

SUBJECT: Revising residential construction liability provisions

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Leach, Murr, Schofield, Slawson, Vasut
4 nays — Julie Johnson, Davis, Flores, Moody

WITNESSES: For —Jacob Barde, El Paso Association of Builders; Gregory Harwell, Ned Muñoz, Texas Association of Builders; James Rudnicki (*Registered, but did not testify*: Lee Ann Alexander, American Property Casualty Association; Gene Lantrip, Big Country Home Builders Association; Kent Conine, Dallas Builders Association; Raymond Adauto, El Paso Association of Builders; Lynn Motheral, Don Allen, Greater Fort Worth Builders Association; Troy Allen, Adam Aschmann, John Burchfield, Greater Houston Builders Association; Shad Schmid, Greater San Antonio Builder Association; Mark Sachs, Letha Sachs, Scott Turner, Home Builders Association of Greater Austin; Shawn Kirkpatrick, KB Home Lone Star, Inc.; Brodie Sachs, Southern Framing; Lee Parsley, Texans for Lawsuit Reform; Ben Stratmann, Texans for Reasonable Solutions; Jared Bryan, Donnie Evans, Scott Norman, Texas Association of Builders; DJ Pendleton, Texas Manufactured Housing Association; Brett Martin, Tilson Homes; Abigail Schmid; Olivia Schmid; Andrea Schmid; Calvin Tillman)

Against —Greg Cagle, Texas Legislative Action Committee; Craig Eiland, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Angela Hovis; Cass McKenzie (*Registered, but did not testify*: Bill Kelly, Mayor’s Office, City of Houston; Drew Campbell)

BACKGROUND: Some have suggested that the Residential Construction Liability Act (RCLA) should be revised to reflect current case law and include clarifications and limits on a contractor's liability that could encourage reasonable repair offers.

DIGEST: CSHB 2022 would revise provisions regarding a contractor's liability for

certain purported residential construction defects by limiting a contractor's liability to defective conditions that proximately caused an actual physical damage to the residence, an actual failure or lack of capability of the building component to perform its intended function, or a verifiable danger to the safety of the occupants of the residence.

The bill would extend exemptions to liability for damages caused by:

- failure of a person other than the contractor or an agent, employee, or subcontractor to timely notify a contractor of a construction defect;
- normal cracking due to drying or settlement of construction components within the tolerance of building standards; or
- the contractor's reliance on certain written information that had been modified and the contractor did not know or could not have been reasonably expected to know of the modification.

The bill would amend the exemption from liability for damages caused by the failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor failed to mitigate the damages or maintain the residence, rather than failure of such a person to take reasonable action to mitigate or maintain the residency.

To maintain a claim of a breach of a habitability warranty, the claimant would be required to establish that a construction defect was latent at the time the residence was completed or title was conveyed to the original purchaser and that the defect rendered the residence unsuitable for its intended use as a home.

Under certain conditions, a contractor would have to be given the opportunity to conduct up to three inspections during the 35-day period after the contractor was notified of a defect and during any applicable extensions of that period.

The amount of time contractors would be given to make a written offer for repair of the defect would be extended from 45 days to 60 days after the

contractor received notice of the defect. The bill would require the contractor to specify the time for completion of the repairs if it would be more than 60 days.

The bill would amend the list of economic damages that a claimant could recover to include reasonable and necessary arbitration related expenses. To recover damages resulting from a construction defect, the claimant would be required to prove that the defect existed at the time of completion of the construction, alteration, or repair.

An offer made by a contractor after the time prescribed could be considered timely if the contractor was limited in their opportunity to make an inspection or offer either because the claimant failed to provide necessary evidence or added new alleged defects to the claim, or due to events beyond the contractor's control.

A relevant action submitted to arbitration would have the same effect on the running of a limitations period as a filing in a court of the state. An attempted waiver of the provisions established in current statute would be void.

The bill would take effect September 1, 2023 and would apply only to a cause of action that accrued on or after that date.