

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Kottkamp offered the following:

2

3 **Amendment**

4 Remove lines 124-372 and insert:

5 family home, an association representing 20 or fewer residential  
6 parcels, a manufactured or modular home, a duplex, a triplex, or  
7 a quadruplex, or at least 120 days before filing an action  
8 involving an association representing more than 20 residential  
9 parcel owners, serve written notice of claim on the contractor,  
10 subcontractor, supplier, or design professional, as applicable,  
11 which notice shall refer to this chapter. If the construction  
12 defect claim arises from work performed under a contract, the  
13 written notice of claim must be served on the person with whom  
14 the claimant contracted. The notice of claim must describe the  
15 claim in reasonable detail sufficient to determine the general  
16 nature of each alleged construction defect and a description of

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17 the damage or loss resulting from the defect, if known. The  
18 claimant shall endeavor to serve the notice of claim within 15  
19 days after discovery of an alleged defect, but the failure to  
20 serve notice of claim within 15 days does not bar the filing of  
21 an action, subject to s. 558.003. This subsection does not  
22 preclude a claimant from filing an action sooner than 60 days,  
23 or 120 days as applicable, after service of written notice as  
24 expressly provided in subsection (6), subsection (7), or  
25 subsection (8).

26 (2) Within 30 ~~5-business~~ days after receipt ~~service~~ of the  
27 notice of claim, ~~the contractor, subcontractor, supplier, or~~  
28 ~~design professional may inspect~~ involving a single-family home,  
29 an association representing 20 or fewer residential parcels, a  
30 manufactured or modular home, a duplex, a triplex, or a  
31 quadruplex, or within 50 days after receipt of the notice of  
32 claim involving an association representing more than 20  
33 residential parcels, the person receiving the notice of claim  
34 under subsection (1) is entitled to perform a reasonable  
35 inspection of the dwelling or of each unit subject to the claim  
36 to assess each alleged construction defect. An association's  
37 right to access property for either maintenance or repair  
38 includes the authority to grant access for the inspection. The  
39 claimant shall provide the person receiving the notice under  
40 subsection (1) and such person's ~~contractor, subcontractor,~~  
41 ~~supplier, or design professional and its~~ contractors or agents  
42 reasonable access to the dwelling during normal working hours to  
43 inspect the dwelling to determine the nature and cause of each  
44 alleged construction defect and the nature and extent of any

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45 repairs or replacements necessary to remedy each defect. The  
46 person receiving notice under subsection (1) shall reasonably  
47 coordinate the timing and manner of any and all inspections with  
48 the claimant to minimize the number of inspections. The  
49 inspection may include destructive testing ~~by mutual agreement.~~  
50 Prior to performing any destructive testing, the person  
51 receiving notice under subsection (1) who desires to perform the  
52 testing shall notify the claimant in writing of the type of  
53 testing to be performed, the anticipated damage to the dwelling  
54 which will be caused by the testing, and the anticipated repairs  
55 that will be necessary to repair any damage caused by the  
56 testing. The person receiving notice under subsection (1) and  
57 such person's contractors or agents performing the testing are  
58 ~~is~~ responsible for repairing any damage to the dwelling caused  
59 by the testing. The claimant shall be given reasonable notice of  
60 the date and time of such testing and may be present to observe  
61 same. No such testing shall render the dwelling uninhabitable.  
62 Failure to repair any damage caused by the destructive testing  
63 shall be grounds for disciplinary proceedings pursuant to s.  
64 489.129(1)(g).

65 (3) Within 10 days after receipt ~~service~~ of the notice of  
66 claim involving a single-family home, an association  
67 representing 20 or fewer residential parcels, a manufactured or  
68 modular home, a duplex, a triplex, or a quadruplex, or within 30  
69 days after receipt of the notice of claim involving an  
70 association representing more than 20 residential parcels, the  
71 person receiving the notice under subsection (1) may ~~contractor,~~  
72 ~~subcontractor, supplier, and design professional must~~ forward a

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73 | copy of the notice of claim to each contractor, subcontractor,  
74 | supplier, or design professional whom it reasonably believes is  
75 | responsible for each defect specified in the notice of claim and  
76 | shall note the specific defect for which it believes the  
77 | particular contractor, subcontractor, supplier, or design  
78 | professional is responsible. Each such contractor,  
79 | subcontractor, supplier, and design professional may inspect the  
80 | dwelling as provided in subsection (2) ~~within 5 business days~~  
81 | ~~after receiving a copy of the notice.~~

82 |       (4) Within 15 ~~5 business~~ days after receiving a copy of  
83 | the notice of claim pursuant to subsection (3) involving a  
84 | single-family home, an association representing 20 or fewer  
85 | residential parcels, a manufactured or modular home, a duplex, a  
86 | triplex, or a quadruplex, or within 30 days after receipt of the  
87 | copy of the notice of claim involving an association  
88 | representing more than 20 residential parcels, the contractor,  
89 | subcontractor, supplier, or design professional must serve a  
90 | written response to the person ~~contractor, subcontractor,~~  
91 | ~~supplier, or design professional~~ who forwarded ~~served~~ a copy of  
92 | the notice of claim. The written response shall include a  
93 | report, if any, of the scope of any inspection of the dwelling,  
94 | the findings and results of the inspection, a statement of  
95 | whether the contractor, subcontractor, supplier, or design  
96 | professional is willing to make repairs to the dwelling or  
97 | whether such ~~he or she disputes the claim~~ is disputed, a  
98 | description of any repairs they are ~~he or she is~~ willing to make  
99 | to remedy the alleged construction defect, and a timetable for  
100 | the completion of such repairs.

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101 (5) Within 45 ~~25~~ days after receiving the notice of claim  
102 involving a single-family home, an association representing 20  
103 or fewer residential parcels, a manufactured or modular home, a  
104 duplex, a triplex, or a quadruplex, or within 75 days after  
105 receipt of a copy of the notice of claim involving an  
106 association representing more than 20 residential parcels, the  
107 person who received notice under subsection (1) each contractor,  
108 subcontractor, supplier, or design professional must serve a  
109 written response to the claimant. The response shall be served  
110 to the attention of the person who signed the notice of claim,  
111 unless otherwise designated in the notice of claim. The written  
112 response must provide:

113 (a) A written offer to remedy the alleged construction  
114 defect at no cost to the claimant, ~~including a report of the~~  
115 ~~scope of the inspection, the findings and results of the~~  
116 ~~inspection,~~ a detailed description of the proposed repairs  
117 necessary to remedy the defect, and a timetable for the  
118 completion of such repairs;

119 (b) A written offer to compromise and settle the claim by  
120 monetary payment and a timetable for making payment to be paid  
121 ~~within 30 days after the claimant's acceptance of the offer; or~~

122 (c) A written offer to compromise and settle the claim by  
123 a combination of repairs and monetary payment, including a  
124 detailed description of the proposed repairs and a timetable for  
125 the completion of such repairs and making payment; or

126 (d)(e) A written statement that the person contractor,  
127 ~~subcontractor, supplier, or design professional~~ disputes the

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128 claim and will not remedy the defect or compromise and settle  
129 the claim.

130 ~~(6) If the contractor, subcontractor, supplier, or design~~  
131 ~~professional offers to remedy the alleged construction defect or~~  
132 ~~compromise and settle the claim by monetary payment, the written~~  
133 ~~response must contain a statement that the claimant shall be~~  
134 ~~deemed to have accepted the offer if, within 15 days, or 45 days~~  
135 ~~for an association, after service to the written response, the~~  
136 ~~claimant does not serve a written rejection of the offer on the~~  
137 ~~contractor, subcontractor, supplier, or design professional.~~

138 (6)(7) If the person receiving a notice of claim pursuant  
139 to subsection (1) ~~contractor, subcontractor, supplier, or design~~  
140 ~~professional~~ disputes the claim and will neither remedy the  
141 defect nor compromise and settle the claim, or does not respond  
142 to the claimant's notice of claim within the time provided in  
143 subsection (5), the claimant may, without further notice,  
144 proceed with an action against that person ~~the contractor,~~  
145 ~~subcontractor, supplier, or design professional~~ for the claim  
146 described in the notice of claim. Nothing in this chapter shall  
147 be construed to preclude a partial settlement or compromise of  
148 the claim as agreed to by the parties and, in that event, the  
149 claimant may, without further notice, proceed with an action on  
150 the unresolved portions of the claim.

151 (7)(8) A claimant who receives ~~rejects~~ a timely settlement  
152 offer must accept or reject the offer made by serving the  
153 ~~contractor, subcontractor, supplier, or design professional~~ must  
154 serve written notice of such acceptance or rejection on the  
155 person making the offer ~~contractor, subcontractor, supplier, or~~

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156 ~~design professional within 15 days, or 45 days for an~~  
157 ~~association, after receiving service of the settlement offer. If~~  
158 ~~a claimant initiates an action without first accepting or~~  
159 ~~rejecting the offer, the court shall abate the action upon~~  
160 ~~timely motion until the claimant complies with this subsection.~~  
161 ~~The claimant's rejection must contain the settlement offer with~~  
162 ~~the word "rejected" printed on it. After service of the~~  
163 ~~rejection, the claimant may proceed with an action against the~~  
164 ~~contractor, subcontractor, supplier, or design professional for~~  
165 ~~the claims in the notice of claim without further notice.~~

166 (8)(9) If the claimant timely and properly accepts the  
167 offer to repair an alleged construction defect, the claimant  
168 shall provide the offeror and the offeror's agents reasonable  
169 access to the claimant's dwelling during normal working hours to  
170 perform the repair by the agreed-upon timetable as stated in the  
171 offer. If the offeror of a contractor, subcontractor, supplier,  
172 or design professional and the contractor, subcontractor,  
173 supplier, or design professional does not make the payment or  
174 repair the defect within the agreed time and in the agreed  
175 manner, except for reasonable delays beyond the control of the  
176 offeror, including, but not limited to, weather conditions,  
177 delivery of materials, claimant's actions, or issuance of any  
178 required permits, the claimant may, without further notice,  
179 proceed with an action against the offeror based upon  
180 contractor, subcontractor, supplier, or design professional for  
181 the claim in the notice of claim. If the offeror a claimant  
182 accepts a contractor's, subcontractor's, supplier's, or design  
183 professional's offer and the contractor, subcontractor,

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184 ~~supplier, or design professional~~ makes payment or repairs the  
185 defect within the agreed time and in the agreed manner, the  
186 claimant is barred from proceeding with an action ~~against the~~  
187 ~~contractor, subcontractor, supplier, or design professional~~ for  
188 the claim described in the notice of claim or as otherwise  
189 provided in the accepted settlement offer.

190 ~~(10) If the claimant accepts the offer of a contractor,~~  
191 ~~subcontractor, supplier, or design professional to repair an~~  
192 ~~alleged construction defect, the claimant shall provide the~~  
193 ~~contractor, subcontractor, supplier, or design professional and~~  
194 ~~its contractors or other agents reasonable access to the~~  
195 ~~claimant's dwelling during normal working hours to perform the~~  
196 ~~repair by the agreed-upon timetable as stated in the offer.~~

197 ~~(9)(11) The failure of a claimant or a contractor,~~  
198 ~~subcontractor, supplier, or design professional to follow the~~  
199 ~~procedures in this section is admissible in an action. However,~~  
200 This section does not prohibit or limit the claimant from making  
201 any necessary emergency repairs to the dwelling as are required  
202 to protect the health, safety, and welfare of the claimant. In  
203 addition, any ~~the offer of a contractor, subcontractor,~~  
204 ~~supplier, or design professional~~ to remedy an alleged  
205 construction defect or to compromise and settle the claim by  
206 monetary payment does not constitute an admission of liability  
207 with respect to the defect and is not admissible in an action to  
208 show the existence of a defect.

209 ~~(10)(12) A claimant's mailing of the~~ written notice of  
210 claim under subsection (1) tolls the applicable statute of



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211 limitations relating to any person covered by this chapter and  
212 any bond surety until the later of:

213 (a) Ninety ~~Sixty~~ days, or 120 days, as applicable, after  
214 receipt of the contractor, subcontractor, supplier, or design  
215 professional receives the notice of claim pursuant to subsection  
216 (1); or

217 (b) Thirty days after the end of the repair period or  
218 payment period stated in the offer, if the claimant has accepted  
219 the offer. By stipulation of the parties, the period may be  
220 extended and the statute of limitations is tolled during the  
221 extension.

222 ~~(11)(13)~~ The procedures in this chapter section apply to  
223 each alleged construction defect. However, a claimant may  
224 include multiple defects in one notice of claim. The initial  
225 list of construction defects may be amended by the claimant to  
226 identify additional or new construction defects as they become  
227 known to the claimant. The court shall allow the action to  
228 proceed to trial only as to alleged construction defects that  
229 were noticed and for which the claimant has complied with this  
230 chapter and as to construction defects reasonably related to, or  
231 caused by, the construction defects previously noticed. Nothing  
232 in this subsection shall preclude subsequent or further actions.

233 ~~(12)(14)~~ This chapter does Sections 558.001-558.003 of  
234 this act do not:

235 (a) Bar or limit any rights, including the right of  
236 specific performance to the extent such right would be available  
237 in the absence of this act, any causes of action, or any

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238 theories on which liability may be based, except as specifically  
239 provided in this chapter act;

240 (b) Bar or limit any defense, or create any new defense,  
241 except as specifically provided in this chapter act; or

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

244 (13) The person receiving notice of claim under subsection  
245 (1) shall be deemed, for insurance purposes, to have been  
246 legally obligated to make the repairs or the monetary payment as  
247 if the claimant had recovered a judgment against such person in  
248 the amount of the cost of the repairs, and the amount of the  
249 monetary payment, if any, if the claimant has accepted the  
250 offer.

251 (14)~~(15)~~ To the extent that an arbitration clause in a  
252 contract for the sale, design, construction, or remodeling of a  
253 dwelling conflicts with this section, this section shall  
254 control.

255 (15) Upon request, the claimant and the person receiving  
256 notice pursuant to subsection (1) shall have a mutual duty to  
257 exchange all available discoverable evidence relating to the  
258 construction defects, including, but not limited to, expert  
259 reports, photographs, information received pursuant to  
260 subsection (4), and videotapes, if any. In the event of