

Bill No. CS for SB 3046

Amendment No. ____ Barcode 101240

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 4, through page 16, line 3, delete those lines

and insert:

Section 4. Section 558.004, Florida Statutes, is amended to read:

558.004 Notice and opportunity to repair.--

(1) In actions brought alleging a ~~against a contractor, subcontractor, supplier, or design professional related to an alleged construction defect~~, the claimant shall, at least no later than 60 days before filing an action involving a single-family home, an association representing 20 or fewer residential parcels, a manufactured or modular home, duplex, triplex, or quadruplex, or at least 120 days before filing an action involving an association representing more than 20 residential parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this

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1 chapter. If the construction defect claim arises from work
2 performed under a contract, the written notice of claim must
3 be served on the person with whom the claimant contracted. The
4 notice of claim must describe the claim in reasonable detail
5 sufficient to determine the general nature of each alleged
6 construction defect and a description of the damage or loss
7 resulting from the defect, if known. The claimant shall
8 endeavor to serve the notice of claim within 15 days after
9 discovery of an alleged defect, but the failure to serve
10 notice of claim within 15 days does not bar the filing of an
11 action, subject to s. 558.003. This subsection does not
12 preclude a claimant from filing an action sooner than 60 days,
13 or 120 days as applicable, after service of written notice as
14 expressly provided in subsection (6), subsection (7), or
15 subsection (8).

16 (2) Within 30 ~~5~~ business days after receipt ~~service~~ of
17 the notice of claim, ~~the contractor, subcontractor, supplier,~~
18 ~~or design professional may inspect~~ involving a single-family
19 home, an association representing 20 or fewer residential
20 parcels, a manufactured or modular home, duplex, triplex, or
21 quadruplex, or within 50 days after receipt of the notice of
22 claim involving an association representing more than 20
23 residential parcels, the person receiving the notice of claim
24 under subsection (1) is entitled to perform a reasonable
25 inspection of the dwelling or of each unit subject to the
26 claim to assess each alleged construction defect. An
27 association's right to access property for either maintenance
28 or repair includes the authority to grant access for the
29 inspection. The claimant shall provide the person receiving
30 the notice under subsection (1) and such person's ~~contractor,~~
31 ~~subcontractor, supplier, or design professional and its~~

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1 contractors or agents reasonable access to the dwelling during
2 normal working hours to inspect the dwelling to determine the
3 nature and cause of each alleged construction defect and the
4 nature and extent of any repairs or replacements necessary to
5 remedy each defect. The person receiving notice under
6 subsection (1) shall reasonably coordinate the timing and
7 manner of any and all inspections with the claimant to
8 minimize the number of inspections. The inspection may include
9 destructive testing by mutual agreement under the following
10 reasonable terms and conditions:

11 (a) If the person receiving notice under subsection
12 (1) determines that destructive testing is necessary to
13 determine the nature and cause of the alleged defects, the
14 person shall notify the claimant in writing.

15 (b) The notice shall describe the destructive testing
16 to be performed, the person selected to do the testing, the
17 estimated anticipated damage and repairs to the dwelling
18 resulting from the testing, the estimated amount of time
19 necessary for the testing and to complete the repairs, and the
20 financial responsibility offered for covering the costs of
21 repairs.

22 (c) If the claimant promptly objects to the person
23 selected to perform the destructive testing, the person
24 receiving notice under subsection (1) shall provide the
25 claimant with a list of three qualified persons from which the
26 claimant may select one person to perform the testing. The
27 person selected to perform the testing shall operate as an
28 agent or subcontractor of the person receiving notice under
29 subsection (1) and shall communicate with, submit any reports
30 to, and be solely responsible to the person receiving notice.

31 (d) The testing shall be done at a mutually agreeable

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1 time.

2 (e) The claimant or a representative of the claimant
3 may be present to observe the destructive testing.

4 (f) The destructive testing shall not render the
5 dwelling uninhabitable.

6
7 In the event the claimant fails or refuses to agree to
8 destructive testing, the claimant has no claim for damages
9 which could have been avoided or mitigated had destructive
10 testing been allowed when requested and had a feasible remedy
11 been promptly implemented.

12 ~~Prior to performing any destructive testing, the person~~
13 ~~who desires to perform the testing shall notify the claimant~~
14 ~~in writing of the type of testing to be performed, the~~
15 ~~anticipated damage to the dwelling which will be caused by the~~
16 ~~testing, and the anticipated repairs that will be necessary to~~
17 ~~repair any damage caused by the testing. The person performing~~
18 ~~the testing is responsible for repairing any damage to the~~
19 ~~dwelling caused by the testing.~~

20 (3) Within 10 days after receipt ~~service~~ of the notice
21 of claim involving a single-family home, an association
22 representing 20 or fewer residential parcels, manufactured or
23 modular home, duplex, triplex, or quadruplex, or within 30
24 days after receipt of the notice of claim involving an
25 association representing more than 20 residential parcels, the
26 person receiving the notice under subsection (1) may
27 ~~contractor, subcontractor, supplier, and design professional~~
28 ~~must~~ forward a copy of the notice of claim to each contractor,
29 subcontractor, supplier, or design professional whom it
30 reasonably believes is responsible for each defect specified
31 in the notice of claim and shall note the specific defect for

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1 which it believes the particular contractor, subcontractor,
2 supplier, or design professional is responsible. Each such
3 contractor, subcontractor, supplier, and design professional
4 may inspect the dwelling as provided in subsection (2) ~~within~~
5 ~~5 business days after receiving a copy of the notice.~~

6 (4) Within 15 ~~5 business~~ days after receiving a copy
7 of the notice of claim pursuant to subsection (3) involving a
8 single-family home, an association representing 20 or fewer
9 residential parcels, manufactured or modular home, duplex,
10 triplex, or quadruplex, or within 30 days after receipt of the
11 copy of the notice of claim involving an association
12 representing more than 20 residential parcels, the contractor,
13 subcontractor, supplier, or design professional must serve a
14 written response to the person ~~contractor, subcontractor,~~
15 ~~supplier, or design professional~~ who forwarded ~~served~~ a copy
16 of the notice of claim. The written response shall include a
17 report, if any, of the scope of any inspection of the
18 dwelling, the findings and results of the inspection, a
19 statement of whether the contractor, subcontractor, supplier,
20 or design professional is willing to make repairs to the
21 dwelling or whether such ~~he or she disputes the claim is~~
22 disputed, a description of any repairs they are ~~he or she is~~
23 willing to make to remedy the alleged construction defect, and
24 a timetable for the completion of such repairs.

25 (5) Within 45 ~~25~~ days after receiving the notice of
26 claim involving a single-family home, an association
27 representing less than 20 residential parcels, manufactured or
28 modular home, duplex, triplex, or quadruplex, or within 75
29 days after receipt of a copy of the notice of claim involving
30 an association representing more than 20 residential parcels,
31 the person who received notice under subsection (1) each

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1 ~~contractor, subcontractor, supplier, or design professional~~
2 must serve a written response to the claimant. The response
3 shall be served to the attention of the person who signed the
4 notice of claim, unless otherwise designated in the notice of
5 claim. The written response must provide:

6 (a) A written offer to remedy the alleged construction
7 defect at no cost to the claimant, ~~including a report of the~~
8 ~~scope of the inspection, the findings and results of the~~
9 ~~inspection,~~ a detailed description of the proposed repairs
10 necessary to remedy the defect, and a timetable for the
11 completion of such repairs;

12 (b) A written offer to compromise and settle the claim
13 by monetary payment that will not obligate the person's
14 insurer and a timetable for making payment to be paid within
15 30 days after the claimant's acceptance of the offer; or

16 (c) A written offer to compromise and settle the claim
17 by a combination of repairs and monetary payment, that will
18 not obligate a person's insurer, that includes a detailed
19 description of the proposed repairs and a timetable for the
20 completion of such repairs and making payment; or

21 ~~(d)(c)~~ A written statement that the person ~~contractor,~~
22 ~~subcontractor, supplier, or design professional~~ disputes the
23 claim and will not remedy the defect or compromise and settle
24 the claim; ~~or.~~

25 (e) A written statement that a monetary payment,
26 including insurance proceeds, if any, will be determined by
27 the person's insurer within 30 days after notification to the
28 insurer by means of forwarding the claim, which notification
29 shall occur at the same time the claimant is notified of this
30 settlement option, which the claimant can accept or reject. A
31 written statement under this paragraph may also include an

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1 offer under paragraph (c), but the offer shall be contingent
2 upon the claimant also accepting the determination of the
3 insurer whether to make any monetary payment, in addition
4 thereto. If the insurer for the person receiving the claim
5 makes no response within the 30 days following notification,
6 then the claimant shall be deemed to have met all conditions
7 precedent to commencing an action.

8 ~~(6) If the contractor, subcontractor, supplier, or~~
9 ~~design professional offers to remedy the alleged construction~~
10 ~~defect or compromise and settle the claim by monetary payment,~~
11 ~~the written response must contain a statement that the~~
12 ~~claimant shall be deemed to have accepted the offer if, within~~
13 ~~15 days, or 45 days for an association, after service to the~~
14 ~~written response, the claimant does not serve a written~~
15 ~~rejection of the offer on the contractor, subcontractor,~~
16 ~~supplier, or design professional.~~

17 ~~(6)(7)~~ If the person receiving a notice of claim
18 pursuant to subsection (1) contractor, subcontractor,
19 supplier, or design professional disputes the claim and will
20 neither remedy the defect nor compromise and settle the claim,
21 or does not respond to the claimant's notice of claim within
22 the time provided in subsection (5), the claimant may, without
23 further notice, proceed with an action against that person the
24 contractor, subcontractor, supplier, or design professional
25 for the claim described in the notice of claim. Nothing in
26 this chapter shall be construed to preclude a partial
27 settlement or compromise of the claim as agreed to by the
28 parties and, in that event, the claimant may, without further
29 notice, proceed with an action on the unresolved portions of
30 the claim.

31 ~~(7)(8)~~ A claimant who receives ~~rejects~~ a timely

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1 ~~settlement offer must accept or reject the offer made by~~
2 ~~servicing the contractor, subcontractor, supplier, or design~~
3 ~~professional must serve~~ written notice of such acceptance or
4 rejection on the person making the offer contractor,
5 subcontractor, supplier, or design professional within 15
6 days, or 45 days for an association, after receiving service
7 of the settlement offer. If a claimant initiates an action
8 without first accepting or rejecting the offer, the court
9 shall abate the action upon timely motion until the claimant
10 complies with this subsection. The claimant's rejection must
11 contain the settlement offer with the word "rejected" printed
12 on it. After service of the rejection, the claimant may
13 proceed with an action against the contractor, subcontractor,
14 supplier, or design professional for the claims in the notice
15 of claim without further notice.

16 (8)(9) If the claimant timely and properly accepts the
17 offer to repair an alleged construction defect, the claimant
18 shall provide the offeror and the offeror's agents reasonable
19 access to the claimant's dwelling during normal working hours
20 to perform the repair by the agreed-upon timetable as stated
21 in the offer. If the offeror of a contractor, subcontractor,
22 supplier, or design professional and the contractor,
23 subcontractor, supplier, or design professional does not make
24 the payment or repair the defect within the agreed time and in
25 the agreed manner, except for reasonable delays beyond the
26 control of the offeror, including, but not limited to, weather
27 conditions, delivery of materials, claimant's actions, or
28 issuance of any required permits, the claimant may, without
29 further notice, proceed with an action against the offeror
30 based upon contractor, subcontractor, supplier, or design
31 professional for the claim in the notice of claim. If the

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1 ~~offeror~~ a claimant accepts a contractor's, subcontractor's,
 2 ~~supplier's, or design professional's offer and the contractor,~~
 3 ~~subcontractor, supplier, or design professional~~ makes payment
 4 or repairs the defect within the agreed time and in the agreed
 5 manner, the claimant is barred from proceeding with an action
 6 ~~against the contractor, subcontractor, supplier, or design~~
 7 ~~professional~~ for the claim described in the notice of claim or
 8 as otherwise provided in the accepted settlement offer.

9 ~~(10)~~ If the claimant accepts the offer of a
 10 ~~contractor, subcontractor, supplier, or design professional to~~
 11 ~~repair an alleged construction defect, the claimant shall~~
 12 ~~provide the contractor, subcontractor, supplier, or design~~
 13 ~~professional and its contractors or other agents reasonable~~
 14 ~~access to the claimant's dwelling during normal working hours~~
 15 ~~to perform the repair by the agreed-upon timetable as stated~~
 16 ~~in the offer.~~

17 ~~(9)(11)~~ The failure of a claimant or a contractor,
 18 ~~subcontractor, supplier, or design professional to follow the~~
 19 ~~procedures in this section is admissible in an action.~~
 20 ~~However,~~ This section does not prohibit or limit the claimant
 21 from making any necessary emergency repairs to the dwelling as
 22 are required to protect the health, safety, and welfare of the
 23 claimant. In addition, any the offer or failure to offer under
 24 subsection (5) of a contractor, subcontractor, supplier, or
 25 design professional to remedy an alleged construction defect
 26 or to compromise and settle the claim by monetary payment does
 27 not constitute an admission of liability with respect to the
 28 defect, and shall not be admissible in an action brought under
 29 this chapter.

30 ~~(10)(12)~~ A claimant's mailing of the written notice of
 31 claim under subsection (1) tolls the applicable statute of

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

3 (a) Ninety Sixty days, or 120 days, as applicable,
4 after receipt of the contractor, subcontractor, supplier, or
5 design professional receives the notice of claim pursuant to
6 subsection (1); or

7 (b) Thirty days after the end of the repair period or
8 payment period stated in the offer, if the claimant has
9 accepted the offer. By stipulation of the parties, the period
10 may be extended and the statute of limitations is tolled
11 during the extension.

12 ~~(11)(13)~~ The procedures in this chapter section apply
13 to each alleged construction defect. However, a claimant may
14 include multiple defects in one notice of claim. The initial
15 list of construction defects may be amended by the claimant to
16 identify additional or new construction defects as they become
17 known to the claimant. The court shall allow the action to
18 proceed to trial only as to alleged construction defects that
19 were noticed and for which the claimant has complied with this
20 chapter and as to construction defects reasonably related to,
21 or caused by, the construction defects previously noticed.
22 Nothing in this subsection shall preclude subsequent or
23 further actions.

24 ~~(12)(14)~~ This chapter does Sections 558.001-558.003 of
25 this act do not:

26 (a) Bar or limit any rights, including the right of
27 specific performance to the extent such right would be
28 available in the absence of this act, any causes of action, or
29 any theories on which liability may be based, except as
30 specifically provided in this chapter act;

31 (b) Bar or limit any defense, or create any new

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1 defense, except as specifically provided in this chapter act;
2 or

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

5 (13) This section does not relieve the person
6 receiving notice of claim under subsection (1) from complying
7 with all contractual provisions of any liability insurance
8 policy as a condition precedent to coverage for any claim
9 under this section. However, notwithstanding the foregoing or
10 any contractual provision, the providing of a copy of the
11 notice to the person's insurer, if applicable, does not
12 constitute a claim for insurance purposes. This section does
13 not impair technical notice provisions or requirements of the
14 liability policy or alter, amend, or change existing Florida
15 law relating to rights between insureds and insurers except as
16 otherwise specifically provided herein.

17 (14)(15) To the extent that an arbitration clause in a
18 contract for the sale, design, construction, or remodeling of
19 a dwelling conflicts with this section, this section shall
20 control.

21 (15) Upon request, the claimant and the person
22 receiving notice pursuant to subsection (1) shall have a
23 mutual duty to exchange all available discoverable evidence
24 relating to the construction defects, including, but not
25 limited to, expert reports, photographs, information received
26 under subsection (4), and videotapes, if any. In the event of
27 subsequent litigation, any party who failed to provide such
28 evidence shall be subject to such sanctions as the court may
29 impose for a discovery violation. Expert reports exchanged
30 between the parties may not be used in any subsequent
31 litigation for any purpose, unless the expert, or a person

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1 affiliated with the expert, testifies as a witness or the
2 report is used or relied upon by an expert who testifies on
3 behalf of the party for whom the report was prepared.

4 Section 5. Section 558.005, Florida Statutes, is
5 amended to read:

6 558.005 ~~Contract of sale;~~ provisions; application.--

7 (1) Except as otherwise provided in subsections (3)
8 and (4), the provisions of this chapter shall control every
9 contract for the design, construction, or remodeling of a
10 dwelling entered into on or after July 1, 2004, which contains
11 the notice as set forth in subsection (2) and is conspicuously
12 set forth in capitalized letters ~~Upon entering into a contract~~
13 ~~for the sale, design, construction, or remodeling of a~~
14 ~~dwelling, the contractor, subcontractor, supplier, or design~~
15 ~~professional shall provide notice to the owner of the dwelling~~
16 ~~of the contractor's, subcontractor's, supplier's, or design~~
17 ~~professional's right to offer to cure construction defects or~~
18 ~~pay to settle alleged construction defects before a claimant~~
19 ~~may commence an action against the contractor, subcontractor,~~
20 ~~supplier, or design professional. Such notice must be~~
21 ~~conspicuous and may be included as part of the contract.~~

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

24
25 CHAPTER 558 NOTICE OF CLAIM

26 CHAPTER 558, FLORIDA STATUTES ~~LAW~~ CONTAINS IMPORTANT
27 REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL
28 ACTION ~~FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A~~
29 ~~CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL~~
30 FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS
31 BEFORE YOU BRING ANY LEGAL ACTION ~~FILE YOUR LAWSUIT~~, YOU MUST

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1 ~~DELIVER TO THE OTHER PARTY TO THIS CONTRACT CONTRACTOR,~~
2 ~~SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN~~
3 ~~NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS~~
4 ~~YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON YOUR~~
5 ~~CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN~~
6 ~~PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED~~
7 ~~CONSTRUCTION DEFECTS AND TO CONSIDER MAKING MAKE AN OFFER TO~~
8 ~~REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE~~
9 ~~NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE BY THE~~
10 ~~CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN~~
11 ~~PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER~~
12 ~~THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT~~
13 ~~YOUR INTERESTS.~~

14 (3) After receipt of the initial notice of claim, a
15 claimant and the person receiving notice under s. 558.004(1)
16 may, by written mutual agreement, alter the procedure for the
17 notice of claim process described in this chapter.

18 (4) This chapter applies to all actions accruing on or
19 after July 1, 2004, and all actions commenced on or after such
20 date, regardless of the date of sale, issuance of a
21 certificate of occupancy or its equivalent, or substantial
22 completion of the dwelling. Notwithstanding the notice
23 requirements of this section for contracts entered into on or
24 after July 1, 2004, this chapter applies to all actions
25 accruing before July 1, 2004, but not yet commenced as of July
26 1, 2004, and failure to include the notice requirements of
27 this section in a contract entered into prior to July 1, 2004,
28 does not operate to bar the procedures of this chapter from
29 applying to all such actions.

30 Section 6. If any provision of this act or the
31 application thereof to any person or circumstance is held

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1 invalid, the invalidity does not affect other provisions or
2 applications of this act which can be given effect without the
3 invalid provision or application, and to this end the
4 provisions of this act are declared severable.

5 Section 7. This act shall take effect July 1, 2004.

6

7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, lines 10 through 27, delete those lines

11

12 and insert:

13 amending s. 558.004, F.S.; revising
14 requirements, procedures, criteria, and
15 limitations in provisions relating to notice
16 and opportunity to repair construction defects
17 in certain structures; providing requirements
18 and procedures for making, accepting, or
19 rejecting settlement offers; providing for
20 consequences of certain actions relating to
21 settlement offers; specifying legal obligation
22 to make certain repairs or monetary payments
23 under certain circumstances; providing a mutual
24 duty to exchange certain discoverable evidence;
25 providing requirements and limitations;
26 amending s. 558.005, F.S.; revising certain
27 contract content provisions; providing a notice
28 form; providing application; providing
29 severability; providing an effective date.

30

31