

By the Committee on Regulated Industries; and Senator Clary

580-2125-06

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A bill to be entitled

An act relating to construction contracting;
amending s. 95.11, F.S.; revising commencement
periods for actions founded on the design,
planning, or construction of improvements to
real property; amending s. 718.618, F.S.,
relating to converter reserve accounts and
warranties; limiting applicability to certain
improvements; providing an effective date.

WHEREAS, architects, engineers, and contractors of an
improvement to real property may find themselves named as
defendants in a damage suit many years after the improvement
was completed and occupied, and

WHEREAS, to permit the bringing of such actions without
an appropriate limitation as to time places the defendant in
an unreasonable, if not impossible, position with respect to
asserting a defense, and

WHEREAS, architects, engineers, and contractors have no
control over an owner whose neglect in maintaining an
improvement may cause dangerous or unsafe conditions to
develop over a period of years, who uses an improvement for
purposes for which it was not designed, or who makes
alterations or changes that, years afterward, may be
determined to be unsafe or defective and that may appear to be
a part of the original improvement, and

WHEREAS, liability insurance for the engineer,
architect, or contractor is more difficult and more expensive
to obtain the longer he or she is exposed to potential
liability after an improvement to real property has been
completed, and

1 WHEREAS, Florida currently limits the liability
2 exposure of architects, engineers, and contractors to a period
3 of 15 years after completion of an improvement to real
4 property, and

5 WHEREAS, liability insurance coverage is increasingly
6 difficult and more expensive to acquire to cover a period of
7 more than 10 years after an improvement to real property is
8 completed, especially for small and medium-sized architecture,
9 engineering, and construction firms, and

10 WHEREAS, liability insurance coverage for work on
11 residential construction projects, such as condominiums, is
12 generally not available to cover a period of more than 10
13 years after the improvement to real property is completed, and

14 WHEREAS, the increased cost of such insurance coverage
15 and liability exposure adds to the total cost of construction
16 and is ultimately borne by residential and commercial property
17 owners, and

18 WHEREAS, Florida's current 15-year limit on liability
19 is considerably longer than most other states, some of which
20 have adopted limits as low as 5 years and most of which have
21 adopted a 10-year limit, and

22 WHEREAS, the best interest of the people of the state
23 will be served by reducing the period of time an engineer,
24 architect, or contractor may be exposed to potential liability
25 after an improvement has been completed, and

26 WHEREAS, a recent increase in the conversion of
27 completed or partially completed buildings to condominiums has
28 caused confusion regarding the scope of the warranties
29 specified in sections 718.203 and 718.618, Florida Statutes,
30 and necessitates the clarification of these statutes, NOW,
31 THEREFORE,

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

2

3 Section 1. Paragraph (c) of subsection (3) of section
4 95.11, Florida Statutes, is amended to read:

5 95.11 Limitations other than for the recovery of real
6 property.--Actions other than for recovery of real property
7 shall be commenced as follows:

8 (3) WITHIN FOUR YEARS.--

9 (c) An action founded on the design, planning, or
10 construction of an improvement to real property, with the time
11 running from the date of actual possession by the owner, the
12 date of the issuance of a certificate of occupancy, the date
13 of abandonment of construction if not completed, or the date
14 of completion or termination of the contract between the
15 professional engineer, registered architect, or licensed
16 contractor and his or her employer, whichever date is latest;
17 except that, when the action involves a latent defect, the
18 time runs from the time the defect is discovered or should
19 have been discovered with the exercise of due diligence. In
20 any event, the action must be commenced within 10 ~~15~~ years
21 after the date of actual possession by the owner, the date of
22 the issuance of a certificate of occupancy, the date of
23 abandonment of construction if not completed, or the date of
24 completion or termination of the contract between the
25 professional engineer, registered architect, or licensed
26 contractor and his or her employer, whichever date is latest.

27 Section 2. Subsection (9) is added to section 718.618,
28 Florida Statutes, to read:

29 718.618 Converter reserve accounts; warranties.--

30 (9) This section applies only to the conversion of
31 existing improvements where construction of the improvement

1 was commenced prior to its designation by the developer as a
2 condominium. In such circumstances, s. 718.203 does not apply.

3 Section 3. The amendments to s. 95.11(3)(c), Florida
4 Statutes, made by this act shall apply to any action commenced
5 on or after July 1, 2006, regardless of when the cause of
6 action accrued, except that any action that would not have
7 been barred under s. 95.11(3)(c), Florida Statutes, prior to
8 the amendments made by this act may be commenced before July
9 1, 2007, and if it is not commenced by that date and is barred
10 by the amendments to s. 95.11(3)(c), Florida Statutes, made by
11 this act, it shall be barred.

12 Section 4. This act shall take effect July 1, 2006.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 1940

17 The committee substitute deletes the amendment to s.
18 718.203(2), F.S., that implied warranties of fitness from work
19 performed by a contractor, subcontractors and suppliers and
20 granted to the developer and purchaser of a condominium unit
21 would be for work or materials as specified in their
22 respective contracts or any amendments to such contracts. It
23 deletes the provision that stated that the warranties apply
24 only to a building or improvement that is designated as a
25 condominium in the construction contract between the developer
26 and the contractor or any amendments to that contract.

27
28 It removes the amendment to s. 718.203(6), F.S., that deleted
29 the language which provided that nothing in s. 718.203,
30 affects a condominium as to which rights are established by
31 contracts for sale of 10 percent or more of the units in the
condominium by the developer to prospective unit owners prior
to July 1, 1974, or as to condominium buildings on which
construction has been commenced prior to July 1, 1974.