

BILL ANALYSIS

Senate Research Center

H.B. 2605
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Economic Development
5/13/1999
Engrossed

DIGEST

Products frequently misrepresented by door-to-door salespeople include home improvements such as siding and storm windows. Chapter 39, Business & Commerce Code (Cancellation of Certain Consumer Transactions), protects consumers from unscrupulous salespeople by authorizing a purchaser of a door-to-door sale three days to cancel the transaction. However, only certain home solicitation transactions are encompassed by the law. For example, a consumer who is represented by a licensed attorney or who uses a licensed real estate broker to negotiate the transaction cannot rescind the purchase, although the contractor can legally fix a lien on the homestead.

In addition, the passage of the "home equity" constitutional amendment created some ambiguities in the law relating to a lien on a homestead for home improvements. The wording of the amendment appears to distinguish between new improvements and the repair and renovation of existing improvements. Moreover, the law does not specify whether the three-day right of rescission under Chapter 39, Business & Commerce Code, applies to all improvements or only to repairs and renovations. H.J.R. 73 has been introduced to eliminate these ambiguities.

H.B. 2605 would authorize the owner of a residential homestead or family homestead to rescind a residential construction contract for the repair or renovation of homestead property if the contract is executed at the homestead property. In addition, a purchaser, lender, or assignee for value without actual knowledge is authorized to conclusively rely on a statement in a contract initialed by the owner or, in the case of a family homestead, both spouses acknowledging that the contract was not executed at the homestead property. H.B. 2605 would take effect only if the voters approve H.J.R. 73.

PURPOSE

As proposed, H.B. 2605 amends a regulation providing a right of rescission for certain owners executing residential construction contracts for improvements on homestead property.

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 Chapter 53K, Property Code, by adding Section 53.2541, as follows:

Sec. 53.2541. RIGHT OF RESCISSION. Applies this section only to a residential construction contract for the repair or renovation of homestead property if the contract is executed at the homestead property by the owner or by either spouse in the case of a family homestead. Sets forth conditions under which this section does not apply. Authorizes an owner to rescind a contract subject to this section. Authorizes a purchaser, lender, or certain assignees to conclusively rely on a statement in the acknowledgment or the residential construction contract initiated by the owner or both spouses acknowledge that the contract was not executed at the homestead property.

SECTION 2. Amends Chapter 53K, Property Code, by adding Section 53.2551, as follows:

Sec. 53.2551. ADDITIONAL DISCLOSURE STATEMENT REQUIRED FOR CERTAIN RESIDENTIAL CONSTRUCTION CONTRACTS. Requires certain contracts to contain a disclosure statement as prescribed by Chapter 39, Business & Commerce Code.

SECTION 3. Effective date: January 1, 2000, but only if the constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property, takes effect; otherwise this Act has no effect.

SECTION 4. Emergency clause.