



672482

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/23/2012	.	
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	.	

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

553.835 Implied warranties.-

(1) The Legislature finds that the courts have reached
different conclusions concerning the scope and extent of the
common law doctrine of implied warranty of fitness and
merchantability or habitability for improvements immediately
supporting the structure of a new home, which creates



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13 uncertainty in the state's fragile real estate and construction
14 industry.

15 (2) It is the intent of the Legislature to affirm the
16 limitations to the doctrine of implied warranty of fitness and
17 merchantability or habitability associated with the construction
18 and sale of a new home.

19 (3) As used in this section, the term "offsite improvement"
20 means the street, road, sidewalk, drainage, utilities, or any
21 other improvement or structure that is not located on or under
22 the lot on which a new home is constructed, or that is located
23 on or under the lot but that does not immediately and directly
24 support the fitness and merchantability or habitability of the
25 home itself.

26 (4) There is no cause of action in law or equity available
27 to a purchaser of a home or to a homeowners' association based
28 upon the doctrine or theory of implied warranty of fitness and
29 merchantability or habitability for damages to offsite
30 improvements. However, this section does not alter or limit the
31 existing rights of purchasers of homes or homeowners'
32 associations to pursue any other cause of action arising from
33 defects in offsite improvements based upon contract, tort, or
34 statute.

35 Section 2. If any provision of the act or its application
36 to any person or circumstance is held invalid, the invalidity
37 does not affect other provisions or applications of the act
38 which can be given effect without the invalid provision or
39 application, and to this end the provisions of this act are
40 severable.

41 Section 3. This act shall take effect July 1, 2012, and



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42 applies to all cases accruing before, pending on, or filed after
43 that date.

44
45 ===== T I T L E A M E N D M E N T =====

46 And the title is amended as follows:

47 Delete everything before the enacting clause
48 and insert:

49 A bill to be entitled
50 An act relating to residential construction
51 warranties; creating s. 553.835, F.S.; providing
52 legislative findings; providing legislative intent to
53 affirm the limitations to the doctrine of implied
54 warranty of fitness and merchantability or
55 habitability associated with the construction and sale
56 of a new home; providing a definition; prohibiting a
57 cause of action in law or equity based upon the
58 doctrine of implied warranty of fitness and
59 merchantability or habitability for offsite
60 improvements; providing that the existing rights of
61 purchasers of homes or homeowners' associations to
62 pursue certain causes of action are not altered or
63 limited; providing for applicability of the act;
64 providing for severability; providing an effective
65 date.

66
67 WHEREAS, the Legislature recognizes and agrees with the
68 limitations on the applicability of the doctrine of implied
69 warranty of fitness and merchantability or habitability for a
70 new home as established in the seminal cases of *Gable v. Silver*,



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71 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. disp, 264
72 So.2d 418 (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654 (Fla.
73 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*
74 *First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),
75 and does not wish to expand any prospective rights,
76 responsibilities, or liabilities resulting from these decisions,
77 and

78 WHEREAS, the recent decision by the Fifth District Court of
79 Appeal rendered in October of 2010, in *Lakeview Reserve*
80 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902
81 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty
82 of fitness and merchantability or habitability for a new home to
83 the construction of roads, drainage systems, retention ponds,
84 and underground pipes, which the court described as essential
85 services, supporting a new home, and

86 WHEREAS, the Legislature finds, as a matter of public
87 policy, that the *Maronda* case goes beyond the fundamental
88 protections that are necessary for a purchaser of a new home and
89 that form the basis for imposing an implied warranty of fitness
90 and merchantability or habitability for a new home, and creates
91 uncertainty in the state's fragile real estate and construction
92 industry, and

93 WHEREAS, it is the intent of the Legislature to reject the
94 decision by the Fifth District Court of Appeal in the *Maronda*
95 case insofar as it expands the doctrine of implied warranty and
96 fitness and merchantability or habitability for a new home to
97 include essential services as defined by the court, NOW
98 THEREFORE,