46 | defect matters should involve the claimant filing a notice of
47 | claim with the contractor, subcontractor, supplier, or design
48 | professional that the claimant asserts is responsible for the
49 | defect and provide the contractor, subcontractor, supplier, or
50 | design professional with an opportunity to resolve the claim
51 | without resort to further legal process.

52 | Section 2. Definitions.--As used in this act, the term:

53 | (1) "Action" means any civil action or arbitration
54 | proceeding for damages or indemnity asserting a claim for damage
55 | to or loss of a dwelling or personal property caused by an
56 | alleged construction defect. The term "action" does not include



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57 any civil action or arbitration proceeding asserting a claim for
58 alleged personal injuries arising out of an alleged construction
59 defect. However, if a civil action or arbitration proceeding
60 asserts both a claim for damage to or loss of a dwelling or
61 personal property caused by an alleged construction defect and a
62 claim for alleged personal injuries arising out of an alleged
63 construction defect, the action may not proceed with respect to
64 the claim for damage to or loss of a dwelling or personal
65 property until the claimant first complies with the requirements
66 of this act.

67 (2) "Association" has the same meaning as set forth in s.
68 718.103(2), s. 719.103(2), s. 720.301(7), or s. 723.025, Florida
69 Statutes.

70 (3) "Claimant" means a homeowner, including a subsequent
71 purchaser, tenant, or association which asserts a claim against
72 a contractor, subcontractor, supplier, or design professional
73 concerning a defect in the design, construction, condition, or
74 sale of a dwelling or in the remodel of a dwelling. The term
75 "claimant" does not include a contractor, subcontractor,
76 supplier, or design professional.

77 (4) "Construction defect" means a deficiency in, or a
78 deficiency arising out of, the design, specifications,
79 surveying, planning, supervision, observation of construction,
80 or construction or remodeling of a dwelling resulting from:

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

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



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85 (c) A failure of the design of a dwelling to meet the
86 applicable professional standards of care at the time of
87 governmental approval; or

88 (d) A failure to construct or remodel a dwelling in
89 accordance with accepted trade standards for good and
90 workmanlike construction at the time of construction.

91 (5) "Contractor" means any person, firm, partnership,
92 corporation, association, or other organization that is legally
93 engaged in the business of designing, developing, constructing,
94 manufacturing, selling, or remodeling of a dwelling or
95 attachments thereto.

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

99 (7) "Dwelling" means a single-family house, manufactured
100 or modular home, duplex, or multifamily unit building designed
101 for residential use and includes common areas and improvements
102 that are owned or maintained by an association or by members of
103 an association. A dwelling includes the systems, other
104 components, and improvements that are part of a single-family
105 house, manufactured or modular home, duplex, or multifamily
106 residential building at the time of completion of construction.

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

109 (9) "Subcontractor" means a contractor who performs work
110 on behalf of another contractor in the construction or
111 remodeling of a dwelling.



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

115 Section 3. Action; abatement.--If a claimant files an
116 action without first complying with the requirements of this
117 act, on motion by a party to the action, the court shall abate
118 the action, without prejudice, and the action may not proceed
119 until the claimant has complied with the requirements of this
120 act.

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

122 (1) In every action brought against a contractor,
123 subcontractor, supplier, or design professional related to an
124 alleged construction defect, the claimant shall, no later than
125 60 days before filing an action, serve written notice of claim
126 on the contractor. The notice of claim must describe the claim
127 in reasonable detail sufficient to determine the general nature
128 of each alleged construction defect and a description of the
129 damage or loss resulting from each alleged construction defect,
130 if known. The claimant shall endeavor to serve the notice of
131 claim within 15 days after the claimant's discovery of the
132 alleged construction defect but the claimant's failure to serve
133 the notice of claim within that 15-day period does not bar the
134 filing of an action under section 3 if the claimant complies
135 with the other requirements of this section.

136 (2) Within 5 business days after service of the notice of
137 claim required in subsection (1), the contractor, subcontractor,
138 supplier, or design professional may inspect the dwelling to
139 assess each alleged construction defect. The claimant shall



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140 provide the contractor, subcontractor, supplier, or design
141 professional and its contractors or agents reasonable access to
142 the claimant's dwelling during normal working hours to inspect
143 the dwelling to determine the nature and cause of each alleged
144 construction defect and the nature and extent of any repairs or
145 replacements necessary to remedy each alleged construction
146 defect. The inspection may include destructive testing by mutual
147 agreement. Prior to performing any destructive testing, the
148 contractor, subcontractor, supplier, or design professional who
149 desires to perform the testing shall notify the claimant in
150 writing of the type of testing to be performed, the anticipated
151 damage to the dwelling which will be caused by the testing, and
152 the anticipated repairs that will be necessary to repair any
153 damage to the dwelling caused by the testing. The contractor,
154 subcontractor, supplier, or design professional performing the
155 testing shall be responsible, at his or her sole expense, for
156 repairing any damage to the dwelling caused by the testing.

157 (3) Within 10 days after service of the notice of claim
158 required in subsection (1), the contractor, subcontractor,
159 supplier, or design professional shall forward a copy of the
160 notice of claim to each subcontractor, supplier, and design
161 professional who it reasonably believes is responsible for each
162 alleged construction defect specified in the notice of claim and
163 shall include with the notice the specific alleged construction
164 defect for which it believes the subcontractor, supplier, or
165 design professional is responsible. Each such subcontractor,
166 supplier, and design professional may inspect the dwelling as
167 provided in subsection (2) within 5 business days after service



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168 of a copy of the notice of claim to such subcontractor,
169 supplier, or design professional under this subsection.

170 (4) Within 5 business days following service of a copy of
171 the notice of claim to a subcontractor, supplier, or design
172 professional pursuant to subsection (3), each subcontractor,
173 supplier, or design professional who has been served a copy of
174 the notice of claim shall serve a written response to the
175 contractor, subcontractor, supplier, or design professional who
176 served a copy of the notice of claim. The written response shall
177 include a report of the scope of the inspection of the dwelling,
178 if any, the findings and results of the inspection, a statement
179 of whether the subcontractor, supplier, or design professional
180 is willing to make repairs to the dwelling or whether he or she
181 disputes the claim, a description of any repairs he or she is
182 willing to make to remedy the alleged construction defect, and a
183 timetable for the completion of such repairs.

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

189 (a) A written offer to remedy the alleged construction
190 defect at no cost to the claimant, including a report of the
191 scope of the inspection, the findings and results of the
192 inspection, a detailed description of the repairs necessary to
193 remedy the alleged construction defect, and a timetable for the
194 completion of such repairs;



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

198 (c) A written statement that the contractor,
 199 subcontractor, supplier, or design professional disputes the
 200 claim and will not proceed further to remedy the alleged
 201 construction defect or to compromise and settle the claim.

202
 203 If the contractor, subcontractor, supplier, or design
 204 professional's written response offers to remedy the alleged
 205 construction defect pursuant to paragraph (a) or compromise and
 206 settle the claim by monetary payment pursuant to paragraph (b),
 207 the written response shall contain a statement that the claimant
 208 shall be deemed to have accepted the offer if, within 15 days,
 209 or 60 days for an association, following service of such written
 210 response, the claimant does not serve a written rejection of the
 211 offer on the contractor, subcontractor, supplier, or design
 212 professional.

213 (6) If the contractor, subcontractor, supplier, or design
 214 professional disputes the claim pursuant to paragraph (5)(c) and
 215 will not remedy the alleged construction defect or compromise
 216 and settle the claim, or does not respond to the claimant's
 217 notice of claim within the time stated in subsection (5), the
 218 claimant may, without further notice, proceed with an action
 219 against the contractor, subcontractor, supplier, or design
 220 professional for the claim described in the notice of claim.

221 (7) If the claimant intends to reject a settlement offer
 222 made by the contractor, subcontractor, supplier, or design



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223 professional pursuant to paragraph (5)(a) or paragraph (5)(b),
224 the claimant shall serve written notice of the claimant's
225 rejection on the contractor, subcontractor, supplier, or design
226 professional within 15 days following service of the settlement
227 offer. The claimant's rejection shall contain the settlement
228 offer with the word "rejected" printed on the settlement offer.
229 After service of the rejection required by this subsection, the
230 claimant may proceed with an action against the contractor,
231 subcontractor, supplier, or design professional for the claims
232 described in the notice of claim required by subsection (1)
233 without further notice.

234 (8) If the claimant accepts the offer of a contractor,
235 subcontractor, supplier, or design professional made pursuant to
236 paragraph (5)(a) or paragraph (5)(b) and the contractor,
237 subcontractor, supplier, or design professional does not proceed
238 to make the monetary payment or repair the alleged construction
239 defect within the agreed timetable and in the agreed manner, the
240 claimant may, without further notice, proceed with an action
241 against the contractor, subcontractor, supplier, or design
242 professional for the claim described in the notice of claim
243 required by subsection (1). If a claimant accepts a contractor,
244 subcontractor, supplier, or design professional's offer made
245 pursuant to paragraph (5)(a) or paragraph (5)(b) and the
246 contractor, subcontractor, supplier, or design professional
247 proceeds to make the monetary payment or repair the alleged
248 construction defect within the agreed time and in the agreed
249 manner, the claimant shall thereafter be barred from bringing or
250 proceeding with an action against the contractor, subcontractor,



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251 supplier, or design professional for the claim described in the
252 notice of claim required by subsection (1).

253 (9) If the claimant accepts the offer of a contractor,
254 subcontractor, supplier, or design professional to repair an
255 alleged construction defect pursuant to paragraph (5)(a), the
256 claimant shall provide the contractor, subcontractor, supplier,
257 or design professional and its contractors or other agents
258 reasonable access to the claimant's dwelling during normal
259 working hours to perform and complete the repair by the agreed
260 timetable.

261 (10) The failure of a claimant or a contractor,
262 subcontractor, supplier, or design professional to follow the
263 procedures set forth in this section is admissible in an action.
264 However, this section does not prohibit or limit the claimant
265 from making any necessary emergency repairs to the claimant's
266 dwelling. In addition, the offer of a contractor, subcontractor,
267 supplier, or design professional to remedy an alleged
268 construction defect or to compromise and settle the claim by
269 monetary payment pursuant to subsection (4), paragraph (5)(a),
270 or paragraph (5)(b) does not constitute an admission of
271 liability with respect to the alleged construction defect.

272 (11) A claimant's written notice of claim under subsection
273 (1) tolls the applicable statute of limitations until the later
274 of:

275 (a) Sixty days after the contractor, subcontractor,
276 supplier, or design professional receives the notice of claim;
277 or



278 (b) Thirty days after the end of the repair timetable
 279 stated in the offer of a contractor, subcontractor, supplier, or
 280 design professional made pursuant to paragraph (5)(a) if the
 281 claimant has accepted the offer. By stipulation of the parties,
 282 the foregoing period may be extended and the statute of
 283 limitations is tolled during the extension.

284 (12) The procedures set forth in this section apply to
 285 each alleged construction defect. However, a claimant may
 286 include multiple alleged construction defects in one notice of
 287 claim pursuant to subsection (1).

288 (13) Sections 1 through 4 of this act do not:

289 (a) Bar or limit any rights including, without limitation,
 290 the right of specific performance to the extent such right would
 291 be available to the claimant in the absence of this act, causes
 292 of action, or theories on which liability may be based except as
 293 specifically provided in this act;

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

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

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

299 (1) Upon entering into a contract to sell, construct, or
 300 remodel a dwelling, the contractor, subcontractor, supplier, or
 301 design professional shall provide notice to the owner of the
 302 dwelling of the contractor, subcontractor, supplier, or design
 303 professional's right to offer to cure construction defects or
 304 pay to settle alleged construction defects before a claimant may
 305 commence an action against the contractor, subcontractor,



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306 supplier, or design professional. Such notice must be
307 conspicuous and may be included as part of the underlying
308 contract.

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

311
312 FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW
313 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST
314 A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL
315 FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS
316 BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE
317 CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A
318 WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE
319 DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS,
320 SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT
321 THE ALLEGED CONSTRUCTION DEFECTS AND MAKE AN OFFER TO REPAIR OR
322 PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED
323 TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY
324 SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS. THERE ARE
325 STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW, AND FAILURE
326 TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

327 Section 6. If any provision of this act or the application
328 thereof to any person or circumstance is held invalid, the
329 invalidity does not affect other provisions or applications of
330 this act which can be given effect without the invalid provision
331 or application, and to this end the provisions of this act are
332 declared severable.

333 Section 7. This act shall take effect upon becoming a law.