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1 A bill to be entitled
2 An act relating to construction defect and building
3 code violation claims; amending s. 95.11, F.S.;
4 revising the limitations period for certain actions
5 founded on the design, planning, or construction of an
6 improvement to real property; defining the terms
7 "completion of an improvement" and "single family
8 residence"; amending s. 553.84, F.S.; defining terms;
9 revising the circumstances under which a person has a
10 cause of action for a violation of the Florida
11 Building Code; providing construction; amending s.
12 558.004, F.S.; requiring a notice of claim to include
13 an inspection report that is verified by the person
14 conducting the inspection; specifying the required
15 contents of the report; providing that a bad faith
16 preparation of an inspection report constitutes
17 grounds for discipline; specifying that the claimant
18 and the person preparing the inspection report do not
19 have an obligation to perform certain testing;
20 requiring a claimant to include the reasons for
21 rejecting an offer in a notice rejecting a settlement
22 offer to remedy a construction defect; authorizing a
23 person served with a notice rejecting a settlement
24 offer to make a supplemental offer within a specified
25 timeframe; providing notice requirements for a
26 claimant who rejects a supplemental offer; requiring
27 the court to stay an action if a claimant initiates an
28 action without first accepting or rejecting a
29 supplemental offer; requiring a claimant who accepts a

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30 certain offer to enter into a contract to complete
31 repairs to remedy an alleged construction defect;
32 requiring the offeror or insurer to pay the contractor
33 or contractors directly for the repairs; prohibiting
34 an offeror or insurer from requiring a claimant to
35 advance payment for repairs; requiring that the
36 repairs be completed within a specified timeframe;
37 creating s. 558.0046, F.S.; requiring a claimant to
38 repair a construction defect if the claimant receives
39 compensation for an alleged construction defect from
40 specified persons; providing that a claimant is liable
41 for damages resulting from failure to disclose a
42 construction defect to a purchaser of a property;
43 providing applicability; providing an effective date.
44

45 Be It Enacted by the Legislature of the State of Florida:
46

47 Section 1. Paragraph (c) of subsection (3) of section
48 95.11, Florida Statutes, is amended 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 45 days after ~~the date of actual possession by the~~
56 ~~owner,~~ the date of completion of the improvement or ~~the issuance~~
57 ~~of a certificate of occupancy,~~ the date of abandonment of
58 construction if the improvement is not completed, except as

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59 provided in subparagraphs 1.-5.

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

64 2. If the action alleges a latent defect to a single family
65 residence and the person alleging the latent defect can show
66 that the engineer, architect, or contractor or his or her
67 employer fraudulently concealed the defect, the action may be
68 commenced within 10 years after the time for commencing an
69 action begins to run, provided that the action is commenced
70 within 1 year after the discovery of the fraudulent concealment
71 or within the time period in subparagraph 1.

72 3. If the action alleges a latent defect to an improvement
73 other than a single family residence and the person alleging the
74 latent defect can show that the engineer, architect, or
75 contractor or his or her employer fraudulently concealed the
76 defect, the action may be commenced at any time, provided that
77 the action is commenced within 1 year after the discovery of the
78 fraudulent concealment or within the time period in subparagraph
79 1.

80 4. If a single family residence is built by a professional
81 engineer, registered architect, or licensed contractor for
82 speculation or for use as a model home, not for use as the
83 person's residence, and title is not transferred to an unrelated
84 party for more than 45 days after the issuance of the
85 certificate of occupancy or the closing or expiration of the
86 building permit, the time begins to run from the date that title
87 is transferred to an unrelated party.

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88 ~~5. , or the date of completion of the contract or~~
89 ~~termination of the contract between the professional engineer,~~
90 ~~registered architect, or licensed contractor and his or her~~
91 ~~employer, whichever date is latest; except that, when the action~~
92 ~~involves a latent defect, the time runs from the time the defect~~
93 ~~is discovered or should have been discovered with the exercise~~
94 ~~of due diligence. In any event, the action must be commenced~~
95 ~~within 10 years after the date of actual possession by the~~
96 ~~owner, the date of the issuance of a certificate of occupancy,~~
97 ~~the date of abandonment of construction if not completed, or the~~
98 ~~date of completion of the contract or termination of the~~
99 ~~contract between the professional engineer, registered~~
100 ~~architect, or licensed contractor and his or her employer,~~
101 ~~whichever date is latest. However, Counterclaims, cross-claims,~~
102 ~~and third-party claims that arise out of the conduct,~~
103 ~~transaction, or occurrence set out or attempted to be set out in~~
104 ~~a pleading may be commenced up to 1 year after the pleading to~~
105 ~~which such claims relate is served, even if such claims would~~
106 ~~otherwise be time barred.~~

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

108 a. "Completion of an improvement" means issuance of the
109 certificate of occupancy or certificate of completion for the
110 improvement, or the closing as defined in s. 553.79(17) (a), or
111 expiration of the building permit for the improvement if the
112 improvement is not required to have a certificate of occupancy
113 or certificate of completion.

114 b. "Single family residence" means a one-family, two-
115 family, or three-family residence not exceeding three habitable
116 stories above ground and no more than one uninhabitable story

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117 and accessory use structures made in connection with the
118 residence ~~With respect to actions founded on the design,~~
119 ~~planning, or construction of an improvement to real property, if~~
120 ~~such construction is performed pursuant to a duly issued~~
121 ~~building permit and if a local enforcement agency, state~~
122 ~~enforcement agency, or special inspector, as those terms are~~
123 ~~defined in s. 553.71, has issued a final certificate of~~
124 ~~occupancy or certificate of completion, then as to the~~
125 ~~construction which is within the scope of such building permit~~
126 ~~and certificate, the correction of defects to completed work or~~
127 ~~repair of completed work, whether performed under warranty or~~
128 ~~otherwise, does not extend the period of time within which an~~
129 ~~action must be commenced. Completion of the contract means the~~
130 ~~later of the date of final performance of all the contracted~~
131 ~~services or the date that final payment for such services~~
132 ~~becomes due without regard to the date final payment is made.~~

133 Section 2. Section 553.84, Florida Statutes, is amended to
134 read:

135 553.84 Statutory civil action.—

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

137 (a) "Material violation" means a violation that exists
138 within a completed building, structure, or facility which may
139 reasonably result, or has resulted, in physical harm to a person
140 or significant damage to the performance of a building or its
141 systems.

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

145 (c) "Significant damage" means a level of adverse impact to

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146 a building, structure, or facility, or its system which results
147 or could reasonably result in economic damage or loss that
148 exceeds the common expectations, and the cost of restoring the
149 damage or preventing such damage to the building, structure, or
150 facility, or its system, would equal or exceed 25 percent of the
151 market value of the building, structure, or facility, or its
152 system, if built in accordance with the Florida Building Code.
153 The term does not include Florida Building Code violations that
154 are cosmetic, minimal, or inconsequential to the overall
155 performance of a building, structure, or facility, or its
156 system.

157 (2) (a) Notwithstanding any other remedies available and
158 except as provided in paragraph (b), any person or party, in an
159 individual capacity or on behalf of a class of persons or
160 parties, damaged as a result of a violation of this part or a
161 material violation of the Florida Building Code, has a cause of
162 action in any court of competent jurisdiction against the person
163 or party who committed the violation.

164 (b) This section does not authorize a cause of action
165 against a; however, if the person or party who obtained obtains
166 the required building permits and any local government or public
167 agency having with authority to enforce the Florida Building
168 Code approved approves the plans and, if the construction
169 project passed passes all required inspections under the code,
170 and if there is no personal injury or damage to property other
171 than the property that is the subject of the permits, plans, and
172 inspections, this section does not apply unless the person or
173 party knew or should have known that the violation existed.

174 Section 3. Present subsections (8) through (15) of section

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175 558.004, Florida Statutes, are redesignated as subsections (9)
176 through (16), respectively, a new subsection (8) is added to
177 that section, and paragraphs (b) and (c) of subsection (1) and
178 subsection (7) of that section are amended, to read:

179 558.004 Notice and opportunity to repair.—

180 (1)

181 (b)1. The notice of claim must include an inspection report
182 that is verified pursuant to s. 92.525 by a contractor,
183 engineer, building code inspector, or other inspector who has a
184 state license and experience relevant to the type of
185 construction that is the basis of the claim. The report must
186 include all of the following:

187 a. A short statement describing the relevant experience and
188 licenses of the person conducting the inspection.

189 b. A description of each alleged construction defect; a
190 clear description of the location of the defect; and, if known,
191 an explanation of the damage resulting from the defect.

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

194 d. A description of how the inspection was conducted,
195 including a description of any specialized equipment used during
196 the inspection or of any tests conducted.

197 e. An explanation of whether or to what extent and how the
198 property owner or person acting at the direction of the property
199 owner inspected, maintained, repaired, or renovated a portion of
200 the structure containing the alleged defect since the owner took
201 possession of the structure.

202 2. The preparation of an inspection report in bad faith
203 constitutes grounds for discipline by any relevant licensing

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204 board or agency.

205 3. The claimant and the person preparing the inspection
206 report do not have an ~~describe in reasonable detail the nature~~
207 ~~of each alleged construction defect and, if known, the damage or~~
208 ~~loss resulting from the defect. Based upon at least a visual~~
209 ~~inspection by the claimant or its agents, the notice of claim~~
210 ~~must identify the location of each alleged construction defect~~
211 ~~sufficiently to enable the responding parties to locate the~~
212 ~~alleged defect without undue burden. The claimant has no~~
213 ~~obligation to perform destructive or other testing for purposes~~
214 ~~of this notice.~~

215 (c) The claimant shall endeavor to serve the notice of
216 claim within 15 days after discovery of an alleged defect, but
217 the failure to serve notice of claim within 15 days does not bar
218 the filing of an action, subject to s. 558.003. This subsection
219 does not preclude a claimant from filing an action sooner than
220 60 days, or 120 days as applicable, after service of written
221 notice as expressly provided in subsection (6), subsection (7),
222 or subsection (9) ~~(8)~~.

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

227 (b) If the claimant rejects the settlement offer, the
228 claimant must include the reasons for rejecting the offer in the
229 notice rejecting the offer. If the claimant believes that the
230 settlement offer omitted reference to any portion of the claim
231 or was unreasonable in any manner, the claimant must include in
232 the notice the items that the claimant believes were omitted and

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233 state in detail all known reasons why the claimant believes the
234 settlement offer is unreasonable.

235 (c) Upon receipt of a claimant's notice of rejection and
236 the reasons for such rejection, the person served with the
237 rejection, within 15 days after receipt of the notice, may make
238 a supplemental offer of repair or monetary payment, or both, to
239 the claimant.

240 (d) If the claimant rejects a supplemental offer to repair
241 the construction defect or to settle the claim by monetary
242 payment or a combination of both, the claimant must serve
243 written notice of the claimant's rejection on the person making
244 the supplemental offer. The notice must include all known
245 reasons for the claimant's rejection of the supplemental
246 settlement offer.

247 (e) If a claimant initiates an action without first
248 accepting or rejecting the offer or supplemental offer, the
249 court shall stay the action upon timely motion until the
250 claimant complies with this subsection.

251 (8) If a claimant accepts an offer made pursuant to
252 paragraph (5)(b), paragraph (5)(c), or paragraph (5)(e) or a
253 supplemental offer made pursuant to paragraph (7)(c), the
254 claimant must, within 90 days after the acceptance, enter into a
255 contract with one or more appropriately licensed contractors to
256 complete the repairs necessary to remedy the alleged
257 construction defect. The offeror or insurer shall pay directly
258 to the contractor or contractors, from the accepted monetary
259 payment, the amounts necessary to begin and to continue the
260 repairs as the work is performed and expenses are incurred. The
261 offeror or insurer may not require the claimant to advance

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262 payment for the repairs. The repairs must be completed within 12
263 months after the claimant enters into the contract for repairs,
264 absent mutual agreement between the offeror or insurer and the
265 claimant.

266 Section 4. Section 558.0046, Florida Statutes, is created
267 to read:

268 558.0046 Duty to repair construction defect.—If a claimant
269 receives compensation for an alleged construction defect from a
270 contractor, a subcontractor, a supplier, a design professional,
271 or an insurer, the claimant must repair the defect. A claimant
272 who receives compensation and fails to fully repair the defect
273 is liable to a purchaser of the property for any damages
274 resulting from the failure to disclose the defect.

275 Section 5. (1) The amendments made by this act to s.
276 95.11(3)(c), Florida Statutes, apply to any action commenced on
277 or after July 1, 2022, regardless of when the cause of action
278 accrued. However, any action that would not have been barred
279 under s. 95.11(3)(c), Florida Statutes, before the amendments
280 made by this act to that section may be commenced before July 1,
281 2023. If such action is not commenced by July 1, 2023, and is
282 barred by the amendments made by this act to s. 95.11(3)(c),
283 Florida Statutes, the action is barred.

284 (2) Sections 2, 3, and 4 of this act apply to compensation
285 for construction defects received on or after July 1, 2022, and
286 to civil actions and proceedings for a construction defect or a
287 building code violation which are initiated on or after July 1,
288 2022.

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