

By Senator Bennett

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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 definitions; 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 off-site
12 improvements, except as otherwise provided by law;
13 providing for applicability of the act; providing for
14 severability; providing an effective date.

15
16 WHEREAS, the Legislature recognizes and agrees with the
17 limitations on the applicability of the doctrine of implied
18 warranty of fitness and merchantability or habitability for a
19 new home as established in the seminal cases of *Gable v. Silver*,
20 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dismissed, 264
21 So.2d 418 (Fla. 1972); *Conklin v. Hurley*, 428 So.2d 654 (Fla.
22 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*
23 *First Fed. S. & L. Ass'n.*, 463 So.2d 530 (Fla. 4th DCA 1985),
24 and does not wish to expand any prospective rights,
25 responsibilities, or liabilities resulting from these decisions,
26 and

27 WHEREAS, the recent decision by the Fifth District Court of
28 Appeal rendered in October of 2010, in *Lakeview Reserve*
29 *Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902

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(Fla. 5th DCA, 2010), expands the doctrine of implied warranty of fitness and merchantability or habitability for a new home to the construction of roads, drainage systems, retention ponds, and underground pipes, which the court described as essential services, supporting a new home, and

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

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

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

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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59 uncertainty in the state's fragile real estate and construction
60 industry.

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

65 (3) As used in this section, the term:

66 (a) "Habitability" means the condition of a home in which
67 inhabitants can live free of structural defects that will likely
68 cause significant harm to the health or safety of inhabitants.

69 (b) "Off-site improvement" means the street, road,
70 sidewalk, drainage, utilities, or any other improvement or
71 structure that is not located on or under the lot on which a new
72 home is constructed, or that is located on or under the lot but
73 that does not immediately and directly support the habitability
74 of the home itself.

75 (4) There is no cause of action in law or equity available
76 to a person based upon the doctrine of implied warranty of
77 fitness and merchantability or habitability for off-site
78 improvements, except as otherwise provided by law.

79 Section 2. If any provision of the act or its application
80 to any person or circumstance is held invalid, the invalidity
81 does not affect other provisions or applications of the act
82 which can be given effect without the invalid provision or
83 application, and to this end the provisions of this act are
84 severable.

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