

BILL ANALYSIS

H.B. 311
By: Canales
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that executory contracts for the sale of residential property have long been disfavored because they are poorly understood by consumers and are potentially abusive transactions under which legal title to homestead property may be withheld until many years after the buyer has built a home and made other expensive improvements. Interested parties note that, even with recent legislative efforts to discourage the use of these instruments, serious problems arising from their use, including eviction of purchasers whose contractual rights have not been legally terminated, persist. Parties also contend that there remain significant misunderstandings among sellers, buyers, and even judges and attorneys about the nature of executory contracts and about the rights and obligations of the various parties to such instruments. H.B. 311 seeks to end the use of these instruments by revising the applicable law relating to an executory contract for the conveyance of real property.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 311 amends the Property Code to add as an additional limitation on a seller's authority to enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property the condition that the contract has not been recorded. The bill grants the seller the power to sell, through a trustee designated by the seller, the purchaser's interest in the property if the purchaser defaults and, regardless of how much the purchaser has paid, the executory contract has been recorded. The bill limits the prohibition against the seller enforcing the remedy of rescission or of forfeiture and acceleration to only prohibit such enforcement after the contract has been recorded. The bill repeals a statutory provision authorizing a seller to enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness of a purchaser who defaults before paying 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract.

H.B. 311 makes a seller who violates the executory contract recording requirements liable to the purchaser in the same manner and for the same amount as a seller who violates statutory requirements for the transfer of recorded, legal title of the property covered by the executory contract is liable to a purchaser, except that the bill limits the damages to the greater of the value of the property or the amount paid under the contract. The bill authorizes an action to recover such damages to be brought as an action for declaratory judgment under the Uniform

Declaratory Judgments Act and establishes that these liability provisions do not limit or affect any other rights or remedies a purchaser has under other law.

H.B. 311 establishes that, on recording, an executory contract conveys legal title to the purchaser, subject to a lien retained by the seller for the amount of the unpaid contract price less any lawful deductions. The bill authorizes extrinsic evidence to be used to supply the legal description of the property if that information is not apparent from the contract.

H.B. 311 specifies that the statutory entitlement of a purchaser to convert at any time and without penalty the purchaser's interest in property under an executory contract into recorded, legal title applies regardless of whether the seller has recorded the executory contract and establishes that statutory provisions relating to such an entitlement may not be construed to limit the purchaser's equitable interest in the property established by other law, if any, or any other rights of the purchaser under statutory provisions governing an executory contract for conveyance.

H.B. 311 repeals Section 5.066(g), Property Code.

EFFECTIVE DATE

September 1, 2015.