

BILL ANALYSIS

Senate Research Center

S.B. 1768
By: Creighton
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1768 amends current law relating to the correction or removal of certain obsolete provisions of the Property Code.

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 Sections 27.001(4), (5), and (8), Property Code, to redefine "construction defect," "contractor," and "structural failure."

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

(b) Deletes existing text creating an exception under this subsection. Deletes existing text providing that Title 16 (Texas Residential Construction Commission Act) prevails, to the extent of conflict between Chapter 27 (Residential Construction Liability) and Title 16.

SECTION 3. Amends Section 27.003(a), Property Code, as follows:

(a) Deletes existing text providing that the contractor, in an action to recover damages or other relief arising from a construction defect, 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.

SECTION 4. Amends Sections 27.004(a), (b), (c), and (d), Property Code, as follows:

(a) Deletes existing text providing that a contractor, in a claim subject to Subtitle D (State-Sponsored Inspection and Dispute Resolution Process; Statutory Warranty and Building and Performance Standards), 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. Makes a conforming change.

(b) 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, to make a written offer of settlement to the claimant. Makes a conforming change.

(c) Deletes existing text providing that compliance with Subtitle D, Title 16, if compliance with Subtitle D, Title 16, within the period prescribed by certain subsections

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, is not required. Deletes existing text requiring the claimant, if Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, to submit a request under Section 428.001 (Request for Resolution). Deletes existing text authorizing the offer provided for by Subsection (b) 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. Makes nonsubstantive and conforming changes.

(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.

SECTION 5. Amends Section 27.0042(b), Property Code, as follows:

(b) Deletes existing text prohibiting a contractor from electing to purchase the residence under Subsection (a) (relating to authorizing a written agreement between a contractor and a homeowner to provide that the contractor is authorized to the purchase the residence sold to the homeowner if certain criteria are met) if the contractor makes such an election later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable. Makes nonsubstantive changes.

SECTION 6. Amends Section 53.172, Property Code, as follows:

Sec. 53.172. BOND REQUIREMENTS. Requires that the bond meet certain criteria, including be executed by a corporate surety authorized and admitted to do business under the law in this state and licensed by this state to execute the bond as surety, subject to Subchapter A (Certain Required or Permitted Obligations), Chapter 3503, Insurance Code, rather than subject to Section 1, Chapter 87 (relating to bonds, undertakings, recognizances, guarantees, or other obligations executed by surety companies duly qualified to do business in Texas), Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

SECTION 7. Amends Section 74.3013(h), Property Code, as follows:

(h) Provides that a nonprofit cooperative corporation, in this section, means a cooperative corporation organized under certain laws, including the Texas Nonprofit Corporation Law, as described by Section 1.008(d) (relating to providing that certain provisions to the extent applicable to nonprofit corporations are authorized to be cited as the "Texas Nonprofit Corporation Law"), Business Organizations Code, and the Texas Cooperative Association Law, as described by Section 1.008(i) (relating to providing that certain provisions to the extent applicable to nonprofit corporations are authorized to be cited as the "Texas Cooperative Association Law"), Business Organizations Code, rather than the Texas Non-Profit Corporation Act (Article 1396-1.01 (Short Title, Captions, Parts, Articles, Sections, Subsections and Paragraphs) et seq., Vernon's Texas Civil Statutes) and the Cooperative Association Act (Article 1396-50.01 (Cooperative Association Act), Vernon's Texas Civil Statutes).

SECTION 8. Amends Sections 112.058(c) and (d), Property Code, to make conforming changes.

SECTION 9. Amends Section 202.002(b), Property Code, as follows:

(b) Provides that Chapter 202 (Construction and Enforcement of Restrictive Covenants) does not affect the requirements of Chapter 123 (Community Homes for Persons with Disabilities), Human Resources Code, rather than the requirements of the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes).

SECTION 10. Amends Section 202.003(b), Property Code, to make a conforming change.

SECTION 11. Amends Section 204.004(b), Property Code, to make a conforming change.

SECTION 12. Amends Section 204.010(a), Property Code, to makes conforming changes.

SECTION 13. Repealer: Section 5.018 (Disclosure of Absence of Certain Warranties), Property Code.

Repealers: Sections 27.001(3) (relating to the definition of "commission") and (9) (relating to the definition of "third-party inspector"), Property Code.

Repealer: Section 27.004(l) (relating to the application of Subtitle D, Title 16, to certain claims), Property Code.

Repealer: Section 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 14. Effective date: upon passage or September 1, 2023.