

By the Committee on Judiciary; and Senator Hutson

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1 A bill to be entitled
2 An act relating to construction defect claims;
3 amending s. 95.11, F.S.; revising the limitations
4 period for certain actions founded on the design,
5 planning, or construction of an improvement on real
6 property; amending s. 558.004, F.S.; requiring a
7 claimant to include the reasons for rejecting an offer
8 in a notice rejecting a settlement offer to remedy a
9 construction defect; authorizing the person served
10 with a notice rejecting a settlement offer to make a
11 supplemental offer within a specified timeframe;
12 providing notice requirements for a claimant who
13 rejects a supplemental offer; requiring the court to
14 stay an action if a claimant initiates an action
15 without first accepting or rejecting a supplemental
16 offer; limiting entitlement to attorney fees if a
17 claimant rejects certain settlement offers to fully
18 repair an alleged construction defect; requiring a
19 claimant who accepts a certain offer to enter into a
20 contract to complete repairs to remedy an alleged
21 construction defect; requiring the offeror or insurer
22 to pay the contractor or contractors directly for the
23 repairs; prohibiting an offeror or insurer from
24 requiring a claimant to advance payment for repairs;
25 requiring that the repairs be completed within a
26 specified timeframe; creating s. 558.0045, F.S.;
27 requiring a court to appoint an expert to examine
28 certain alleged construction defects and to prepare an
29 examination report, under certain circumstances;

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30 requiring that the report contain specified
31 information; requiring the parties to compensate the
32 expert; prohibiting the expert from being employed to
33 make repairs or from recommending contractors to make
34 repairs; creating s. 558.0046, F.S.; requiring a
35 claimant to repair a construction defect if the
36 claimant receives compensation for an alleged
37 construction defect from specified persons; providing
38 that a claimant is liable for damages resulting from
39 failure to disclose a construction defect to a
40 purchaser of a property; providing applicability;
41 providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Paragraph (c) of subsection (3) of section
46 95.11, Florida Statutes, is amended to read:

47 95.11 Limitations other than for the recovery of real
48 property.—Actions other than for recovery of real property shall
49 be commenced as follows:

50 (3) WITHIN FOUR YEARS.—

51 (c) An action founded on the design, planning, or
52 construction of an improvement to real property, with the time
53 running from the date of actual possession by the owner, the
54 date of the issuance of a certificate of occupancy, the date of
55 abandonment of construction if not completed, or the date of
56 completion of the contract or termination of the contract
57 between the professional engineer, registered architect, or
58 licensed contractor and his or her employer, whichever date is

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59 ~~latest; except that, when the action involves a latent defect,~~
60 ~~the time runs from the time the defect is discovered or should~~
61 ~~have been discovered with the exercise of due diligence. In any~~
62 ~~event, the action must be commenced within 10 years after the~~
63 ~~date of actual possession by the owner, the date of the issuance~~
64 ~~of a certificate of occupancy, the date of abandonment of~~
65 ~~construction if not completed, or the date of completion of the~~
66 ~~contract or termination of the contract between the professional~~
67 ~~engineer, registered architect, or licensed contractor and his~~
68 ~~or her employer, whichever date is latest. However,~~
69 counterclaims, cross-claims, and third-party claims that arise
70 out of the conduct, transaction, or occurrence set out or
71 attempted to be set out in a pleading may be commenced up to 1
72 year after the pleading to which such claims relate is served,
73 even if such claims would otherwise be time barred. With respect
74 to actions founded on the design, planning, or construction of
75 an improvement to real property, if such construction is
76 performed pursuant to a duly issued building permit and if a
77 local enforcement agency, state enforcement agency, or special
78 inspector, as those terms are defined in s. 553.71, has issued a
79 final certificate of occupancy or certificate of completion,
80 then as to the construction which is within the scope of such
81 building permit and certificate, the correction of defects to
82 completed work or repair of completed work, whether performed
83 under warranty or otherwise, does not extend the period of time
84 within which an action must be commenced. Completion of the
85 contract means the later of the date of final performance of all
86 the contracted services or the date that final payment for such
87 services becomes due without regard to the date final payment is

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88 made.

89 Section 2. Present subsections (8) through (15) of section
90 558.004, Florida Statutes, are redesignated as subsections (9)
91 through (16), respectively, a new subsection (8) is added to
92 that section, and paragraph (c) of subsection (1) and subsection
93 (7) of that section are amended, to read:

94 558.004 Notice and opportunity to repair.—

95 (1)

96 (c) The claimant shall endeavor to serve the notice of
97 claim within 15 days after discovery of an alleged defect, but
98 the failure to serve notice of claim within 15 days does not bar
99 the filing of an action, subject to s. 558.003. This subsection
100 does not preclude a claimant from filing an action sooner than
101 60 days, or 120 days as applicable, after service of written
102 notice as expressly provided in subsection (6), subsection (7),
103 or subsection (9) ~~(8)~~.

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

108 (b) If the claimant rejects the settlement offer, the
109 claimant must include the reasons for rejecting the offer in the
110 notice rejecting the offer. If the claimant believes that the
111 settlement offer omitted reference to any portion of the claim
112 or was unreasonable in any manner, the claimant must include in
113 the notice the items that the claimant believes were omitted and
114 state in detail all known reasons why the claimant believes the
115 settlement offer is unreasonable.

116 (c) Upon receipt of a claimant's notice of rejection and

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117 the reasons for such rejection, the person served with the
118 rejection, within 15 days after receipt of the notice, may make
119 a supplemental offer of repair or monetary payment, or both, to
120 the claimant.

121 (d) If the claimant rejects a supplemental offer to repair
122 the construction defect or to settle the claim by monetary
123 payment or a combination of both, the claimant must serve
124 written notice of the claimant's rejection on the person making
125 the supplemental offer. The notice must include all known
126 reasons for the claimant's rejection of the supplemental
127 settlement offer.

128 (e) If a claimant initiates an action without first
129 accepting or rejecting the offer or supplemental offer, the
130 court shall stay the action upon timely motion until the
131 claimant complies with this subsection.

132 (8) (a) If the claimant rejects a timely settlement offer or
133 supplemental offer provided to remedy the alleged construction
134 defect at no cost to the claimant, in any action brought for
135 that defect, the claimant may not recover attorney fees from the
136 offeror on any basis unless the claimant proves by a
137 preponderance of the evidence that, at the time of the offer,
138 additional repairs beyond those offered were necessary to remedy
139 the defect. This paragraph does not apply to any claim for
140 attorney fees based on a contract between the claimant and the
141 offeror.

142 (b) If a claimant accepts an offer made pursuant to
143 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a
144 supplemental offer made pursuant to paragraph (7) (c), the
145 claimant must, within 90 days after the acceptance, enter into a

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146 contract with one or more appropriately licensed contractors to
147 complete the repairs necessary to remedy the alleged
148 construction defect. The offeror or insurer shall pay directly
149 to the contractor or contractors, from the accepted monetary
150 payment, the amounts necessary to begin and to continue the
151 repairs as the work is performed and expenses are incurred. The
152 offeror or insurer may not require the claimant to advance
153 payment for the repairs. The repairs must be completed within 12
154 months after the claimant enters into the contract for repairs,
155 absent mutual agreement between the offeror or insurer and the
156 claimant.

157 Section 3. Section 558.0045, Florida Statutes, is created
158 to read:

159 558.0045 Construction defect actions; attorney fees and
160 costs.-

161 (1) In a civil action alleging a construction defect, the
162 court shall appoint an engineer, a contractor, a building code
163 inspector, or another expert having experience in the type of
164 construction that is the basis of the claimant's claim to
165 examine the alleged defect or, if repairs have been made, any
166 evidence of the alleged defect. However, the court may not
167 appoint an expert if all of the parties object or if the court
168 finds that the costs of an expert outweigh any potential
169 benefits to the resolution of the action. If an expert is
170 appointed, the expert must coordinate and communicate with the
171 parties as directed by the court. Within 15 days after
172 conducting the examination, or as otherwise determined by the
173 court, the expert shall submit a written report to the court for
174 its consideration and to the parties which contains the expert's

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175 findings. The report must do all of the following:

176 (a) Describe how the expert conducted the examination of
177 the alleged defect.

178 (b) Identify persons present at the site of the improvement
179 while the expert conducted the examination.

180 (c) Include photographs or other documentation of the
181 alleged defect including any relevant test results.

182 (d) State whether the damages claimed by the claimant are
183 more likely than not the result of a construction defect,
184 another identified cause, or a construction defect and another
185 identified cause.

186 (e) Address other matters related to the alleged defect as
187 directed by the court.

188 (2) If the expert concludes that the damages are wholly or
189 partially the result of a construction defect, the report must
190 state the actions necessary to repair the defect and any repairs
191 related to the defect, provide an estimate of the reasonable
192 cost of repairs, and state the anticipated time needed for
193 repairs under the current market conditions for construction
194 services and materials.

195 (3) The parties shall compensate the expert, but the
196 prevailing party is entitled to reimbursement from the
197 nonprevailing party.

198 (4) An expert appointed by the court under this section may
199 not be employed to repair the alleged defect or recommend
200 contractors to repair the defect.

201 Section 4. Section 558.0046, Florida Statutes, is created
202 to read:

203 558.0046 Duty to repair construction defect.—If a claimant

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204 receives compensation for an alleged construction defect from a
205 contractor, a subcontractor, a supplier, a design professional,
206 or an insurer, the claimant must repair the defect. A claimant
207 who receives compensation and fails to fully repair the defect
208 is liable to a purchaser of the property for any damages
209 resulting from the failure to disclose the defect.

210 Section 5. (1) The amendments by this act to s.
211 95.11(3)(c), Florida Statutes, apply to any action commenced on
212 or after July 1, 2022, regardless of when the cause of action
213 accrued. However, any action that would not have been barred
214 under s. 95.11(3)(c), Florida Statutes, before the amendments
215 made by this act to that section may be commenced before July 1,
216 2023. If such action is not commenced by July 1, 2023, and is
217 barred by the amendments made by this act to s. 95.11(3)(c),
218 Florida Statutes, the action is barred.

219 (2) Sections 2 through 4 of this act apply to compensation
220 for construction defects received on or after July 1, 2022, and
221 to civil actions and proceedings for a construction defect which
222 are initiated on or after July 1, 2022.

223 Section 6. This act shall take effect July 1, 2022.