

1 A bill to be entitled
2 An act relating to residential construction
3 warranties; creating s. 553.835, F.S.; providing
4 legislative findings; providing legislative intent to
5 affirm the limitations to the doctrine or theory of
6 implied warranty of fitness and merchantability or
7 habitability associated with the construction and sale
8 of a new home; providing a definition; prohibiting a
9 cause of action in law or equity based upon the
10 doctrine or theory of implied warranty of fitness and
11 merchantability or habitability for damages to offsite
12 improvements; providing that the existing rights of
13 purchasers of homes or homeowners' associations to
14 pursue certain causes of action are not altered or
15 limited; providing for applicability of the act;
16 providing for severability; providing an effective
17 date.

18
19 WHEREAS, the Legislature recognizes and agrees with the
20 limitations on the applicability of the doctrine or theory of
21 implied warranty of fitness and merchantability or habitability
22 for a new home as established in the seminal cases of *Gable v.*
23 *Silver*, 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dismiss, *264 So.2d 418* (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654
24 (Fla. 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n*
25 *v. First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),
26 and does not wish to expand any prospective rights,
27 responsibilities, or liabilities resulting from these decisions,
28

29 and

30 WHEREAS, the recent decision by the Fifth District Court of
 31 Appeal rendered in October of 2010, in *Lakeview Reserve*
 32 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902
 33 (Fla. 5th DCA, 2010), expands the doctrine or theory of implied
 34 warranty of fitness and merchantability or habitability for a
 35 new home to the construction of roads, drainage systems,
 36 retention ponds, and underground pipes, which the court
 37 described as essential services, supporting a new home, and

38 WHEREAS, the Legislature finds, as a matter of public
 39 policy, that the *Maronda* case goes beyond the fundamental
 40 protections that are necessary for a purchaser of a new home and
 41 that form the basis for imposing an implied warranty of fitness
 42 and merchantability or habitability for a new home and creates
 43 uncertainty in the state's fragile real estate and construction
 44 industry, and

45 WHEREAS, it is the intent of the Legislature to reject the
 46 decision by the Fifth District Court of Appeal in the *Maronda*
 47 case insofar as it expands the doctrine or theory of implied
 48 warranty and fitness and merchantability or habitability for a
 49 new home to include essential services as defined by the court,
 50 NOW THEREFORE,

51

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

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54 Section 1. Section 553.835, Florida Statutes, is created
 55 to read:

56 553.835 Implied warranties.—

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57 (1) The Legislature finds that the courts have reached
58 different conclusions concerning the scope and extent of the
59 common law doctrine or theory of implied warranty of fitness and
60 merchantability or habitability for improvements immediately
61 supporting the structure of a new home, which creates
62 uncertainty in the state's fragile real estate and construction
63 industry.

64 (2) It is the intent of the Legislature to affirm the
65 limitations to the doctrine or theory of implied warranty of
66 fitness and merchantability or habitability associated with the
67 construction and sale of a new home.

68 (3) As used in this section, the term "offsite
69 improvement" means:

70 (a) The street, road, driveway, sidewalk, drainage,
71 utilities, or any other improvement or structure that is not
72 located on or under the lot on which a new home is constructed,
73 excluding such improvements that are shared by and part of the
74 overall structure of two or more separately owned homes that are
75 adjoined or attached whereby such improvements affect the
76 fitness and merchantability or habitability of one or more of
77 the other adjoining structures; and

78 (b) The street, road, driveway, sidewalk, drainage,
79 utilities, or any other improvement or structure that is located
80 on or under the lot but that does not immediately and directly
81 support the fitness and merchantability or habitability of the
82 home itself.

83 (4) There is no cause of action in law or equity available
84 to a purchaser of a home or to a homeowners' association based

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85 upon the doctrine or theory of implied warranty of fitness and
86 merchantability or habitability for damages to offsite
87 improvements. However, this section does not alter or limit the
88 existing rights of purchasers of homes or homeowners'
89 associations to pursue any other cause of action arising from
90 defects in offsite improvements based upon contract, tort, or
91 statute, including, but not limited to, ss. 718.203 and 719.203.

92 Section 2. If any provision of the act or its application
93 to any person or circumstance is held invalid, the invalidity
94 does not affect other provisions or applications of the act
95 which can be given effect without the invalid provision or
96 application, and to this end the provisions of this act are
97 severable.

98 Section 3. This act shall take effect July 1, 2012, and
99 applies to all cases accruing before, pending on, or filed after
100 that date.