A bill to be entitled
An act relating to construction defect claims;
amending s. 95.11, F.S.; revising the time period to
bring certain actions; providing definitions; amending
ss. 471.023, 472.021, 481.219, 481.319, and 492.111,
F.S.; conforming cross-references; repealing chapter
558, F.S., relating to construction defects; creating
s. 768.401, F.S.; providing definitions; providing
that certain design professionals are not individually
liable for certain damages under certain
circumstances; providing applicability; providing an
effective date.

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

Section 1. Paragraph (c) of subsection (3) of section
95.11, Florida Statutes, is amended to read:
95.11 Limitations other than for the recovery of real
property.— Actions other than for recovery of real property shall
be commenced as follows:
(3) WITHIN FOUR YEARS.—
(c) An action founded on the design, planning, or
construction of an improvement to real property, with the time
running from the date of actual possession by the owner, the
date of the issuance of a certificate of occupancy, the date of
abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest, except as provided in subparagraphs 1.-6. that:

1. When the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 7 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.

2. If the action alleges a latent defect of a common area that is subject to a homeowners' association or condominium association, then the action must be commenced within 7 years after the date of the actual possession by the owner or the date of completion or termination of the contract, or 4 years after the date that the association was turned over to the unit owners, whichever is latest.

3. If the action alleges a latent defect and the claimant can show by clear and convincing evidence that the engineer, architect, or contractor or his or her employer fraudulently
concealed the defect, the action may be commenced within 15 years after the time for commencing an action begins to run.

4. If the action alleges a latent defect and the claimant can show that the latent defect arises from a material violation of the Florida Building Code, the action may be commenced within 10 years after the time for commencing an action begins to run.

5. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

6. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced.

7. As used in this paragraph, the term:
"Actual possession" means the date possession of the property where the subject improvements are constructed is delivered to a party other than the contractor or to a person affiliated with the contractor. However, with respect to improvements in a community subject to a homeowners association or condominium association, actual possession means the date that members of the association other than the developer or its successor are entitled to elect a majority of the board of directors or board of administration.

b. "Completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

Section 2. Subsection (3) of section 471.023, Florida Statutes, is amended to read:

471.023 Qualification of business organizations.—
(3) Except as provided in s. 768.401 s. 558.0035, the fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her. Partnerships and all partners shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a business organization other than a partnership
shall be personally liable and accountable only for negligent
acts, wrongful acts, or misconduct committed by him or her or
committed by any person under his or her direct supervision and
control, while rendering professional services on behalf of the
business organization. The personal liability of a shareholder
or owner of a business organization, in his or her capacity as
shareholder or owner, shall be no greater than that of a
shareholder-employee of a corporation incorporated under chapter
607. The business organization shall be liable up to the full
value of its property for any negligent acts, wrongful acts, or
misconduct committed by any of its officers, agents, or
employees while they are engaged on its behalf in the rendering
of professional services.

Section 3. Subsection (3) of section 472.021, Florida
Statutes, is amended to read:

472.021 Certification of partnerships and corporations.—
(3) Except as provided in s. 768.401 or s. 558.0035, the fact
that any registered surveyor and mapper practices through a
corporation or partnership does not relieve the registrant from
personal liability for negligence, misconduct, or wrongful acts
committed by him or her. Partnerships and all partners shall be
jointly and severally liable for the negligence, misconduct, or
wrongful acts committed by their agents, employees, or partners
while acting in a professional capacity. An officer, agent, or
employee of a business organization other than a partnership
shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by a person under his or her direct supervision and control while rendering professional services on behalf of the business organization. The personal liability of a shareholder or owner of a business organization, in his or her capacity as shareholder or owner, shall be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The business organization shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

Section 4. Subsection (7) of section 481.219, Florida Statutes, is amended to read:

481.219 Qualification of business organizations.—
(7) A business organization is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, except as provided in s. 768.401 and 558.0035, the architect who signs and seals the construction documents and instruments of service is liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.
Section 5. Subsection (5) of section 481.319, Florida Statutes, is amended to read:

481.319 Corporate and partnership practice of landscape architecture.—

(5) Except as provided in s. 768.401 and s. 558.0035, the fact that a registered landscape architect practices landscape architecture through a corporation or partnership as provided in this section does not relieve the landscape architect from personal liability for her or his professional acts.

Section 6. Subsection (3) of section 492.111, Florida Statutes, is amended to read:

492.111 Practice of professional geology by a firm, corporation, or partnership.—The practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers, or partners thereof is permitted subject to the provisions of this chapter, if:

(3) Except as provided in s. 768.401 and s. 558.0035, the fact that a licensed professional geologist practices through a corporation or partnership does not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. The partnership and all partners are jointly and severally liable for the negligence, misconduct, or
wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation is personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, may be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

Section 7. Chapter 558, Florida Statutes, consisting of ss. 558.001, 558.002, 558.003, 558.0035, 558.004, and 558.005, Florida Statutes, is repealed.

Section 8. Section 768.401, Florida Statutes, is created to read:

768.401 Design professionals; contractual limitation on liability.—

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

(a) "Business entity" means any corporation, limited liability company, partnership, limited partnership,
proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Design professional" means a person, as defined in s. 1.01, who is licensed in this state as an architect, a landscape architect, an engineer, a surveyor, or a geologist or who is a registered interior designer as defined in s. 481.203.

(2) A design professional employed by a business entity or an agent of the business entity is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract if:

(a) The contract is made between the business entity and a claimant or with another entity for the provision of professional services to the claimant;

(b) The contract does not name as a party to the contract the individual employee or agent who will perform the professional services;

(c) The contract includes a prominent statement, in capital letters that are at least 5 point sizes larger than the rest of the text, that, under this section, an individual employee or agent may not be held individually liable for negligence;

(d) The business entity maintains any professional liability insurance required under the contract; and

(e) Any damages are solely economic in nature and the
Section 9. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act apply to any action commenced on or after July 1, 2022, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, before the amendments made by this act must be commenced before July 1, 2023. If the action is not commenced by July 1, 2023, and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, then the action is barred.

Section 10. This act shall take effect July 1, 2022.