

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 506  
By: Harris  
Economic Development  
4/28/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, the Residential Construction Liability Act (RCLA) requires homeowners asserting that their home contains construction defects to provide notice regarding specific complaints to the builder. The builder then has 45 days to inspect the alleged defects and to make an offer to repair or settle in court. If the parties proceed with a suit without repairs, the type of damages recoverable depend on the reasonableness of the builder's original offer. C.S.S.B. 506 would authorize suits to recover damages resulting from construction defects and to modify problems in earlier acts.

### **PURPOSE**

As proposed, C.S.S.B. 506 authorizes suits to recover damages resulting from construction defects and provides for recovery of a penalty from certain contractors.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 27.001(2) and (3), Property Code, to redefine "construction defect" and "contractor." Makes conforming changes.

SECTION 2. Amends Section 27.002, Property Code, to provide that this chapter applies to any action to recover damages resulting part from a construction defect and any subsequent purchaser of a residence who files a claim against a contractor. Makes conforming changes.

SECTION 3. Amends Section 27.003(a), Property Code, to provide that in an action to recover damages resulting from a construction defect, a contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant if an assignee of the claimant fails to provide the written notice to the contractor required by Section 27.004(a) before performing repairs. Makes conforming changes.

SECTION 4. Amends Chapter 27, Property Code, by adding Section 27.0031, as follows:

Sec. 27.0031. FRIVOLOUS SUIT; HARASSMENT. Provides that a party who files a suit that is groundless or brought in bad faith, or for the purposes of harassment, is liable to the defendant for reasonable attorney's fees and court costs.

SECTION 5. Amends Section 27.004, Property Code, by amending Subsections (a), (b), (d), (f), (h), (i), and (k), and adding Subsection (p), as follows:

(a) Requires a claimant, at the request of the contractor, to provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, if that evidence would be discoverable.

(b) Requires an offer to be sent to the claimant at the claimant's last known address or the claimant's attorney by certified mail, return receipt requested.

(d) Requires the court to abate a suit governed by this chapter, rather than section, if Subsection (c) does not apply and after a hearing, the court finds that the contractor is entitled to an abatement

because the claimant failed to provide, rather than was not provided, the notice or failed to give the contractor a reasonable opportunity to inspect the property as required. Makes a confirming change.

(f) Provides that if a claimant unreasonably rejects an offer made, the claimant may not recover an amount in excess of the reasonable cost of the offered repairs or the amount of a reasonable monetary settlement offer made under Subsection (n). Makes conforming changes.

(h) Authorizes a claimant, except as provided by Subsection (f), in a suit subject to this chapter, to recover only certain damages proximately caused by a construction defect, including the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter.

(i) Prohibits total damages awarded in a suit subject to this chapter from exceeding the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the construction defect.

(k) Makes conforming changes.

(p) Provides that if the contractor provides written notice for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

SECTION 6. Amends Chapter 27, Property Code, by adding Section 27.0041, as follows:

Sec. 27.0041. **MEDIATION.** Authorizes a claimant or contractor to file a motion to compel mediation in a dispute, if a claimant files suit seeking damages from a contractor arising from a construction defect in an amount greater than \$7,500. Requires the motion to be filed no later than the 90th day after the date the suit is filed. Requires the court to order parties to mediate a dispute no later than the 30th day after the date a motion is filed under Subsection (a). Requires the court to appoint a mediator, if the parties cannot agree on the appointment of a mediator. Requires the court to order the parties to begin mediation of a dispute not later than the 30th day after the date the court enters its order under Subsection (b), unless the parties agree otherwise or the court determines additional time is required. Authorizes the court to order the parties to begin mediation of a dispute no later than the 60th day after the date the court enters its order under Subsection (b), if the court determines that additional time is required. Requires each party to participate in the mediation and contribute equally to the cost of mediation, unless each party has appeared in the suit filed agrees otherwise. Provides that Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, applies to a mediation under this section to the extent those laws do not conflict with this section.

SECTION 7. Amends Section 27.005, Property Code, to provide that this chapter does not create a cause of action or derivative liability, rather than an implied warranty, or extend a limitations period.

SECTION 8. Amends Chapter 27, Property Code, by adding Section 27.007, as follows:

Sec. 27.007. **DISCLOSURE STATEMENT REQUIRED.** Requires a written contract subject to this chapter to contain next to the signature lines in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads in a certain way. Authorizes a claimant to recover a civil penalty of \$500, in addition to any other remedy provided by this chapter from the contractor, if a contract does not contain the notice required by this section.

SECTION 9. (a) Effective date: September 1, 1999, except as provided by Subsection (b) of this section.

(b) Effective date of Section 27.007, Property Code, as added by this Act: September 1, 2000.

(c) Makes application of this Act prospective.

SECTION 10. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

### Relating Clause.

Amends the relating clause by adding text regarding recovery of a penalty from certain contractors.

### SECTION 2.

Amends Section 27.002, Property Code, to delete proposed text regarding damages resulting in whole or in part from a construction defect.

### SECTION 3.

Amends Section 27.003(a), Property Code, to provide that in an action to recover damages resulting from a construction defect, a contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant, rather than the claimant, if an assignee of the claimant, rather than the claimant, fails to provide the written notice to the contractor required by Section 27.004(a) before performing repairs. Makes a conforming change.

### SECTION 5.

Amends Section 27.004, Property Code, by amending Subsections (a), (b), (f), and (h); deleting proposed Subsection (g); and adding Subsection (p), Property Code, as follows:

- (a) Requires a claimant, at the request of the contractor, to provide to the contractor, rather than to include with the notice, any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, if that evidence would be discoverable. Deletes proposed text regarding in a suit filed under the chapter.
- (b) Requires an offer to be sent to the claimant at the claimant's last known address or the claimant's attorney by certified mail, return receipt requested.
- (f) Provides that if a claimant unreasonably rejects an offer made, rather than if the claimant rejects a reasonable offer made, the claimant may not recover an amount in excess of the reasonable cost of the offered repairs or the amount of a reasonable monetary settlement offer made under Subsection (n).
- (h) Authorizes a claimant, except as provided by Subsection (f), in a suit subject to this chapter, to recover only certain damages proximately caused by a construction defect, including the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter.
- (p) Provides that if the contractor provides written notice for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

### SECTION 7.

Amends Section 27.005, Property Code, to provide that this chapter does not create a cause of action or derivative liability, rather than an implied warranty, or extend a limitations period.

### SECTION 8.

Amends Chapter 27, Property Code, by adding Section 27.007, regarding a required disclosure statement.

SECTION 9.

Redesignated from proposed SECTION 7. Effective date: September 1, 1999, except as provided by Subsection (b) of this section. Effective date of Section 27.007, Property Code, as added by this Act: September 1, 2000. Makes application of this Act prospective.

SECTION 10.

Redesignated from proposed SECTION 9.