

## **BILL ANALYSIS**

Senate Research Center

S.B. 867  
By: Cain  
Jurisprudence  
3-21-97  
As Filed

### **DIGEST**

Recently, a Fort Worth court of civil appeals decision suggested that the language of the Residential Construction Liability Act (RCLA) damage limitation was not clearly stated. The cap on damages is limited to the purchase price of the home. RCLA does not take into account older homes with improvements. This bill would clarify the damage provision, so that the second owners would receive the same benefits and obligations of the first owner, clearly state that subcontractors and design professionals are included under RCLA, clarify that the test for contractors and owners is consistent, and add an arbitration clause to reflect the growing legal trend.

### **PURPOSE**

As proposed, S.B. 867 amends the Residential Construction Liability Act (RCLA) regarding residential construction liability to clarify the damage provision, so that the second owners would receive the same benefits and obligations of the first owner, clearly state that subcontractors and design professionals are included under RCLA, clarify that the test for contractors and owners are consistent, and add an arbitration clause to reflect the growing legal trend.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 27.001(3), Property Code, to redefine "contractor."

SECTION 2. Amends Section 27.002(a), Property Code, to provide that this section applies to certain actions to recover damages from a construction defect except by an owner of a residence, including an owner subsequent to the owner contracting with the contractor.

SECTION 3. Amends Section 27.003(a), Property Code, to delete a provision that a contractor is not liable for damages caused by the negligence of a person other than the contractor or an employee or subcontractor. Makes a conforming change.

SECTION 4. Amends Section 27.004, Property Code, by amending Subsections (f), (g), (i), and (m) and adding Subsection (p), as follows:

(f) Provides that if a claimant rejects a reasonable amount the claimant may not recover damages in excess of certain reasonable cost of repairs.

(g) Provides that in certain instances, the limitations on damages and defenses to liability provided for in Subsection (f), rather than this section, do not apply.

(i) Prohibits total damages in a suit under this chapter from exceeding the greater of the claimant's purchase price for the residence or the fair market value of the residence without the construction defect.

(m) Makes a conforming change.

(p) Sets forth requirements for mediation.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.