

By the Committees on Community Affairs; and 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.; defining terms; revising the
4 limitations period for certain actions founded on the
5 design, planning, or construction of an improvement on
6 real property; amending s. 627.441, F.S.; conforming a
7 cross-reference; amending s. 558.004, F.S.; requiring
8 a claimant to include the reasons for rejecting an
9 offer in a notice rejecting a settlement offer to
10 remedy a construction defect; authorizing the person
11 served with a notice rejecting a settlement offer to
12 make a supplemental offer within a specified
13 timeframe; providing notice requirements for a
14 claimant who rejects a supplemental offer; requiring
15 the court to stay an action if a claimant initiates an
16 action without first accepting or rejecting a
17 supplemental offer; limiting entitlement to attorney
18 fees if a claimant rejects certain settlement offers
19 to fully repair an alleged construction defect;
20 requiring a claimant who accepts a certain offer to
21 enter into a contract to complete repairs to remedy an
22 alleged construction defect; requiring the offeror or
23 insurer to pay the contractor or contractors directly
24 for the repairs; prohibiting an offeror or insurer
25 from requiring a claimant to advance payment for
26 repairs; requiring that the repairs be completed
27 within a specified timeframe; creating s. 558.0045,
28 F.S.; requiring a court to appoint an expert to
29 examine certain alleged construction defects and to

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

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

45
46 Section 1. Paragraph (c) of subsection (3) of section
47 95.11, Florida Statutes, is amended, and subsection (12) is
48 added to that section, to read:

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

52 (3) WITHIN FOUR YEARS.—

53 ~~(c) An action founded on the design, planning, or~~
54 ~~construction of an improvement to real property, with the time~~
55 ~~running from the date of actual possession by the owner, the~~
56 ~~date of the issuance of a certificate of occupancy, the date of~~
57 ~~abandonment of construction if not completed, or the date of~~
58 ~~completion of the contract or termination of the contract~~

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59 ~~between the professional engineer, registered architect, or~~
60 ~~licensed contractor and his or her employer, whichever date is~~
61 ~~latest; except that, when the action involves a latent defect,~~
62 ~~the time runs from the time the defect is discovered or should~~
63 ~~have been discovered with the exercise of due diligence. In any~~
64 ~~event, the action must be commenced within 10 years after the~~
65 ~~date of actual possession by the owner, the date of the issuance~~
66 ~~of a certificate of occupancy, the date of abandonment of~~
67 ~~construction if not completed, or the date of completion of the~~
68 ~~contract or termination of the contract between the professional~~
69 ~~engineer, registered architect, or licensed contractor and his~~
70 ~~or her employer, whichever date is latest. However,~~
71 ~~counterclaims, cross-claims, and third-party claims that arise~~
72 ~~out of the conduct, transaction, or occurrence set out or~~
73 ~~attempted to be set out in a pleading may be commenced up to 1~~
74 ~~year after the pleading to which such claims relate is served,~~
75 ~~even if such claims would otherwise be time barred. With respect~~
76 ~~to actions founded on the design, planning, or construction of~~
77 ~~an improvement to real property, if such construction is~~
78 ~~performed pursuant to a duly issued building permit and if a~~
79 ~~local enforcement agency, state enforcement agency, or special~~
80 ~~inspector, as those terms are defined in s. 553.71, has issued a~~
81 ~~final certificate of occupancy or certificate of completion,~~
82 ~~then as to the construction which is within the scope of such~~
83 ~~building permit and certificate, the correction of defects to~~
84 ~~completed work or repair of completed work, whether performed~~
85 ~~under warranty or otherwise, does not extend the period of time~~
86 ~~within which an action must be commenced. Completion of the~~
87 ~~contract means the later of the date of final performance of all~~

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88 ~~the contracted services or the date that final payment for such~~
89 ~~services becomes due without regard to the date final payment is~~
90 ~~made.~~

91 (12) ACTIONS RELATING TO AN IMPROVEMENT TO REAL PROPERTY.-

92 (a) Definitions.-As used in this subsection, the term:

93 1. "Category 1 improvement" includes a detached single-
94 family home, including a manufactured home, or a standalone
95 building or structure, intended for use by a single business,
96 occupant, or owner, not exceeding three stories in height and
97 related improvements to such homes, buildings, or structures.

98 2. "Category 2 improvement" includes a single-family
99 dwelling unit not exceeding three stories in height which is
100 constructed in a series or group of attached units or a
101 commercial or nonresidential building not exceeding three
102 stories in height and related improvements to such dwellings,
103 buildings, or structures.

104 3. "Category 3 improvement" includes commercial or
105 residential buildings or structures of four or more stories in
106 height and related improvements to such buildings or structures.

107 4. "Category 4 improvement" includes an improvement that is
108 not a category 1 improvement, category 2 improvement, or
109 category 3 improvement.

110 5. "Completion of the contract" means the later of the date
111 of final performance of all the contracted services or the date
112 that final payment for such services becomes due without regard
113 to the date final payment is made.

114 (b) Running of time to commence action.-An action founded
115 on the design, planning, or construction of an improvement to
116 real property must be commenced within the timeframes set forth

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117 in this section or the action is time barred.

118 1. The time to commence the action runs from the date of
119 actual possession by the owner, the date of the issuance of a
120 certificate of occupancy, the date of abandonment of
121 construction if not completed, or the date of completion of the
122 contract or termination of the contract between the professional
123 engineer, registered architect, or licensed contractor and his
124 or her employer, whichever date is earliest.

125 2. Counterclaims, cross-claims, and third-party claims that
126 arise out of the conduct, transaction, or occurrence set out or
127 attempted to be set out in a pleading may be commenced up to 1
128 year after the pleading to which such claims relate is served,
129 even if such claims would otherwise be time barred.

130 3. If the action is based on construction that is performed
131 pursuant to a duly issued building permit and if a local
132 enforcement agency, state enforcement agency, or special
133 inspector, as those terms are defined in s. 553.71, has issued a
134 final certificate of occupancy or certificate of completion,
135 then as to the construction which is within the scope of such
136 building permit and certificate, the correction of defects to
137 completed work or repair of completed work, whether performed
138 under warranty or otherwise, does not extend the period of time
139 within which an action must be commenced.

140 (c) Limitations and repose periods.-

141 1. An action founded on the design, planning, or
142 construction of an improvement to real property may be commenced
143 within 4 years after the time to commence an action begins to
144 run.

145 2. An action involving a latent defect may be commenced

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146 within 4 years after the facts giving rise to the cause of
147 action are discovered or should have be discovered through the
148 exercise of due diligence. However, the action may not be
149 commenced more than 5 years after the time for commencing an
150 action begins to run for a category 1 improvement, 7 years for a
151 category 2 improvement, and 10 years for a category 3 or
152 category 4 improvement.

153 Section 2. Subsection (2) of section 627.441, Florida
154 Statutes, is amended to read:

155 627.441 Commercial general liability policies; coverage to
156 contractors for completed operations.—

157 (2) A liability insurer must offer coverage at an
158 appropriate additional premium for liability arising out of
159 current or completed operations under an owner-controlled
160 insurance program for any period beyond the period for which the
161 program provides liability coverage, as specified in s.
162 255.0517(2) (b). The period of such coverage must be sufficient
163 to protect against liability arising out of an action brought
164 within the time limits provided in s. 95.11(12) ~~s. 95.11(3)(e)~~.

165 Section 3. Present subsections (8) through (15) of section
166 558.004, Florida Statutes, are redesignated as subsections (9)
167 through (16), respectively, a new subsection (8) is added to
168 that section, and paragraph (c) of subsection (1) and subsection
169 (7) of that section are amended, to read:

170 558.004 Notice and opportunity to repair.—

171 (1)

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

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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
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.

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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) (a) If the claimant rejects a timely settlement offer or
209 supplemental offer provided to remedy the alleged construction
210 defect at no cost to the claimant, in any action brought for
211 that defect, the claimant may not recover attorney fees from the
212 offeror on any basis unless the claimant proves by a
213 preponderance of the evidence that, at the time of the offer,
214 additional repairs beyond those offered were necessary to remedy
215 the defect. This paragraph does not apply to any claim for
216 attorney fees based on a contract between the claimant and the
217 offeror.

218 (b) If a claimant accepts an offer made pursuant to
219 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a
220 supplemental offer made pursuant to paragraph (7) (c), the
221 claimant must, within 90 days after the acceptance, enter into a
222 contract with one or more appropriately licensed contractors to
223 complete the repairs necessary to remedy the alleged
224 construction defect. The offeror or insurer shall pay directly
225 to the contractor or contractors, from the accepted monetary
226 payment, the amounts necessary to begin and to continue the
227 repairs as the work is performed and expenses are incurred. The
228 offeror or insurer may not require the claimant to advance
229 payment for the repairs. The repairs must be completed within 12
230 months after the claimant enters into the contract for repairs,
231 absent mutual agreement between the offeror or insurer and the
232 claimant.

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233 Section 4. Section 558.0045, Florida Statutes, is created
234 to read:

235 558.0045 Construction defect actions; attorney fees and
236 costs.-

237 (1) In a civil action alleging a construction defect, the
238 court shall appoint an engineer, a contractor, a building code
239 inspector, or another expert having experience in the type of
240 construction that is the basis of the claimant's claim to
241 examine the alleged defect or, if repairs have been made, any
242 evidence of the alleged defect. However, the court may not
243 appoint an expert if all of the parties object or if the court
244 finds that the costs of an expert outweigh any potential
245 benefits to the resolution of the action. If an expert is
246 appointed, the expert must coordinate and communicate with the
247 parties as directed by the court. Within 15 days after
248 conducting the examination, or as otherwise determined by the
249 court, the expert shall submit a written report to the court for
250 its consideration and to the parties which contains the expert's
251 findings. The report must do all of the following:

252 (a) Describe how the expert conducted the examination of
253 the alleged defect.

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

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

258 (d) State whether the damages claimed by the claimant are
259 more likely than not the result of a construction defect,
260 another identified cause, or a construction defect and another
261 identified cause.

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

264 (2) If the expert concludes that the damages are wholly or
265 partially the result of a construction defect, the report must
266 state the actions necessary to repair the defect and any repairs
267 related to the defect, provide an estimate of the reasonable
268 cost of repairs, and state the anticipated time needed for
269 repairs under the current market conditions for construction
270 services and materials.

271 (3) The parties shall compensate the expert, but the
272 prevailing party is entitled to reimbursement from the
273 nonprevailing party.

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

277 Section 5. Section 558.0046, Florida Statutes, is created
278 to read:

279 558.0046 Duty to repair construction defect.—If a claimant
280 receives compensation for an alleged construction defect from a
281 contractor, a subcontractor, a supplier, a design professional,
282 or an insurer, the claimant must repair the defect. A claimant
283 who receives compensation and fails to fully repair the defect
284 is liable to a purchaser of the property for any damages
285 resulting from the failure to disclose the defect.

286 Section 6. (1) The amendments by this act to s.
287 95.11(3)(c), Florida Statutes, apply to any action commenced on
288 or after July 1, 2022, regardless of when the cause of action
289 accrued. However, any action that would not have been barred
290 under s. 95.11(3)(c), Florida Statutes, before the amendments

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291 made by this act to that section may be commenced before July 1,
292 2023. If such action is not commenced by July 1, 2023, and is
293 barred by the amendments made by this act to s. 95.11(3)(c),
294 Florida Statutes, the action is barred.

295 (2) Sections 3 through 5 of this act apply to compensation
296 for construction defects received on or after July 1, 2022, and
297 to civil actions and proceedings for a construction defect which
298 are initiated on or after July 1, 2022.

299 Section 7. This act shall take effect July 1, 2022.