

July 6, 2004

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 entitled:

AN ACT

Relating to resolution of disputes concerning alleged defective residential construction.

I disapprove of said Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081. My reasons for disapproval are as follows:

- I. Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 fails to adequately protect consumers.

Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 places unreasonable obstacles that will prevent or delay homeowners from exercising their legal rights as a result of a homebuilder's mistake or malfeasance. This bill puts an undue burden on homeowners, requiring them to wait up to three to six months before being made whole. These delays could cause considerable health or safety risks. Further, they are not justified because homeowners are typically forced to file lawsuits only after all other means of informal resolution have proven fruitless.

- II. Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 gives unwarranted protections that tip the scales of justice against homeowners.

While it is a laudable goal to resolve disputes without litigation, this bill puts consumers at a distinct and unjustified disadvantage. Many homeowners do not have the know-how or legal tools to address construction defects, and this legislation would only further hinder their ability to rectify a homebuilder's mistake. This is especially troubling in light of the fact that many working-class Missourians are in the process of becoming first-time homebuyers as a result of moderately low interest rates. Many homeowners could be uncomfortable following the complicated requirements in this bill and will be forced to hire an attorney to assist them. Otherwise, homeowners who miss one of the many deadlines in the bill or fail to navigate the complicated procedures the bill mandates would have their lawsuits dismissed.

Additionally, forcing mediation upon two parties in unequal bargaining positions clearly puts the contractor in a distinct advantage over the homebuyer. Mediation is an appropriate and important form of alternative dispute resolution, but consumers should not be forced into it in these circumstances. Mandatory mediation, where parties with unequal leverage are involved, is unproductive, particularly in small construction disputes where the cost of mediation could exceed the value of the claim. The mediation mandate in this bill, moreover, is flawed because it does not require either party to send a negotiator authorized to enter into a settlement. This creates a substantial and undesirable risk of bad-faith negotiation.

- III. Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 may violate the open courts provisions of the Missouri Constitution's Bill of Rights.

Provisions in this legislation contain procedural hurdles that, without adequate justification, delay the claimant from filing a lawsuit against a contractor. Article 1, Section 14 of the Missouri Constitution provides, "That the court of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay." Missouri's judicial branch has historically set high standards when evaluating the constitutionality of mandatory pre-filing procedures. Certain aspects of this bill may very well fail to satisfy the courts' standards.

For all of the above stated reasons for disapproval, I am returning Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1081 without my approval.

Respectfully submitted,

Bob Holden  
Governor