

By the Committees on Rules; Community Affairs; and Judiciary;  
and Senator Hutson

595-02700-22

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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 to real  
6           property; amending s. 627.441, F.S.; conforming a  
7           cross-reference; amending s. 558.004, F.S.; requiring  
8           a notice of claim to include an inspection report that  
9           is verified by the person conducting the inspection;  
10          specifying the required contents of the report;  
11          providing that a bad faith preparation of an  
12          inspection report constitutes grounds for discipline;  
13          specifying that the person preparing the inspection  
14          report does not have an obligation to perform certain  
15          testing; requiring a claimant to include the reasons  
16          for rejecting an offer in a notice rejecting a  
17          settlement offer to remedy a construction defect;  
18          authorizing the person served with a notice rejecting  
19          a settlement offer to make a supplemental offer within  
20          a specified timeframe; providing notice requirements  
21          for a claimant who rejects a supplemental offer;  
22          requiring the court to stay an action if a claimant  
23          initiates an action without first accepting or  
24          rejecting a supplemental offer; limiting entitlement  
25          to attorney fees if a claimant rejects certain  
26          settlement offers to fully repair an alleged  
27          construction defect; requiring a claimant who accepts  
28          a certain offer to enter into a contract to complete  
29          repairs to remedy an alleged construction defect;

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30 requiring the offeror or insurer to pay the contractor  
31 or contractors directly for the repairs; prohibiting  
32 an offeror or insurer from requiring a claimant to  
33 advance payment for repairs; requiring that the  
34 repairs be completed within a specified timeframe;  
35 creating s. 558.0045, F.S.; requiring a court to  
36 appoint an expert to examine certain alleged  
37 construction defects and to prepare an examination  
38 report, under certain circumstances; requiring that  
39 the report contain specified information; requiring  
40 the parties to compensate the expert; prohibiting the  
41 expert from being employed to make repairs or from  
42 recommending contractors to make repairs; creating s.  
43 558.0046, F.S.; requiring a claimant to repair a  
44 construction defect if the claimant receives  
45 compensation for an alleged construction defect from  
46 specified persons; providing that a claimant is liable  
47 for damages resulting from failure to disclose a  
48 construction defect to a purchaser of a property;  
49 providing applicability; providing an effective date.  
50

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

53 Section 1. Paragraph (c) of subsection (3) of section  
54 95.11, Florida Statutes, is amended, and subsection (12) is  
55 added to that section, to read:

56 95.11 Limitations other than for the recovery of real  
57 property.—Actions other than for recovery of real property shall  
58 be commenced as follows:

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59 (3) WITHIN FOUR YEARS.—

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

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88 ~~final certificate of occupancy or certificate of completion,~~  
89 ~~then as to the construction which is within the scope of such~~  
90 ~~building permit and certificate, the correction of defects to~~  
91 ~~completed work or repair of completed work, whether performed~~  
92 ~~under warranty or otherwise, does not extend the period of time~~  
93 ~~within which an action must be commenced. Completion of the~~  
94 ~~contract means the later of the date of final performance of all~~  
95 ~~the contracted services or the date that final payment for such~~  
96 ~~services becomes due without regard to the date final payment is~~  
97 ~~made.~~

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

99 (a) *Running of time to commence action.*-An action founded  
100 on the design, planning, or construction of an improvement to  
101 real property must be commenced within the timeframes set forth  
102 in this section or the action is time barred.

103 1. The time to commence the action runs from the date of  
104 actual possession by the owner, the date of the issuance of a  
105 certificate of occupancy, the date of abandonment of  
106 construction if not completed, or the date of completion of the  
107 contract or termination of the contract between the professional  
108 engineer, registered architect, or licensed contractor and his  
109 or her employer, whichever date is earliest. For the purposes of  
110 this subparagraph, the term "completion of the contract" means  
111 the later of the date of final performance of all the contracted  
112 services or the date that final payment for such services  
113 becomes due without regard to the date final payment is made.

114 2. Counterclaims, cross-claims, and third-party claims that  
115 arise out of the conduct, transaction, or occurrence set out or  
116 attempted to be set out in a pleading may be commenced up to 1

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117 year after the pleading to which such claims relate is served,  
118 even if such claims would otherwise be time barred.

119 3. If the action is based on construction that is performed  
120 pursuant to a duly issued building permit and if a local  
121 enforcement agency, state enforcement agency, or special  
122 inspector, as those terms are defined in s. 553.71, has issued a  
123 final certificate of occupancy or certificate of completion,  
124 then as to the construction which is within the scope of such  
125 building permit and certificate, the correction of defects to  
126 completed work or repair of completed work, whether performed  
127 under warranty or otherwise, does not extend the period of time  
128 within which an action must be commenced.

129 (b) Limitations and repose periods.—

130 1. An action founded on the design, planning, or  
131 construction of an improvement to real property may be commenced  
132 within 4 years after the time to commence an action begins to  
133 run.

134 2. An action involving a latent defect may be commenced  
135 within 4 years after the facts giving rise to the cause of  
136 action are discovered or should have been discovered through the  
137 exercise of due diligence. However, the action may not be  
138 commenced more than 5 years after the time for commencing an  
139 action begins to run for a one-family, two-family, or three-  
140 family residence not exceeding two habitable stories above no  
141 more than one uninhabitable story and accessory use structures  
142 in connection therewith and 10 years for any other improvement.

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

145 627.441 Commercial general liability policies; coverage to

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146 contractors for completed operations.—

147 (2) A liability insurer must offer coverage at an  
148 appropriate additional premium for liability arising out of  
149 current or completed operations under an owner-controlled  
150 insurance program for any period beyond the period for which the  
151 program provides liability coverage, as specified in s.  
152 255.0517(2)(b). The period of such coverage must be sufficient  
153 to protect against liability arising out of an action brought  
154 within the time limits provided in s. 95.11(12) ~~s. 95.11(3)(e)~~.

155 Section 3. Present subsections (8) through (15) of section  
156 558.004, Florida Statutes, are redesignated as subsections (9)  
157 through (16), respectively, a new subsection (8) is added to  
158 that section, and paragraphs (b) and (c) of subsection (1) and  
159 subsection (7) of that section are amended, to read:

160 558.004 Notice and opportunity to repair.—

161 (1)

162 (b)1. The notice of claim must include an inspection report  
163 that is verified pursuant to s. 92.525 by a contractor,  
164 engineer, building code inspector, or other inspector who has a  
165 state license and experience relevant to the type of  
166 construction that is the basis of the claim. The report must  
167 include all of the following:

168 a. A short statement describing the relevant experience and  
169 licenses of the person conducting the inspection.

170 b. A description of each alleged construction defect; a  
171 clear description of the location of the defect; pictures,  
172 videos, and any results of testing which pertain to the defect;  
173 and, if known, an explanation of the damage resulting from the  
174 defect.

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175 c. A description of how the inspection was conducted,  
176 including a description of any specialized equipment used during  
177 the inspection or of any tests conducted.

178 d. An explanation of whether or to what extent and how the  
179 property owner or person acting at the direction of the property  
180 owner inspected, maintained, repaired, or renovated a portion of  
181 the structure containing the alleged defect since the owner took  
182 possession of the structure.

183 2. The preparation of an inspection report in bad faith  
184 constitutes grounds for discipline by any relevant licensing  
185 board or agency.

186 3. The claimant and the person preparing the inspection  
187 report do not have an describe in reasonable detail the nature  
188 of each alleged construction defect and, if known, the damage or  
189 loss resulting from the defect. Based upon at least a visual  
190 inspection by the claimant or its agents, the notice of claim  
191 must identify the location of each alleged construction defect  
192 sufficiently to enable the responding parties to locate the  
193 alleged defect without undue burden. The claimant has no  
194 obligation to perform destructive or other testing for purposes  
195 of this notice.

196 (c) The claimant shall endeavor to serve the notice of  
197 claim within 15 days after discovery of an alleged defect, but  
198 the failure to serve notice of claim within 15 days does not bar  
199 the filing of an action, subject to s. 558.003. This subsection  
200 does not preclude a claimant from filing an action sooner than  
201 60 days, or 120 days as applicable, after service of written  
202 notice as expressly provided in subsection (6), subsection (7),  
203 or subsection (9) ~~(8)~~.

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

208           (b) If the claimant rejects the settlement offer, the  
209 claimant must include the reasons for rejecting the offer in the  
210 notice rejecting the offer. If the claimant believes that the  
211 settlement offer omitted reference to any portion of the claim  
212 or was unreasonable in any manner, the claimant must include in  
213 the notice the items that the claimant believes were omitted and  
214 state in detail all known reasons why the claimant believes the  
215 settlement offer is unreasonable.

216           (c) Upon receipt of a claimant's notice of rejection and  
217 the reasons for such rejection, the person served with the  
218 rejection, within 15 days after receipt of the notice, may make  
219 a supplemental offer of repair or monetary payment, or both, to  
220 the claimant.

221           (d) If the claimant rejects a supplemental offer to repair  
222 the construction defect or to settle the claim by monetary  
223 payment or a combination of both, the claimant must serve  
224 written notice of the claimant's rejection on the person making  
225 the supplemental offer. The notice must include all known  
226 reasons for the claimant's rejection of the supplemental  
227 settlement offer.

228           (e) If a claimant initiates an action without first  
229 accepting or rejecting the offer or supplemental offer, the  
230 court shall stay the action upon timely motion until the  
231 claimant complies with this subsection.

232           (8) (a) If the claimant rejects a timely settlement offer or



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233 supplemental offer provided to remedy the alleged construction  
234 defect at no cost to the claimant, in any action brought for  
235 that defect, the claimant may not recover attorney fees from the  
236 offeror on any basis unless the claimant proves by a  
237 preponderance of the evidence that, at the time of the offer,  
238 additional repairs beyond those offered were necessary to remedy  
239 the defect. This paragraph does not apply to any claim for  
240 attorney fees based on a contract between the claimant and the  
241 offeror.

242 (b) If a claimant accepts an offer made pursuant to  
243 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a  
244 supplemental offer made pursuant to paragraph (7) (c), the  
245 claimant must, within 90 days after the acceptance, enter into a  
246 contract with one or more appropriately licensed contractors to  
247 complete the repairs necessary to remedy the alleged  
248 construction defect. The offeror or insurer shall pay directly  
249 to the contractor or contractors, from the accepted monetary  
250 payment, the amounts necessary to begin and to continue the  
251 repairs as the work is performed and expenses are incurred. The  
252 offeror or insurer may not require the claimant to advance  
253 payment for the repairs. The repairs must be completed within 12  
254 months after the claimant enters into the contract for repairs,  
255 absent mutual agreement between the offeror or insurer and the  
256 claimant.

257 Section 4. Section 558.0045, Florida Statutes, is created  
258 to read:

259 558.0045 Construction defect actions.-

260 (1) In a civil action alleging a construction defect, the  
261 court shall appoint an engineer, a contractor, a building code

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262 inspector, or another expert having experience in the type of  
263 construction that is the basis of the claimant's claim to  
264 examine the alleged defect or, if repairs have been made, any  
265 evidence of the alleged defect. However, the court may not  
266 appoint an expert if all of the parties object or if the court  
267 finds that the costs of an expert outweigh any potential  
268 benefits to the resolution of the action. If an expert is  
269 appointed, the expert must coordinate and communicate with the  
270 parties as directed by the court. Within 15 days after  
271 conducting the examination, or as otherwise determined by the  
272 court, the expert shall submit a written report to the court for  
273 its consideration and to the parties which contains the expert's  
274 findings. The report must do all of the following:

275 (a) Describe how the expert conducted the examination of  
276 the alleged defect.

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

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

281 (d) State whether the damages claimed by the claimant are  
282 more likely than not the result of a construction defect,  
283 another identified cause, or a construction defect and another  
284 identified cause.

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

287 (2) If the expert concludes that the damages are wholly or  
288 partially the result of a construction defect, the report must  
289 state the actions necessary to repair the defect and any repairs  
290 related to the defect, provide an estimate of the reasonable

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291 cost of repairs, and state the anticipated time needed for  
292 repairs under the current market conditions for construction  
293 services and materials.

294 (3) The parties shall compensate the expert, but the  
295 prevailing party is entitled to reimbursement from the  
296 nonprevailing party.

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

300 Section 5. Section 558.0046, Florida Statutes, is created  
301 to read:

302 558.0046 Duty to repair construction defect.—If a claimant  
303 receives compensation for an alleged construction defect from a  
304 contractor, a subcontractor, a supplier, a design professional,  
305 or an insurer, the claimant must repair the defect. A claimant  
306 who receives compensation and fails to fully repair the defect  
307 is liable to a purchaser of the property for any damages  
308 resulting from the failure to disclose the defect.

309 Section 6. (1) The amendments by this act to s.  
310 95.11(3)(c), Florida Statutes, apply to any action commenced on  
311 or after July 1, 2022, regardless of when the cause of action  
312 accrued. However, any action that would not have been barred  
313 under s. 95.11(3)(c), Florida Statutes, before the amendments  
314 made by this act to that section may be commenced before July 1,  
315 2023. If such action is not commenced by July 1, 2023, and is  
316 barred by the amendments made by this act to s. 95.11(3)(c),  
317 Florida Statutes, the action is barred.

318 (2) Sections 3 through 5 of this act apply to compensation  
319 for construction defects received on or after July 1, 2022, and

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320 to civil actions and proceedings for a construction defect which  
321 are initiated on or after July 1, 2022.

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