

1                                   A bill to be entitled  
 2           An act relating to construction defect claims;  
 3           amending s. 95.11, F.S.; revising the time period to  
 4           bring certain actions; providing definitions; amending  
 5           ss. 471.023, 472.021, 481.219, 481.319, and 492.111,  
 6           F.S.; conforming cross-references; repealing chapter  
 7           558, F.S., relating to construction defects; creating  
 8           s. 768.401, F.S.; providing definitions; providing  
 9           that certain design professionals are not individually  
 10          liable for certain damages under certain  
 11          circumstances; providing applicability; providing an  
 12          effective date.

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

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 16           Section 1. Paragraph (c) of subsection (3) of section  
 17   95.11, Florida Statutes, is amended to read:

18           95.11 Limitations other than for the recovery of real  
 19   property.—Actions other than for recovery of real property shall  
 20   be commenced as follows:

21           (3)    WITHIN FOUR YEARS.—

22           (c)    An action founded on the design, planning, or  
 23   construction of an improvement to real property, ~~with~~ the time  
 24   running from the date of actual possession by the owner, ~~the~~  
 25   ~~date of the issuance of a certificate of occupancy, the date of~~

26 ~~abandonment of construction if not completed,~~ or the date of  
 27 completion of the contract or termination of the contract  
 28 between the professional engineer, registered architect, or  
 29 licensed contractor and his or her employer, whichever date is  
 30 latest,~~;~~ except as provided in subparagraphs 1.-6. that,

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

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

48 3. If the action alleges a latent defect and the claimant  
 49 can show by clear and convincing evidence that the engineer,  
 50 architect, or contractor or his or her employer fraudulently

51 concealed the defect, the action may be commenced within 15  
52 years after the time for commencing an action begins to run.

53 4. If the action alleges a latent defect and the claimant  
54 can show that the latent defect arises from a material violation  
55 of the Florida Building Code, the action may be commenced within  
56 10 years after the time for commencing an action begins to run.

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

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

75 7. As used in this paragraph, the term:

76        a. "Actual possession" means the date possession of the  
 77 property where the subject improvements are constructed is  
 78 delivered to a party other than the contractor or to a person  
 79 affiliated with the contractor. However, with respect to  
 80 improvements in a community subject to a homeowners association  
 81 or condominium association, actual possession means the date  
 82 that members of the association other than the developer or its  
 83 successor are entitled to elect a majority of the board of  
 84 directors or board of administration.

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

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

91        471.023 Qualification of business organizations.—

92        (3) Except as provided in s. 768.401 ~~s. 558.0035~~, the fact  
 93 that a licensed engineer practices through a business  
 94 organization does not relieve the licensee from personal  
 95 liability for negligence, misconduct, or wrongful acts committed  
 96 by him or her. Partnerships and all partners shall be jointly  
 97 and severally liable for the negligence, misconduct, or wrongful  
 98 acts committed by their agents, employees, or partners while  
 99 acting in a professional capacity. Any officer, agent, or  
 100 employee of a business organization other than a partnership

101 shall be personally liable and accountable only for negligent  
 102 acts, wrongful acts, or misconduct committed by him or her or  
 103 committed by any person under his or her direct supervision and  
 104 control, while rendering professional services on behalf of the  
 105 business organization. The personal liability of a shareholder  
 106 or owner of a business organization, in his or her capacity as  
 107 shareholder or owner, shall be no greater than that of a  
 108 shareholder-employee of a corporation incorporated under chapter  
 109 607. The business organization shall be liable up to the full  
 110 value of its property for any negligent acts, wrongful acts, or  
 111 misconduct committed by any of its officers, agents, or  
 112 employees while they are engaged on its behalf in the rendering  
 113 of professional services.

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

116 472.021 Certification of partnerships and corporations.—

117 (3) Except as provided in s. 768.401 ~~s. 558.0035~~, the fact  
 118 that any registered surveyor and mapper practices through a  
 119 corporation or partnership does not relieve the registrant from  
 120 personal liability for negligence, misconduct, or wrongful acts  
 121 committed by him or her. Partnerships and all partners shall be  
 122 jointly and severally liable for the negligence, misconduct, or  
 123 wrongful acts committed by their agents, employees, or partners  
 124 while acting in a professional capacity. An officer, agent, or  
 125 employee of a business organization other than a partnership

126 shall be personally liable and accountable only for negligent  
 127 acts, wrongful acts, or misconduct committed by him or her or  
 128 committed by a person under his or her direct supervision and  
 129 control while rendering professional services on behalf of the  
 130 business organization. The personal liability of a shareholder  
 131 or owner of a business organization, in his or her capacity as  
 132 shareholder or owner, shall be no greater than that of a  
 133 shareholder-employee of a corporation incorporated under chapter  
 134 607. The business organization shall be liable up to the full  
 135 value of its property for any negligent acts, wrongful acts, or  
 136 misconduct committed by any of its officers, agents, or  
 137 employees while they are engaged on its behalf in the rendering  
 138 of professional services.

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

141 481.219 Qualification of business organizations.—

142 (7) A business organization is not relieved of  
 143 responsibility for the conduct or acts of its agents, employees,  
 144 or officers by reason of its compliance with this section.  
 145 However, except as provided in s. 768.401 ~~s. 558.0035~~, the  
 146 architect who signs and seals the construction documents and  
 147 instruments of service is liable for the professional services  
 148 performed, and the interior designer who signs and seals the  
 149 interior design drawings, plans, or specifications shall be  
 150 liable for the professional services performed.

151 Section 5. Subsection (5) of section 481.319, Florida  
 152 Statutes, is amended to read:

153 481.319 Corporate and partnership practice of landscape  
 154 architecture.—

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

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

162 492.111 Practice of professional geology by a firm,  
 163 corporation, or partnership.—The practice of, or offer to  
 164 practice, professional geology by individual professional  
 165 geologists licensed under the provisions of this chapter through  
 166 a firm, corporation, or partnership offering geological services  
 167 to the public through individually licensed professional  
 168 geologists as agents, employees, officers, or partners thereof  
 169 is permitted subject to the provisions of this chapter, if:

170 (3) Except as provided in s. 768.401 ~~s. 558.0035~~, the fact  
 171 that a licensed professional geologist practices through a  
 172 corporation or partnership does not relieve the registrant from  
 173 personal liability for negligence, misconduct, or wrongful acts  
 174 committed by her or him. The partnership and all partners are  
 175 jointly and severally liable for the negligence, misconduct, or

176 wrongful acts committed by their agents, employees, or partners  
177 while acting in a professional capacity. Any officer, agent, or  
178 employee of a corporation is personally liable and accountable  
179 only for negligent acts, wrongful acts, or misconduct committed  
180 by her or him or committed by any person under her or his direct  
181 supervision and control, while rendering professional services  
182 on behalf of the corporation. The personal liability of a  
183 shareholder of a corporation, in her or his capacity as  
184 shareholder, may be no greater than that of a shareholder-  
185 employee of a corporation incorporated under chapter 607. The  
186 corporation is liable up to the full value of its property for  
187 any negligent acts, wrongful acts, or misconduct committed by  
188 any of its officers, agents, or employees while they are engaged  
189 on behalf of the corporation in the rendering of professional  
190 services.

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

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

196 768.401 Design professionals; contractual limitation on  
197 liability.-

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

199 (a) "Business entity" means any corporation, limited  
200 liability company, partnership, limited partnership,



201 proprietorship, firm, enterprise, franchise, association, self-  
202 employed individual, or trust, whether fictitiously named or  
203 not, doing business in this state.

204 (b) "Design professional" means a person, as defined in s.  
205 1.01, who is licensed in this state as an architect, a landscape  
206 architect, an engineer, a surveyor, or a geologist or who is a  
207 registered interior designer as defined in s. 481.203.

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

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

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

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

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

225 (e) Any damages are solely economic in nature and the

226 damages do not extend to personal injuries or property not  
227 subject to the contract.

228 Section 9. The amendments to s. 95.11(3)(c), Florida  
229 Statutes, made by this act apply to any action commenced on or  
230 after July 1, 2022, regardless of when the cause of action  
231 accrued, except that any action that would not have been barred  
232 under s. 95.11(3)(c), Florida Statutes, before the amendments  
233 made by this act must be commenced before July 1, 2023. If the  
234 action is not commenced by July 1, 2023, and is barred by the  
235 amendments to s. 95.11(3)(c), Florida Statutes, made by this  
236 act, then the action is barred.

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