

By: Workman

H.B. No. 2343

A BILL TO BE ENTITLED

AN ACT

relating to prerequisites to asserting certain claims arising from certain construction defects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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, specifications, surveying, planning,

1 or supervision of the construction, that is the result of:

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

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

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

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

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

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

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

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

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

27 (1) for:

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

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

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

11           (3) asserted against a contractor, subcontractor,  
12 supplier, or design professional.

13           (b) This chapter does not apply to:

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

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

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

20           (4) a defect or design claim covered by Section  
21 82.119, Property Code;

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

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

26           Sec. 130A.003. INSPECTION AND REPORT. (a) Before bringing  
27 an action asserting a claim to which this chapter applies, the

1 claimant must obtain from an independent third-party licensed  
2 professional engineer an inspection of the improvement affected by  
3 the alleged construction defect and a written report that:

4 (1) identifies the specific construction defect on  
5 which the claim is based;

6 (2) describes the present physical condition of the  
7 affected improvement; and

8 (3) describes any modification, maintenance, or  
9 repairs to the improvement made by the claimant or others.

10 (b) The claimant must provide written notice of the  
11 inspection required by this section to each party who is subject to  
12 the claim not later than the 10th day before the date the inspection  
13 will occur. The notice must:

14 (1) identify the party who will conduct the inspection  
15 and prepare the report;

16 (2) identify each specific area of the improvement to  
17 be inspected; and

18 (3) include the date and time the inspection will  
19 occur.

20 (c) Each party subject to the claim or the party's  
21 representative may attend the inspection required by this section.

22 Sec. 130A.004. OPPORTUNITY TO CORRECT. Before bringing an  
23 action asserting a claim to which this chapter applies, the  
24 claimant must allow each party subject to the claim at least 150  
25 days after the date the report required by Section 130A.003 is  
26 provided to the party to inspect and correct any construction  
27 defect or related condition identified in the report.

1       Sec. 130A.005. TOLLING OF LIMITATIONS PERIOD. If the  
2 notice of inspection required by Section 130A.003 is provided  
3 during the final year of the limitations period applicable to the  
4 claim, the limitations period is tolled until the first anniversary  
5 of the date on which the notice is provided.

6       Sec. 130A.006. ABATEMENT; DISMISSAL. (a) If a person  
7 brings an action asserting a claim to which this chapter applies  
8 without complying with Sections 130A.003 and 130A.004, the court,  
9 arbitrator, or other adjudicating authority may abate the action  
10 for not more than one year on a showing that the person bringing the  
11 action intends to comply with those sections.

12       (b) Except as provided by Subsection (a), if a person brings  
13 an action asserting a claim to which this chapter applies without  
14 complying with Sections 130A.003 and 130A.004, the court,  
15 arbitrator, or other adjudicating authority shall dismiss the  
16 action. The dismissal may be with prejudice at the discretion of the  
17 court, arbitrator, or other adjudicating authority.

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

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