

## **BILL ANALYSIS**

Senate Research Center

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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 27, Property Code, also referred to as the Residential Construction Liability Act (RCLA), provides a process for the resolution of residential construction defect disputes and affords builders the opportunity to cure construction defects before a plaintiff files a claim. The RCLA applies to residential homes, including single-family homes, duplexes, triplexes, quadruplexes, and condominium units. Enacted in 1989, the RCLA applies to any action that seeks to recover damages from construction defects, but does not apply to claims for personal injury, survival, or wrongful death or for damage to goods.

For over three decades, the RCLA has encouraged builders to repair homes and avoid costly litigation for both homeowners and builders. Furthermore, the RCLA allows for the parties to negotiate and settle disputes before any litigation occurs. However, the RCLA is not an independent cause of action; rather, it serves as a procedural framework to help resolve disputes.

H.B. 2022 seeks to provide necessary clarifications and limits on a contractor's liability to address litigiousness and to encourage builders to make reasonable offers of repair to address defective conditions, in addition to removing outdated references and updating statutory language to reflect case law changes and actual practice.

H.B. 2022 amends current law relating to residential construction liability.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 27.001, Property Code, as follows:

Sec. 27.001. DEFINITIONS. Defines "townhouse." Redefines "appurtenance," "construction defect," "contractor," "economic damages," "residence," and "structural failure." Deletes existing definitions of "commission" and "third-party inspector." Makes nonsubstantive changes.

SECTION 2. Amends Section 27.002(b), Property Code, as follows:

(b) Deletes existing text creating an exception under Subsection (b) (relating to providing that Chapter 27 (Residential Construction Liability) prevails to the extent of conflict between this chapter and any other law). Deletes existing text providing that Title 16 (Texas Residential Construction Commission Act) prevails to the extent of a conflict between this chapter and Title 16.

SECTION 3. Amends Section 27.003, Property Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that in an action subject to this chapter arising from a construction defect, rather than in an action to recover damages or other relief arising from a construction defect:

(1) a contractor is liable only to the extent a defective condition proximately causes:

(A) actual physical damage to the residence;

(B) an actual failure or lack of capability of a building component to perform its intended function or purpose; or

(C) a verifiable danger to the safety of the occupants of the residence;

(2) a contractor is not liable for damages, rather than for any percentage of damages, caused by:

(A) makes no changes to this paragraph;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) mitigate the damages, rather than take reasonable action to mitigate the damages;

(ii) maintain the residence, rather than take reasonable action to maintain the residence; or

(iii) timely notify a contractor of a construction defect;

(C) makes no changes to this paragraph;

(D) normal cracking or shrinkage cracking due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false, modified, or inaccurate and the contractor did not know and could not reasonably have known of the falsity, modification, or inaccuracy of the information; and

(3) Deletes existing text providing that the contractor, if an assignee of the claimant or a person subrogated to the rights of a claimant fails to request state-sponsored inspection and dispute resolution under Chapter 428 (State-Sponsored Inspection and Dispute Resolution Process), if applicable, before performing repairs, 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 or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor. Makes nonsubstantive changes.

(c) Requires a claimant, to maintain a claim of breach of a warranty of habitability, to establish that a construction defect:

(1) was latent at the time the residence was completed or title was conveyed to the original purchaser; and

(2) has rendered the residence unsuitable for its intended use as a home.

SECTION 4. Amends Section 27.004, Property Code, by amending Subsections (a), (b), (c), (d), and (g) and adding Subsection (g-1), as follows:

(a) Requires the contractor, to the extent requested, to be given the opportunity to conduct up to three inspections during the 35-day period after the date the contractor receives the notice and during any extension of that inspection period provided by law or as otherwise agreed to by the parties. Requires the claimant, rather than requires the claimant on 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, including any expert reports, photographs, and video or audio recordings, rather than videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. Deletes existing text requiring a claimant, in a claim not subject to Subtitle D (State-Sponsored Inspection and Dispute Resolution Process; Statutory Warranty and Building and Performance Standards), Title 16, before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, to give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint.

Deletes existing text providing that a contractor, in a claim subject to Subtitle D, Title 16, is entitled to make an offer of repair in accordance with Subsection (b). Deletes existing text providing that a claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.

(b) Authorizes the contractor, not later than the 60th day after the date the contractor receives the notice under Section 27.004 (Notice and Offer of Settlement), to make a written offer of settlement to the claimant. Provides that the offer is authorized to include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and is required to describe in reasonable detail the kind of repairs which will be made and the time for completion of the repairs if more than 60 days. Requires that the repairs be made not later than the 60th day, rather than the 45th day, after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor.

Deletes existing text authorizing the contractor, not later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th day after the date the contractor receives the notice under this section, if Subtitle D, Title 16, does not apply, to make a written offer of settlement to the claimant.

(c) Deletes existing text providing that if compliance with Subtitle D, Title 16, is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim compliance with Subtitle D, Title 16, is not required. Deletes existing text requiring the claimant to submit a request under Section 428.001 (Request for Resolution) if Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant. Deletes existing text authorizing the inspection provided for by Subsection (a), if Subtitle D, Title 16, does not apply, to be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) is authorized to be made not later than the 15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after the date of service, if Subtitle D, Title 16, does not apply.

(d) Deletes existing text requiring the court or arbitration tribunal to abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to

comply with the requirements of Subtitle D, Title 16, if applicable. Makes a conforming change.

(g) Authorizes the claimant, except as provided by Subsection (e) (relating to providing that a claimant is prohibited from recovering certain amounts if the claimant rejects a reasonable offer or does not permit a reasonable opportunity to inspect or repair the defect), in an action subject to this chapter, to recover only certain economic damages proximately caused by a construction defect, including reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation. Makes nonsubstantive changes.

(g-1) Authorizes the court or arbitration tribunal to order that an offer made by the contractor after the time prescribed is considered timely for purposes of Subsection (b) or (c), as applicable, if the contractor is prejudiced in the contractor's opportunity to inspect as provided for by Subsection (a) or (c) or make an offer provided for by Subsection (b) or (c):

(1) because the claimant:

(A) failed to provide the contractor evidence available and in the claimant's possession, custody, or control at the time of the original notice depicting the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including reports, photographs, videos, or any other evidence; or

(B) amended a claim to add a new alleged defect; or

(2) due to events beyond the contractor's control.

SECTION 5. Amends Section 27.0042(a), Property Code, to delete existing text creating an exception under Subsection (b) (relating to prohibiting a contractor from electing to purchase the residence if certain criteria are met).

SECTION 6. Amends Section 27.006, Property Code, as follows:

Sec. 27.006. CAUSATION. Requires a claimant, in an action to recover damages resulting from a construction defect, to prove certain information, including that the construction defect existed at the time of completion of the construction, alteration, or repair. Makes nonsubstantive changes.

SECTION 7. Amends Chapter 27, Property Code, by adding Section 27.008 and 27.009, as follows:

Sec. 27.008. EFFECT OF ARBITRATION ON LIMITATIONS PERIOD. Provides that the submission of an action subject to this chapter to arbitration has the same effect on the running of a limitations period as a filing in a court in this state.

Sec. 27.009. NO WAIVER. Provides that an attempted waiver of the provisions of this chapter in a contract subject to this chapter is void.

SECTION 8. Repealer: Section 27.004(1) (relating to requiring the contractor to engage the third-party inspector to inspect the repairs and determine if the residence complies with the applicable limited statutory warranty and building performance standards if Subtitle D, Title 16, applies), Property Code.

Repealers: Sections 27.0042(b) (relating to prohibiting a contractor from electing to purchase the residence if certain criteria are met) and 27.007(c) (relating to providing that Section 27.007 (Disclosure Statement Required) does not apply to a contract relating to a home required to be registered under Section 426.003 (Registration of Home)), Property Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2023.