

By the Committees on Judiciary; and Community Affairs; and
Senator Bennett

590-03255-12

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

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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 of implied warranty
34 of fitness and merchantability or habitability for a new home to
35 the construction of roads, drainage systems, retention ponds,
36 and underground pipes, which the court described as essential
37 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 of implied warranty and
48 fitness and merchantability or habitability for a new home to
49 include essential services as defined by the court, NOW

50 THEREFORE,

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

53
54 Section 1. Section 553.835, Florida Statutes, is created to
55 read:

56 553.835 Implied warranties.-

57 (1) The Legislature finds that the courts have reached
58 different conclusions concerning the scope and extent of the

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59 common law doctrine 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 of implied warranty of fitness and
66 merchantability or habitability associated with the construction
67 and sale of a new home.

68 (3) As used in this section, the term "offsite improvement"
69 means a street, road, driveway, sidewalk, drainage, utilities,
70 or any other improvement or structure that:

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

78 (b) Is located on or under the lot but does not immediately
79 and directly support the fitness and merchantability or
80 habitability of the new home itself.

81 (4) There is no cause of action in law or equity available
82 to a purchaser of a home or to a homeowners' association based
83 upon the doctrine or theory of implied warranty of fitness and
84 merchantability or habitability for damages to offsite
85 improvements. However, this section does not alter or limit the
86 existing rights of purchasers of homes or homeowners'
87 associations to pursue any other cause of action arising from

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88 defects in offsite improvements based upon contract, tort, or
89 statute, including, but not limited to, ss. 718.203 and 719.203.

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

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