

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 198  
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Intergovernmental Relations  
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Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, parts of the Property Code, relating to executory contracts for the conveyance of real property, need to be restructured to make a number of changes, including making contracts for deed protections apply statewide and requiring disclosure of tax payment and insurance coverage information by sellers. As proposed, C.S.S.B. 198 makes these and other changes, consolidating and restructuring Chapter 5D and E of the Property Code.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapters D and E, Chapter 5, Property Code, as follows:

Redesignates existing Section 5.065 as Section 5.061. New heading: DEFINITION.

Redesignates existing Section 5.091 as Section 5.062. APPLICABILITY. Deletes text regarding an executory contract that covers real property, per capita income, and location within 200 miles of an international border. Provides that this subchapter applies to a transaction involving an executory contract for conveyance of real property used or to be used as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code. Provides that this subchapter does not apply to a transaction involving the sale of state land. Provides that Sections 5.066 and 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property is related to the seller within the second degree and has waived the applicability of those sections in a written agreement.

Redesignates existing Section 5.062 as Section 5.063. NOTICE. Requires notice under this section to be in writing and delivered by registered or certificate mail, return receipt requested. Deletes text regarding notice by other writing.

Redesignates existing Section 5.061 as Section 5.064. New heading: SELLER'S REMEDIES ON DEFAULT. Authorizes a seller to enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property if: the seller notifies the purchaser of the purchaser's right to cure the default within the 60-day period described by Section 5.065; the purchaser fails to cure the default within the 60-day period; and Section 5.066 does not apply. Deletes language regarding property used or to be used as the purchaser's residence and payment of the purchase price by certain times.

Redesignates existing Section 5.063 as Section 5.065. RIGHT TO CURE DEFAULT. Authorizes a purchaser in default under an executory contract for the conveyance of real

property to avoid the enforcement of a remedy described by Section 5.064, rather than that section, by complying with the terms of the contract on or before the 60th day after the date notice is given under that section, rather than up to the date of compliance. Deletes text regarding expiration of the applicable period provided by Section 5.061. Makes a conforming change.

Redesignates existing Section 5.101 as Section 5.066. EQUITY PROTECTION; SALE OF PROPERTY. Requires the seller to warrant that the property is free from any encumbrance. Deletes text regarding an action involving a bona fide purchaser. Makes conforming changes.

Redesignates existing Section 5.064 as Section 5.067. PLACEMENT OF LIEN FOR UTILITY SERVICE.

Redesignates existing Section 5.093 as Section 5.068. New heading: FOREIGN LANGUAGE REQUIREMENT. Requires the seller, if the negotiations preceding execution of an executory contract are primarily in a language other than English, to provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default required by this subchapter. Makes conforming changes.

Redesignates existing Section 5.094 as Section 5.069. SELLER'S DISCLOSURE OF PROPERTY CONDITION. Deletes text regarding back taxes owed on property and substitutes "property" for "land" in a written notice required to be attached to an executory contract.

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE. Requires the seller, before an executory contract is signed by the purchaser, to provide the purchaser with a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08 (Tax Certificate), Tax Code; and a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates the name of the insurer and the insured; a description of the property insured; and the amount for which the property is insured. Provides that the seller's failure to provide information required by this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46 (Deceptive Trade Practices Unlawful), Business & Commerce Code, and is actionable in a suit brought under Chapter 17E (Deceptive Trade Practices and Consumer Protection), Business & Commerce Code; and that failure entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller. Provides that Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Chapter 17E, Business & Commerce Code.

Redesignates existing Section 5.095 as Section 5.071. SELLER'S DISCLOSURE OF FINANCING TERMS. Requires the seller, before an executory contract is signed by the purchaser, to provide to the purchaser a written statement that specifies the fact that the seller is prohibited from charging a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED. Provides that an executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by the party's authorized representative. Provides that the rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract. Prohibits an executory contract from being varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract. Requires the seller to include in a

separate document or in a provision of the contract a certain statement printed in certain type or certain typewritten letters. Provides that the seller's failure to provide the notice required by this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Chapter 17E, Business and Commerce Code. Provides that the failure also entitles the purchaser to cancel and rescind the executory contract and receive a full refund of payments made to the seller. Provides that Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Chapter 17E, Business & Commerce Code.

Redesignates existing Section 5.096 as Section 5.073. **CONTRACT TERMS PROHIBITED.** Makes a conforming change.

Redesignates existing Section 5.097 as Section 5.074. **PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE.**

Redesignates existing Section 5.098 as Section 5.075. New heading: **PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001.** Authorizes a purchaser, on an executory contract entered into before September 1, 2001, rather than 1995, to pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the property. Makes a conforming change.

Redesignates existing Section 5.099 as Section 5.076. **RECORDING REQUIREMENTS.** Requires the seller, except as provided by Subsection (b), to record the executory contract, including the attached disclosure statement required on or before the 30th day after the date the contract is executed. Makes a conforming change.

Redesignates existing Section 5.100 as Section 5.077. **ANNUAL ACCOUNTING STATEMENT.** Requires the statement to include the amounts paid to insure the property on the purchaser's behalf if collected by the seller; if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2). Provides that a seller who fails to comply with Subsection (a) is liable to the purchaser for liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement and reasonable attorney's fees. Deletes text regarding deducting 15 percent of each monthly payment and reimbursement to the seller for the amount deducted. Makes conforming and nonsubstantive changes.

Sec. 5.078. **DISPOSITION OF INSURANCE PROCEEDS.** Requires the named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property to inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of the executory contract for conveyance and the term of the contract; and the name and address of the other party to the contract. Requires an insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged to issue the proceeds jointly to the purchaser and the seller designated in the contract. Requires the purchaser and seller to ensure that the proceeds are used to repair, remedy, or improve the condition on the property. Provides that the seller's or the purchaser's failure to comply with Subsection (c) is a false, misleading or deceptive act or practice and is actionable in a suit brought under Chapter 17E, Business & Commerce Code. Provides that Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Chapter 17E, Business & Commerce Code.

Redesignates existing Section 5.102 as Section 5.079. TITLE TRANSFER. Provides that a seller who violates Subsection (a) is liable to the purchaser for, rather than subject to a penalty of, liquidated damages in certain amounts, and reasonable attorney's fees. Provides that if a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending is authorized to waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

Redesignates existing Section 5.103 as Section 5.080. LIABILITY FOR DISCLOSURES.

SECTION 2. Repealer: the heading to Subchapter E (Requirements for Executory Contract for Conveyance Applicable to Certain Counties), Chapter 5, Property Code.  
Repealer: Section 5.092 (Determination and Notice of Applicability), Property Code.

SECTION 3. Effective date: September 1, 2001.  
Makes application of this Act prospective, with exceptions.

### **SUMMARY OF COMMITTEE CHANGES**

Committee substitute differs from the original in the following ways:

SECTION 1. Sec. 5.062. Makes this subchapter applicable to an executory contract for conveyance of real property for the residence of a relative of the purchaser. Makes this subchapter inapplicable to a transaction involving the sale of state land. Makes Sections 5.066 and 5.068-5.080 inapplicable to a transaction involving an executory contract for conveyance if the purchaser is related to the seller and has waived the applicability of those sections.

Sec. 5.064. Changes a specific condition under which a seller is authorized to enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default from the sellers' notification of the purchaser of the expiration of 60 days after the date notice is given, to the seller's notification of the purchaser of the purchaser's right to cure the default within the 60-day period described by Section 5.065. Deletes the stipulation that the property be used as the purchaser's residence.

Sec. 5.065. Replaces a vague reference to "that section" with the specific section, and replaces a reference to the date of the compliance with "that section."

Sec. 5.070. Requires the name of the insured, as well as the name of the insurer, to be indicated on the legible copy of the insurance policy, binder, or other evidence relating to the property that is required for this section.

Sec. 5.075. Replaces the year 1995 with the year 2001 on the specific date of an executory contract related to a purchaser's authorization to pledge interest in a property.

Sec. 5.076. Makes the deadline for the seller to record the contract the 30th day instead of the 60th day after the date the contract is executed.

Sec. 5.078. Removes the stipulation that the real property be used as the purchaser's residence. Adds improvements to the property to the things that may be done with the proceeds under an insurance policy. Makes the purchaser's failure to comply with Subsection (c) a false, misleading, or deceptive act or practice, as well as the failure of the seller. Removes the entitlement of the seller to cancel and rescind the executory contract and retain all payments made to the seller.

Sec. 5.079. Adds an authorization of the court to waive damage payments and attorney's fees in the case of a person who has gained the property by will or intestate succession and is trying diligently to obtain a necessary court order to establish the title.

SECTION 2. No changes.

SECTION 3. Makes conforming changes.