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LEGISLATIVE ACTION

Senate

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House

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Senator Hutson moved the following:

Senate Amendment (with title amendment)

Delete lines 54 - 320

and insert:

95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, ~~with~~ the time



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12 running from 45 days after the date of actual possession by the
13 owner, the date of completion of the improvement or the issuance
14 of a certificate of occupancy, the date of abandonment of
15 construction if the improvement is not completed, except as
16 provided in subparagraphs 1.-5.

17 1. If the action involves a latent defect, the action must
18 be commenced within 7 years, and the time begins to run 45 days
19 after the completion of the improvement or the date of
20 abandonment of construction if the improvement is not completed.

21 2. If the action alleges a latent defect to a single family
22 residence and the person alleging the latent defect can show
23 that the engineer, architect, or contractor or his or her
24 employer fraudulently concealed the defect, the action may be
25 commenced within 10 years after the time for commencing an
26 action begins to run, provided that the action is commenced
27 within 1 year after the discovery of the fraudulent concealment
28 or within the time period in subparagraph 1.

29 3. If the action alleges a latent defect to an improvement
30 other than a single family residence and the person alleging the
31 latent defect can show that the engineer, architect, or
32 contractor or his or her employer fraudulently concealed the
33 defect, the action may be commenced at any time, provided that
34 the action is commenced within 1 year after the discovery of the
35 fraudulent concealment or within the time period in subparagraph
36 1.

37 4. If a single family residence is built by a professional
38 engineer, registered architect, or licensed contractor for
39 speculation or for use as a model home, not for use as the
40 person's residence, and title is not transferred to an unrelated



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41 party for more than 45 days after the issuance of the
42 certificate of occupancy or the closing or expiration of the
43 building permit, the time begins to run from the date that title
44 is transferred to an unrelated party.

45 ~~5. , or the date of completion of the contract or~~
46 ~~termination of the contract between the professional engineer,~~
47 ~~registered architect, or licensed contractor and his or her~~
48 ~~employer, whichever date is latest; except that, when the action~~
49 ~~involves a latent defect, the time runs from the time the defect~~
50 ~~is discovered or should have been discovered with the exercise~~
51 ~~of due diligence. In any event, the action must be commenced~~
52 ~~within 10 years after the date of actual possession by the~~
53 ~~owner, the date of the issuance of a certificate of occupancy,~~
54 ~~the date of abandonment of construction if not completed, or the~~
55 ~~date of completion of the contract or termination of the~~
56 ~~contract between the professional engineer, registered~~
57 ~~architect, or licensed contractor and his or her employer,~~
58 ~~whichever date is latest. However, Counterclaims, cross-claims,~~
59 ~~and third-party claims that arise out of the conduct,~~
60 ~~transaction, or occurrence set out or attempted to be set out in~~
61 ~~a pleading may be commenced up to 1 year after the pleading to~~
62 ~~which such claims relate is served, even if such claims would~~
63 ~~otherwise be time barred.~~

64 6. As used in this paragraph, the term:

65 a. "Completion of an improvement" means issuance of the
66 certificate of occupancy or certificate of completion for the
67 improvement, or the closing as defined in s. 553.79(17)(a), or
68 expiration of the building permit for the improvement if the
69 improvement is not required to have a certificate of occupancy



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70 or certificate of completion.

71 b. "Single family residence" means a one-family, two-
72 family, or three-family residence not exceeding two habitable
73 stories above ground and no more than one uninhabitable story
74 and accessory use structures made in connection with the
75 residence ~~With respect to actions founded on the design,~~
76 ~~planning, or construction of an improvement to real property, if~~
77 ~~such construction is performed pursuant to a duly issued~~
78 ~~building permit and if a local enforcement agency, state~~
79 ~~enforcement agency, or special inspector, as those terms are~~
80 ~~defined in s. 553.71, has issued a final certificate of~~
81 ~~occupancy or certificate of completion, then as to the~~
82 ~~construction which is within the scope of such building permit~~
83 ~~and certificate, the correction of defects to completed work or~~
84 ~~repair of completed work, whether performed under warranty or~~
85 ~~otherwise, does not extend the period of time within which an~~
86 ~~action must be commenced. Completion of the contract means the~~
87 ~~later of the date of final performance of all the contracted~~
88 ~~services or the date that final payment for such services~~
89 ~~becomes due without regard to the date final payment is made.~~

90 Section 2. Section 553.84, Florida Statutes, is amended to
91 read:

92 553.84 Statutory civil action.—

93 (1) As used in this section, the term:

94 (a) "Material violation" means a violation that exists
95 within a completed building, structure, or facility which may
96 reasonably result, or has resulted, in physical harm to a person
97 or significant damage to the performance of a building or its
98 systems.



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99 (b) "Performance" means that the building, structure, or
100 facility, or its system, functions as it is intended and is able
101 to be used for its designed purpose.

102 (c) "Significant damage" means a level of adverse impact to
103 a building, structure, or facility, or its system which results
104 or could reasonably result in economic damage or loss that
105 exceeds the common expectations, and the cost of restoring the
106 damage or preventing such damage to the building, structure, or
107 facility, or its system, would equal or exceed 25 percent of the
108 market value of the building, structure, or facility, or its
109 system, if built in accordance with the Florida Building Code.
110 The term does not include Florida Building Code violations that
111 are cosmetic, minimal, or inconsequential to the overall
112 performance of a building, structure, or facility, or its
113 system.

114 (2) (a) Notwithstanding any other remedies available and
115 except as provided in paragraph (b), any person or party, in an
116 individual capacity or on behalf of a class of persons or
117 parties, damaged as a result of a violation of this part or a
118 material violation of the Florida Building Code, has a cause of
119 action in any court of competent jurisdiction against the person
120 or party who committed the violation.

121 (b) This section does not authorize a cause of action
122 against a; however, if the person or party who obtained obtains
123 the required building permits and any local government or public
124 agency having with authority to enforce the Florida Building
125 Code approved approves the plans and, if the construction
126 project passed passes all required inspections under the code,
127 and if there is no personal injury or damage to property other



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128 ~~than the property that is the subject of the permits, plans, and~~
129 ~~inspections, this section does not apply~~ unless the person or
130 party knew or should have known that the violation existed.

131 Section 3. Present subsections (8) through (15) of section
132 558.004, Florida Statutes, are redesignated as subsections (9)
133 through (16), respectively, a new subsection (8) is added to
134 that section, and paragraphs (b) and (c) of subsection (1) and
135 subsection (7) of that section are amended, to read:

136 558.004 Notice and opportunity to repair.—

137 (1)

138 (b)1. The notice of claim must include an inspection report
139 that is verified pursuant to s. 92.525 by a contractor,
140 engineer, building code inspector, or other inspector who has a
141 state license and experience relevant to the type of
142 construction that is the basis of the claim. The report must
143 include all of the following:

144 a. A short statement describing the relevant experience and
145 licenses of the person conducting the inspection.

146 b. A description of each alleged construction defect; a
147 clear description of the location of the defect; and, if known,
148 an explanation of the damage resulting from the defect.

149 c. Documentation of the defect with photographs or videos,
150 and the results of any testing which pertain to the defect.

151 d. A description of how the inspection was conducted,
152 including a description of any specialized equipment used during
153 the inspection or of any tests conducted.

154 e. An explanation of whether or to what extent and how the
155 property owner or person acting at the direction of the property
156 owner inspected, maintained, repaired, or renovated a portion of



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157 the structure containing the alleged defect since the owner took
158 possession of the structure.

159 2. The preparation of an inspection report in bad faith
160 constitutes grounds for discipline by any relevant licensing
161 board or agency.

162 3. The claimant and the person preparing the inspection
163 report do not have an ~~describe in reasonable detail the nature~~
164 ~~of each alleged construction defect and, if known, the damage or~~
165 ~~loss resulting from the defect. Based upon at least a visual~~
166 ~~inspection by the claimant or its agents, the notice of claim~~
167 ~~must identify the location of each alleged construction defect~~
168 ~~sufficiently to enable the responding parties to locate the~~
169 ~~alleged defect without undue burden. The claimant has no~~
170 obligation to perform destructive or other testing for purposes
171 of this notice.

172 (c) The claimant shall endeavor to serve the notice of
173 claim within 15 days after discovery of an alleged defect, but
174 the failure to serve notice of claim within 15 days does not bar
175 the filing of an action, subject to s. 558.003. This subsection
176 does not preclude a claimant from filing an action sooner than
177 60 days, or 120 days as applicable, after service of written
178 notice as expressly provided in subsection (6), subsection (7),
179 or subsection (9) ~~(8)~~.

180 (7) (a) A claimant who receives a timely settlement offer
181 must accept or reject the offer by serving written notice of
182 such acceptance or rejection on the person making the offer
183 within 45 days after receiving the settlement offer.

184 (b) If the claimant rejects the settlement offer, the
185 claimant must include the reasons for rejecting the offer in the



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186 notice rejecting the offer. If the claimant believes that the
187 settlement offer omitted reference to any portion of the claim
188 or was unreasonable in any manner, the claimant must include in
189 the notice the items that the claimant believes were omitted and
190 state in detail all known reasons why the claimant believes the
191 settlement offer is unreasonable.

192 (c) Upon receipt of a claimant's notice of rejection and
193 the reasons for such rejection, the person served with the
194 rejection, within 15 days after receipt of the notice, may make
195 a supplemental offer of repair or monetary payment, or both, to
196 the claimant.

197 (d) If the claimant rejects a supplemental offer to repair
198 the construction defect or to settle the claim by monetary
199 payment or a combination of both, the claimant must serve
200 written notice of the claimant's rejection on the person making
201 the supplemental offer. The notice must include all known
202 reasons for the claimant's rejection of the supplemental
203 settlement offer.

204 (e) If a claimant initiates an action without first
205 accepting or rejecting the offer or supplemental offer, the
206 court shall stay the action upon timely motion until the
207 claimant complies with this subsection.

208 (8) If a claimant accepts an offer made pursuant to
209 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a
210 supplemental offer made pursuant to paragraph (7) (c), the
211 claimant must, within 90 days after the acceptance, enter into a
212 contract with one or more appropriately licensed contractors to
213 complete the repairs necessary to remedy the alleged
214 construction defect. The offeror or insurer shall pay directly



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215 to the contractor or contractors, from the accepted monetary
216 payment, the amounts necessary to begin and to continue the
217 repairs as the work is performed and expenses are incurred. The
218 offeror or insurer may not require the claimant to advance
219 payment for the repairs. The repairs must be completed within 12
220 months after the claimant enters into the contract for repairs,
221 absent mutual agreement between the offeror or insurer and the
222 claimant.

223 Section 4. Section 558.0046, Florida Statutes, is created
224 to read:

225 558.0046 Duty to repair construction defect.—If a claimant
226 receives compensation for an alleged construction defect from a
227 contractor, a subcontractor, a supplier, a design professional,
228 or an insurer, the claimant must repair the defect. A claimant
229 who receives compensation and fails to fully repair the defect
230 is liable to a purchaser of the property for any damages
231 resulting from the failure to disclose the defect.

232 Section 5. (1) The amendments made by this act to s.
233 95.11(3)(c), Florida Statutes, apply to any action commenced on
234 or after July 1, 2022, regardless of when the cause of action
235 accrued. However, any action that would not have been barred
236 under s. 95.11(3)(c), Florida Statutes, before the amendments
237 made by this act to that section may be commenced before July 1,
238 2023. If such action is not commenced by July 1, 2023, and is
239 barred by the amendments made by this act to s. 95.11(3)(c),
240 Florida Statutes, the action is barred.

241 (2) Sections 2, 3, and 4 of this act apply to compensation
242 for construction defects received on or after July 1, 2022, and
243 to civil actions and proceedings for a construction defect or a



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244 building code violation which

245

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

247 And the title is amended as follows:

248 Delete lines 2 - 42

249 and insert:

250 An act relating to construction defect and building
251 code violation claims; amending s. 95.11, F.S.;

252 revising the limitations period for certain actions
253 founded on the design, planning, or construction of an
254 improvement to real property; defining the terms
255 "completion of an improvement" and "single family
256 residence"; amending s. 553.84, F.S.; defining terms;
257 revising the circumstances under which a person has a
258 cause of action for a violation of the Florida
259 Building Code; providing construction; amending s.
260 558.004, F.S.; requiring a notice of claim to include
261 an inspection report that is verified by the person
262 conducting the inspection; specifying the required
263 contents of the report; providing that a bad faith
264 preparation of an inspection report constitutes
265 grounds for discipline; specifying that the claimant
266 and the person preparing the inspection report do not
267 have an obligation to perform certain testing;
268 requiring a claimant to include the reasons for
269 rejecting an offer in a notice rejecting a settlement
270 offer to remedy a construction defect; authorizing a
271 person served with a notice rejecting a settlement
272 offer to make a supplemental offer within a specified



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273 timeframe; providing notice requirements for a
274 claimant who rejects a supplemental offer; requiring
275 the court to stay an action if a claimant initiates an
276 action without first accepting or rejecting a
277 supplemental offer; requiring a claimant who accepts a
278 certain offer to enter into a contract to complete
279 repairs to remedy an alleged construction defect;
280 requiring the offeror or insurer to pay the contractor
281 or contractors directly for the repairs; prohibiting
282 an offeror or insurer from requiring a claimant to
283 advance payment for repairs; requiring that the
284 repairs be completed within a specified timeframe;
285 creating s.