

BILL ANALYSIS

C.S.H.B. 2022
By: Leach
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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and to encourage builders to make reasonable offers of repair to address defective conditions, in addition to removing outdated references and updating statutory language to reflect case law changes and actual practice.

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

C.S.H.B. 2022 amends the Property Code to revise provisions regarding a contractor's liability in an action arising from a residential construction defect as follows:

- requires a claimant to prove the construction defect existed at the time of the completion of the construction, alteration, or repair, in addition to the damages being proximately caused by the defect;
- makes a contractor liable only to the extent a defective condition proximately causes actual physical damage to the residence, an actual failure or lack of capability of a building component to perform its intended function or purpose, or a verifiable danger to the safety of the occupants of the residence;
- exempts a contractor from liability for damages caused by the failure of a person other than the contractor or the contractor's agent, employee, or subcontractor to timely notify a contractor of a construction defect;
- exempts a contractor from liability for damages caused by the contractor's reliance on certain written information obtained from official government records if the information

was modified and the contractor did not know and could not reasonably have known of the modification;

- specifies that the liability exemption for damages caused by normal shrinkage due to drying or settlement of construction components applies with respect to normal cracking or shrinkage cracking due to that drying or settlement;
- changes the liability exemption for damages caused by the failure of a person other than the contractor or the contractor's agent, employee, or subcontractor to take reasonable action to mitigate the damages or maintain the residence to apply to the failure of such a person instead to mitigate the damages or maintain the residence; and
- requires a claimant, for purposes of maintaining a claim of breach of a warranty of habitability, to establish that a construction defect was latent in the residence on the date the residence was completed or title was conveyed to the original purchaser and the defect has rendered the residence unsuitable for its intended use as a home.

C.S.H.B. 2022 revises provisions relating to the notice and offer of settlement before initiating an action for damages arising from a construction defect as follows:

- with respect to the requirement for a claimant to provide evidence to the contractor that includes expert reports, photographs, and videotapes relating to the defect and necessary repairs:
 - removes the condition that the contractor request the evidence; and
 - includes audio recordings among the types of evidence to be provided;
- requires the contractor 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 provided by law or as otherwise agreed to by the parties;
- extends the deadline by which a contractor may make a written settlement offer to the claimant from the 45th day after the date the contractor receives the notice to the 60th day after that date;
- requires the contractor to include in the settlement offer the time for the completion of construction defect repairs if more than 60 days;
- extends the deadline by which repairs must be made, barring certain delays, from the 45th day after the date the contractor receives written notice of acceptance of the settlement offer to the 60th day after that date;
- includes reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation among the economic damages that are proximately caused by construction defect that a claimant in a residential construction liability action may recover; and
- authorizes the applicable court or tribunal in the action to order that a settlement offer made by the contractor after the prescribed time is considered timely if the contractor is prejudiced in the contractor's opportunity to inspect a construction defect or make an offer due to events beyond the contractor's control or because the claimant did the following:
 - amended a claim to add a new alleged defect; or
 - failed to provide the contractor evidence 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 available in the claimant's possession, custody, or control at the time of the original notice.

C.S.H.B. 2022 repeals the provision limiting a contractor's authority to elect to purchase a residence as an alternative to the economic damages.

C.S.H.B. 2022 makes the following changes with respect to certain definitions in provisions relating to residential construction liability:

- changes the meaning of "appurtenance" from a structure or recreational facility that is appurtenant to a residence but not a part of the dwelling unit to any garage, outbuilding, retaining wall, or other structure or recreational facility that is constructed

by a contractor in connection with the construction or alteration of a residence, regardless of whether it is attached to or a part of the dwelling unit;

- defines "townhouse" as a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides;
- removes from the term "construction defect" any physical damage to a residence, appurtenance, or real property on which the residence and appurtenance are affixed proximately caused by a construction defect and specifies that the matter concerning the design, construction, or repair of a residence or appurtenance is a deficiency in such;
- includes as a "contractor" any person contracting for the construction of a new residence constructed by or on behalf of that person and a person contracting with an owner or the developer other housing projects for the construction or sale of one or more new residences;
- specifies that "economic damages" do not include damages for bodily or personal injury;
- specifies that "residence" includes the real property and improvements for a detached one-family or two-family dwelling, a townhouse not more than three stories above grade plane in height with a separate means of egress, or an accessory structure not more than three stories above grade plane in height; and
- clarifies that the definition of "residence" includes units and common elements in a multiunit residential structure in which the individual units are sold to owners under a condominium or cooperative system.

C.S.H.B. 2022 establishes that the submission of a residential construction liability action to arbitration has the same effect on the running of a limitations period as a filing in a court in Texas. The bill makes an attempted waiver of statutory provisions regarding residential construction liability actions in an applicable contract void. The bill applies only to a cause of action that accrues on or after the bill's effective date.

C.S.H.B. 2022 repeals the following provisions of the Property Code:

- Section 27.004(l);
- Section 27.0042(b); and
- Section 27.007(c).

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2022 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a requirement not in the introduced for a claimant in an action to recover damages resulting from a construction defect to prove that the defect existed at the time of the completion of the construction, alteration, or repair.

While both the introduced and substitute make a contractor liable only to the extent a defective condition proximately causes certain conditions, the substitute changes the condition of imminent danger to the safety of the occupants, as in the introduced, to a verifiable danger to the safety of the occupants.

The substitute changes the conditions that a claimant must establish for purposes of maintaining a claim of breach of a warranty of habitability from the construction defect having existed in the

residence on the date the residence was completed or title was conveyed and the defect having rendered the residence uninhabitable, as in the introduced, to the construction defect being latent at the time the residence was completed or title was conveyed and the defect having rendered the residence unsuitable for its intended use as a home.

The substitute omits the requirement that, for purposes of sending a written notice relating to construction defects before initiating an action for damages, the claimant act with reasonable diligence after discovery and investigation of the construction defect to send the notice, which appeared in the introduced.

The substitute does not include the removal of the condition that, with respect to the requirement for a claimant to provide certain evidence to a contractor before initiating an action for damages arising from a construction defect, that the evidence be discoverable under Texas Rules of Civil Procedure. The removal of this condition was present in the introduced.

The substitute does not include the authorization that was in the introduced for a court or arbitration tribunal that orders an action abated to award the contractor reasonable and necessary attorney's fees incurred by the contractor to seek the abatement. The substitute does not include a provision from the introduced clarifying that the claimant may not recover any economic damages other than the specified economic damages that the claimant may recover. The substitute does include among the economic damages that may be awarded to a claimant reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation, the inclusion of which was not in the introduced.

The substitute revises the authorization that was in the introduced version for a court or arbitration tribunal to order that an offer made by the contractor is considered timely if the contractor was prejudiced in the contractor's opportunity to inspect a construction defect or make an offer due to certain conditions, as follows:

- by omitting the condition that the claimant delayed giving written notice to the contractor; and
- by specifying that, with respect to the condition that the claimant failed to provide evidence depicting the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, the evidence is available and in the claimant's possession, custody, or control.

The substitute includes a provision absent from the introduced establishing that an attempted waiver of provisions regarding residential construction liability actions in an applicable contract is void.

The substitute omits the repeal of Section 27.004(f), Property Code, relating to the inapplicability of limitations on damages that may be recovered by a claimant if the contractor fails to make a reasonable settlement offer, which was present in the introduced.