

CHAPTER 164

COURTS

HOUSE BILL 07-1338

BY REPRESENTATIVE(S) Pommer, Carroll M., Judd, Levy, Madden, Merrifield, Benefield, Frangas, McGihon, Borodkin, Carroll T., Casso, Green, Labuda, Primavera, Solano, and Soper; also SENATOR(S) Veiga, Tochtrop, Sandoval, Groff, and Windels.

AN ACT

CONCERNING THE ELIMINATION OF CERTAIN RESTRICTIONS ON LEGAL RIGHTS AVAILABLE TO RESIDENTIAL PROPERTY OWNERS WITH RESPECT TO CONSTRUCTION DEFECT ACTIONS, AND, IN CONNECTION THEREWITH, ENACTING THE "HOMEOWNER PROTECTION ACT OF 2007".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and may be cited as the "Homeowner Protection Act of 2007".

SECTION 2. 13-20-806, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-20-806. Limitation of damages. (7) (a) IN ORDER TO PRESERVE COLORADO RESIDENTIAL PROPERTY OWNERS' LEGAL RIGHTS AND REMEDIES, IN ANY CIVIL ACTION OR ARBITRATION PROCEEDING DESCRIBED IN SECTION 13-20-802.5 (1), ANY EXPRESS WAIVER OF, OR LIMITATION ON, THE LEGAL RIGHTS, REMEDIES, OR DAMAGES PROVIDED BY THE "CONSTRUCTION DEFECT ACTION REFORM ACT", THIS PART 8, OR PROVIDED BY THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S., AS DESCRIBED IN THIS SECTION, OR ON THE ABILITY TO ENFORCE SUCH LEGAL RIGHTS, REMEDIES, OR DAMAGES WITHIN THE TIME PROVIDED BY APPLICABLE STATUTES OF LIMITATION OR REPOSE, ARE VOID AS AGAINST PUBLIC POLICY.

(b) A WAIVER, LIMITATION, OR RELEASE CONTAINED IN A WRITTEN SETTLEMENT OF CLAIMS, AND ANY RECORDED NOTICE OF SUCH SETTLEMENT, BETWEEN A RESIDENTIAL PROPERTY OWNER AND A CONSTRUCTION PROFESSIONAL AFTER SUCH A CLAIM HAS ACCRUED SHALL NOT BE RENDERED VOID BY THIS SUBSECTION (7).

(c) THIS SUBSECTION (7) APPLIES ONLY TO THE LEGAL RIGHTS, REMEDIES, OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DAMAGES OF CLAIMANTS ASSERTING CLAIMS ARISING OUT OF RESIDENTIAL PROPERTY AND SHALL NOT APPLY TO SALES OR DONATIONS OF PROPERTY OR SERVICES BY A BONA FIDE CHARITABLE ORGANIZATION THAT IS IN COMPLIANCE WITH THE REGISTRATION AND REPORTING REQUIREMENTS OF ARTICLE 16 OF TITLE 6, C.R.S.

(d) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (7) TO THE CONTRARY, THIS SUBSECTION (7) SHALL APPLY ONLY TO ACTIONS THAT ARE GOVERNED BY THE PROVISIONS OF THIS PART 8, ALSO KNOWN AS THE "CONSTRUCTION DEFECT ACTION REFORM ACT", AND SHALL NOT BE DEEMED TO ALTER OR AMEND THE LIMITATIONS ON DAMAGES CONTAINED IN THIS PART 8, INCLUDING THE LIMITATIONS ON TREBLE DAMAGES AND ATTORNEY FEES SET FORTH IN THIS SECTION.

(e) NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RENDER VOID ANY REQUIREMENT TO PARTICIPATE IN MEDIATION PRIOR TO FILING A SUIT OR ARBITRATION PROCEEDING.

SECTION 3. 13-20-807, Colorado Revised Statutes, is amended to read:

13-20-807. Express warranty - not affected. The provisions of this part 8 are not intended to abrogate or limit the provisions of any express warranty OR THE OBLIGATIONS OF THE PROVIDER OF SUCH WARRANTY. The provisions of this part 8 shall apply to those circumstances where an action is filed asserting one or more claims for relief including a claim for breach of warranty; EXCEPT THAT IN ANY SUCH ACTION, SECTION 13-20-806 (7) SHALL NOT APPLY TO BREACH OF EXPRESS WARRANTY CLAIMS EXCEPT TO THE EXTENT THAT PROVISIONS OF THE EXPRESS WARRANTY PURPORT TO WAIVE OR LIMIT CLAIMS FOR RELIEF OTHER THAN THE BREACH OF EXPRESS WARRANTY CLAIM. The provisions of this part 8 shall not be deemed to require a claimant who is the beneficiary of an express warranty to comply with the notice provisions of section 13-20-803.5 to request ordinary warranty service in accordance with the terms of such warranty. A claimant who requires warranty service shall comply with the provisions of such warranty.

SECTION 4. Effective date - applicability. This act shall take effect upon passage and shall apply to actions filed on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 20, 2007