

By the Committee on Community Affairs; and Senator Bennett

578-02165-12

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1                   A bill to be entitled  
2           An act relating to residential construction  
3           warranties; creating s. 553.835, F.S.; providing  
4           legislative findings; providing legislative intent to  
5           affirm the limitations to the doctrine of implied  
6           warranty of fitness and merchantability or  
7           habitability associated with the construction and sale  
8           of a new home; providing a definition; prohibiting a  
9           cause of action in law or equity based upon the  
10          doctrine of implied warranty of fitness and  
11          merchantability or habitability for offsite  
12          improvements; providing that the existing rights of  
13          purchasers of homes or homeowners' associations to  
14          pursue certain causes of action are not altered or  
15          limited; providing for applicability of the act;  
16          providing for severability; providing an effective  
17          date.

18  
19          WHEREAS, the Legislature recognizes and agrees with the  
20          limitations on the applicability of the doctrine of implied  
21          warranty of fitness and merchantability or habitability for a  
22          new home as established in the seminal cases of *Gable v. Silver*,  
23          258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264  
24          So.2d 418 (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654 (Fla.  
25          1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*  
26          *First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),  
27          and does not wish to expand any prospective rights,  
28          responsibilities, or liabilities resulting from these decisions,  
29          and

578-02165-12

20121196c1

30 WHEREAS, the recent decision by the Fifth District Court of  
31 Appeal rendered in October of 2010, in *Lakeview Reserve*  
32 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902  
33 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty  
34 of fitness and merchantability or habitability for a new home to  
35 the construction of roads, drainage systems, retention ponds,  
36 and underground pipes, which the court described as essential  
37 services, supporting a new home, and

38 WHEREAS, the Legislature finds, as a matter of public  
39 policy, that the *Maronda* case goes beyond the fundamental  
40 protections that are necessary for a purchaser of a new home and  
41 that form the basis for imposing an implied warranty of fitness  
42 and merchantability or habitability for a new home, and creates  
43 uncertainty in the state's fragile real estate and construction  
44 industry, and

45 WHEREAS, it is the intent of the Legislature to reject the  
46 decision by the Fifth District Court of Appeal in the *Maronda*  
47 case insofar as it expands the doctrine of implied warranty and  
48 fitness and merchantability or habitability for a new home to  
49 include essential services as defined by the court, NOW

50 THEREFORE,

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Section 553.835, Florida Statutes, is created to  
55 read:

56 553.835 Implied warranties.—

57 (1) The Legislature finds that the courts have reached  
58 different conclusions concerning the scope and extent of the

578-02165-12

20121196c1

59 common law doctrine of implied warranty of fitness and  
60 merchantability or habitability for improvements immediately  
61 supporting the structure of a new home, which creates  
62 uncertainty in the state's fragile real estate and construction  
63 industry.

64 (2) It is the intent of the Legislature to affirm the  
65 limitations to the doctrine of implied warranty of fitness and  
66 merchantability or habitability associated with the construction  
67 and sale of a new home.

68 (3) As used in this section, the term "offsite improvement"  
69 means the street, road, sidewalk, drainage, utilities, or any  
70 other improvement or structure that is not located on or under  
71 the lot on which a new home is constructed, or that is located  
72 on or under the lot but that does not immediately and directly  
73 support the fitness and merchantability or habitability of the  
74 home itself.

75 (4) There is no cause of action in law or equity available  
76 to a purchaser of a home or to a homeowners' association based  
77 upon the doctrine or theory of implied warranty of fitness and  
78 merchantability or habitability for damages to offsite  
79 improvements. However, this section does not alter or limit the  
80 existing rights of purchasers of homes or homeowners'  
81 associations to pursue any other cause of action arising from  
82 defects in offsite improvements based upon contract, tort, or  
83 statute.

84 Section 2. If any provision of the act or its application  
85 to any person or circumstance is held invalid, the invalidity  
86 does not affect other provisions or applications of the act  
87 which can be given effect without the invalid provision or

578-02165-12

20121196c1

88 application, and to this end the provisions of this act are  
89 severable.

90 Section 3. This act shall take effect July 1, 2012, and  
91 applies to all cases accruing before, pending on, or filed after  
92 that date.