

SUBJECT: Limiting fine for failure to provide construction contract consumer notice

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Nixon, Rose, King, Madden, Martinez Fischer, Raymond,
Talton

0 nays

2 absent — Strama, Woolley

SENATE VOTE: On final passage, March 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Thomas Ratliff, Home Depot, Inc.

Against — None

BACKGROUND: Property Code, sec. 27.007 requires that residential construction contracts contain a notice to consumers informing them of their rights in case they have complaints arising from the performance of contracts that are not corrected through normal warranty service. The notice must inform the consumer that, in order to maintain a suit against the contractor, the consumer must provide notice to the contractor about any complaint within 60 days. If the contract does not contain this notice to the consumer, the consumer is authorized to recover \$500 in addition to any other remedy allowed.

DIGEST: SB 334 would amend sec. 27.007 to state that a consumer may not recover the \$500 penalty from the contractor for not providing the required notice unless the consumer also proves actual damages were caused by the construction defect.

The bill would take effect September 1, 2005, and would apply to any case not finally adjudicated before that date.

SUPPORTERS SB 334 would clarify that a consumer must show actual damages before

SAY: recovering the \$500 penalty for failure to provide the notice of consumer rights in a residential construction contract. When the Legislature allowed a consumer to recover a \$500 penalty from a contractor for not including the required notice, it did not intend for the failure to provide such notice to be a separate cause of action. A consumer should be required to show actual damages before seeking to recover the \$500 penalty.

OPPONENTS
SAY: SB 334 retroactively would apply to all cases not resolved before September 1, 2005. Sec. 27.007 clearly established a right to recover a penalty of \$500 from contractors, separate from any other claim, and some people have relied on this right in order to file suit against contractors. Attorneys who have accepted such cases already have invested money into such litigation. It would be unfair for the Legislature retroactively to decide that a right that it created no longer exists. If it was not the intent of the Legislature to create such an independent right, the courts will decide that.