

SUBJECT: Amending rights to rescind contracts for repair or renovations to homesteads

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Corte, George, Giddings, Ritter, Siebert, Solomons,
Woolley

0 nays

1 present, not voting — Dukes

WITNESSES: For — Robert Bass, Lumbermen's Association of Texas; Herbert Haws,
Rodney Jones, Texas Association of Builders; Lynn Motheral, Texas
Association of Builders, Remodelers Council

Against — None

On — None

BACKGROUND: Under Chapter 39 of the Business and Commerce Code, contracts for goods or services worth more than \$25 can be rescinded without penalty within three days if the contract was signed at a person's residence, rather than a place of business.

Art. 16, sec. 50 of the Texas Constitution, the 1997 home equity amendment, provides for a right of rescission of contracts for repairs or renovations to a homestead when a lien would attach to the homestead. A contract, which must be in writing and signed by the owner and with consent of both spouses, cannot be executed until 12 days after an application for credit is filed by the homeowner and may be rescinded without penalty three days after execution of the contract. An exception is allowed immediate repairs to conditions that would materially affect the health and safety of a resident of the homestead, if the owner acknowledges this in writing. Also, the contract may be executed by the owner and the owner's spouse only in the office of the third-party lender making the extension of credit, an attorney, or a title company.

DIGEST: CSHB 2605 would allow rescission of a contract for repair or renovation of a homestead if the contract was executed by the owner of a homestead or either spouse at the homestead property. However, such contracts could not be rescinded if:

- ! the owner, or both spouses for a family homestead, had been represented by a licensed attorney;
- ! the residential construction contract was negotiated by a licensed real estate broker; or
- ! the contract was executed at another location, not at the homestead itself

A purchaser, lender, or assignee for value could rely on a statement initialed by the owner or both spouses affirming that the contract was not executed at the homestead.

The bill would require that the disclosure statement required by Chapter 39 of the Business and Commerce Code regarding right of rescission be included in such contracts.

These provisions would be added to Subchapter K, Chapter 53 of the Property Code, regulating mechanic's, contractor's, and materialman's liens.

The bill would take effect on January 1, 2000, if HJR 73, amending the constitution provision, was approved.

SUPPORTERS SAY: HB 2605 would clarify the right to rescind contracts for homestead repairs or renovations, removing the burdensome 12-day waiting period required by the Constitution, if HJR 73 is approved. This provision, in effect, creates a two-week delay before home repairs can begin.

Under Chapter 39 of the Business and Commerce Code, consumers already have the right to rescind a contract for goods or services within three days, provided that the contract was signed at the consumer's home and not at a place of business. This important provision is intended to protect consumers against unscrupulous, high-pressure, home repair solicitors.

The home equity amendment approved last session provides that after a property owner applies for a loan to pay for home improvements, a 12-day waiting period goes into effect. The contract can be executed after that period,

but the property owner still has the three-day period to rescind the contract. Therefore, construction work, however minor, cannot begin for 15 days. This inconveniences home owners and contractors both.

HB 2605 also would protect consumers and ensure compliance with the law by making sure both contractors and consumers are better informed. Most contractors are very familiar with Chapter 53 of the Property Code, but may not be aware of the rights granted consumers under Chapter 39 of the Business and Commerce Code or the Constitution. HB2605 would help by making sure this provision is located in the Property Code.

OPPONENTS
SAY:

The 12-day waiting period in the Texas Constitution is intended to protect consumers and should not be removed. Without the waiting period, unscrupulous solicitors offering repair services could pressure unsuspecting homeowners into signing contracts committing them to the purchase of expensive repairs. The 12-day wait, coupled with the three-day right of rescission, is an important consumer safeguard that should be preserved.

NOTES:

The committee substitute would specify that a purchaser, lender, or assignee for value could rely on a statement in a contract stating that the contract had not been executed at the homestead property.

HB 2605 would take effect only if HJR 73 by Solomons is approved. As substituted by the Business and Industry Committee, HJR 73 would repeal certain requirements in Art. 16, sec. 50(a) of the Constitution for home improvement liens to attach to a homestead. It would repeal the 12-day period for execution of a home improvement contract, the three-day rescission period, and the requirement that the contract be executed only at the office of a third party lender making the loan, an attorney, or a title company. It would provide that a home improvement contract could be rescinded under terms set by law if the contract was executed at the residential homestead. CSHJR was reported favorably on April 22.