

## **BILL ANALYSIS**

C.S.H.B. 2343  
By: Workman  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that design professionals and construction contractors involved in commercial building projects are being sued for alleged construction defects before they are made aware of any alleged defects and before the alleged defects are identified in a third-party inspection. The parties are concerned that an industry is emerging whereby building owners are approached by lawyers soliciting a building inspection in exchange for identifying defects and suing the parties involved in the building's creation in an attempt to forge a quick settlement. C.S.H.B. 2343 seeks to remedy this situation by requiring an independent, third-party inspection of the affected improvement, and for a period during which the potentially liable parties may correct any alleged defects, before a suit may be filed.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2343 amends the Civil Practice and Remedies Code to establish provisions relating to a claim that is for damages arising from damage to or loss of real or personal property caused by an alleged deficiency in the construction of an improvement to real property intended wholly or partly for commercial use, not including residential or industrial use, or for indemnification for such damages, that is asserted by a person with an interest in the real property affected by the alleged deficiency, and that is asserted against a contractor, subcontractor, supplier, or licensed architect, interior designer, landscape architect, engineer, surveyor, or geologist. The bill requires a claimant to obtain from an independent third-party licensed professional engineer an inspection of the improvement affected by the alleged deficiency and a written report that includes certain specified information before bringing a court or judicial proceeding or an arbitration asserting such a claim. The bill requires such a claimant to provide written notice of the inspection to each party who is subject to the claim not later than the 10th day before the date the inspection will occur, requires the notice to include certain specified information, and authorizes each party subject to the claim or the party's representative to attend the required inspection.

C.S.H.B. 2343 requires a claimant to allow each party subject to such a claim at least 150 days after the date the engineer's report is provided to the party to inspect and correct any construction defect or related condition identified in the report before bringing a court or judicial proceeding or an arbitration asserting such a claim. The bill tolls the limitations period until the first anniversary of the date on which the notice of engineer inspection is provided if the notice is

provided during the final year of the limitations period applicable to the claim. The bill requires a court, arbitrator, or other adjudicating authority before which a person brings an action asserting such a claim without complying with the bill's requirements to dismiss the action and authorizes such dismissal to be with prejudice at the discretion of the adjudicating authority, but authorizes the court, arbitrator, or authority to abate the action for not more than one year on a showing that the person bringing the action intends to so comply.

C.S.H.B. 2343 expressly does not apply to a claim asserted by a contractor, subcontractor, supplier, or licensed architect, interior designer, landscape architect, engineer, surveyor, or geologist; to a claim for personal injury, survival, or wrongful death; to a claim involving the construction of residential property covered under Property Code provisions governing residential construction liability; to a defect or design claim covered by provisions of the Uniform Condominium Act relating to the procedures for filing suit or initiating arbitration proceedings for such a claim; to a contract entered into by the Texas Department of Transportation; or to a project that receives money from a state or federal highway fund.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2343 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 130A to read as follows:

#### CHAPTER 130A. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 130A.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration. The term does not include an administrative action.

(2) "Construction" includes:

(A) the initial construction of a building construction project exclusive of residential or industrial construction;

(B) the construction of an addition to a building construction project exclusive of residential or industrial construction; or

(C) the repair, alteration, or remodeling of a building construction project exclusive of residential or industrial construction.

(3) "Construction defect" means a deficiency in the construction of a building construction project exclusive of residential or industrial construction, including a deficiency in or arising out of the design,

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 130A to read as follows:

#### CHAPTER 130A. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 130A.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration. The term does not include an administrative action.

(2) "Commercial use" does not include residential or industrial use.

(3) "Construction" includes:

(A) the initial construction of an improvement to real property;

(B) the construction of an addition to an improvement to real property; or

(C) the repair, alteration, or remodeling of an improvement to real property.

(4) "Construction defect" means a deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or

specifications, surveying, planning, or supervision of the construction, that is the result of:

(A) the use of defective materials, products, or components in the construction;

(B) a violation of a building code applicable by law to the construction;

(C) a failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; or

(D) a failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

(4) "Contractor" means a person legally engaged in the business of designing, developing, constructing, manufacturing, repairing, altering, or remodeling improvements to real property.

(5) "Design professional" means a person licensed as an architect, interior designer, landscape architect, engineer, surveyor, or geologist.

(6) "Subcontractor" means a contractor directly retained and compensated by another contractor to perform labor or perform labor and supply materials in the construction.

(7) "Supplier" means a person who provides only materials, equipment, or other supplies for the construction.

Sec. 130A.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a claim:

(1) for:

(A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect; or

(B) indemnification for damages described by Subparagraph (A);

(2) asserted by a person with an interest in the real property affected by the alleged construction defect, including a person whose interest arose from the purchase of the affected property after any relevant construction contract was entered into or relevant activity was performed; and

(3) asserted against a contractor, subcontractor, supplier, or design

supervision of the construction, that is the result of:

(A) the use of defective materials, products, or components in the construction;

(B) a violation of a building code applicable by law to the construction;

(C) a failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; or

(D) a failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

(5) "Contractor" means a person legally engaged in the business of designing, developing, constructing, manufacturing, repairing, altering, or remodeling improvements to real property.

(6) "Design professional" means a person licensed as an architect, interior designer, landscape architect, engineer, surveyor, or geologist.

(7) "Subcontractor" means a contractor directly retained and compensated by another contractor to perform labor or perform labor and supply materials in the construction.

(8) "Supplier" means a person who provides only materials, equipment, or other supplies for the construction.

Sec. 130A.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a claim:

(1) for:

(A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property intended wholly or partly for commercial use; or

(B) indemnification for damages described by Paragraph (A);

(2) asserted by a person with an interest in the real property affected by the alleged construction defect, including a person whose interest arose from the purchase of the affected property after any relevant construction contract was entered into or relevant activity was performed; and

(3) asserted against a contractor, subcontractor, supplier, or design

professional.

(b) This chapter does not apply to:

(1) a claim asserted by a contractor, subcontractor, supplier, or design professional;

(2) a claim for personal injury, survival, or wrongful death;

(3) a claim involving the construction of residential property covered under Chapter 27, Property Code;

(4) a defect or design claim covered by Section 82.119, Property Code;

(5) a contract entered into by the Texas Department of Transportation; or

(6) a project that receives money from a state or federal highway fund.

Sec. 130A.003. INSPECTION AND REPORT.

Sec. 130A.004. OPPORTUNITY TO CORRECT.

Sec. 130A.005. TOLLING OF LIMITATIONS PERIOD.

Sec. 130A.006. ABATEMENT; DISMISSAL.

SECTION 2. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

professional.

(b) This chapter does not apply to:

(1) a claim asserted by a contractor, subcontractor, supplier, or design professional;

(2) a claim for personal injury, survival, or wrongful death;

(3) a claim involving the construction of residential property covered under Chapter 27, Property Code;

(4) a defect or design claim covered by Section 82.119, Property Code;

(5) a contract entered into by the Texas Department of Transportation; or

(6) a project that receives money from a state or federal highway fund.

Sec. 130A.003. INSPECTION AND REPORT.

Sec. 130A.004. OPPORTUNITY TO CORRECT.

Sec. 130A.005. TOLLING OF LIMITATIONS PERIOD.

Sec. 130A.006. ABATEMENT; DISMISSAL.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.