

By: Leach, Cyrier, Lucio III, et al.

H.B. No. 1999

A BILL TO BE ENTITLED

AN ACT

relating to certain construction liability claims concerning public buildings and public works.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2272 to read as follows:

CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 2272.001. 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 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.

(3) "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 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 engaged in the business of developing, constructing, fabricating, repairing, altering, or remodeling improvements to real property.

(5) "Design professional" means an individual registered as an architect under Chapter 1051, Occupations Code, or a person licensed as an engineer under Chapter 1001, Occupations Code.

(6) "Governmental entity" means:

(A) the state;

(B) a municipality, county, public school district, or special-purpose district or authority;

(C) a district, county, or justice of the peace court;

(D) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003,

1 Education Code;

2 (E) the legislature or a legislative agency; or

3 (F) the Supreme Court of Texas, the Texas Court
4 of Criminal Appeals, a court of appeals, or the State Bar of Texas
5 or another judicial agency having statewide jurisdiction.

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

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

11 Sec. 2272.002. APPLICABILITY OF CHAPTER. (a) This chapter
12 applies only to a claim:

13 (1) for:

14 (A) damages arising from damage to or loss of
15 real or personal property caused by an alleged construction defect
16 in an improvement to real property that is a public building or
17 public work; or

18 (B) indemnity or contribution for damages
19 described by Paragraph (A);

20 (2) asserted by a governmental entity with an interest
21 in the public building or public work affected by the alleged
22 construction defect; and

23 (3) asserted against a contractor, subcontractor,
24 supplier, or design professional.

25 (b) This chapter does not apply to:

26 (1) a claim for personal injury, survival, or wrongful
27 death;

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

3 (3) a contract entered into by the Texas Department of
4 Transportation;

5 (4) a project that receives money from a state or
6 federal highway fund; or

7 (5) a civil works project as defined by Section
8 2269.351, Government Code.

9 Sec. 2272.003. REPORT. Before bringing an action asserting
10 a claim to which this chapter applies, the governmental entity must
11 provide each party with whom the governmental entity has a contract
12 for the design or construction of an affected structure a written
13 report by certified mail, return receipt requested, that clearly:

14 (1) identifies the specific construction defect on
15 which the claim is based;

16 (2) describes the present physical condition of the
17 affected structure; and

18 (3) describes any modification, maintenance, or
19 repairs to the affected structure made by the governmental entity
20 or others since the affected structure was initially occupied or
21 used.

22 Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a)
23 Before bringing an action asserting a claim to which this chapter
24 applies, the governmental entity must allow each party with whom
25 the governmental entity has a contract for the design or
26 construction of an affected structure and who is subject to the
27 claim and any known subcontractor or supplier who is subject to the

1 claim:

2 (1) a reasonable opportunity to inspect any
3 construction defect or related condition identified in the report
4 for a period of 30 days after sending the report required by Section
5 2272.003; and

6 (2) at least 120 days after the inspection to:

7 (A) correct any construction defect or related
8 condition identified in the report; or

9 (B) enter into a separate agreement with the
10 governmental entity to correct any construction defect or related
11 condition identified in the report.

12 (b) The governmental entity is not required to allow a party
13 to make a correction or repair under Subsection (a) if:

14 (1) the party:

15 (A) is a contractor and cannot provide payment
16 and performance bonds to cover the corrective work;

17 (B) cannot provide liability insurance or
18 workers' compensation insurance;

19 (C) has been previously terminated for cause by
20 the governmental entity; or

21 (D) has been convicted of a felony; or

22 (2) the governmental entity previously complied with
23 the process required by Subsection (a) regarding a construction
24 defect or related condition identified in the report and:

25 (A) the defect or condition was not corrected as
26 required by Subsection (a)(2)(A) or an agreement under Subsection
27 (a)(2)(B); or

1 (B) the attempt to correct the construction
2 defect or related condition identified in the report resulted in a
3 new construction defect or related condition.

4 Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS.
5 If the report and opportunity to correct required by Sections
6 2272.003 and 2272.004 are provided during the final year of a
7 limitations or repose period applicable to the claim, the
8 limitations or repose period is tolled until the first anniversary
9 of the date on which the report is provided.

10 Sec. 2272.006. DISMISSAL. (a) If a governmental entity
11 brings an action asserting a claim to which this chapter applies
12 without complying with Sections 2272.003 and 2272.004, the court,
13 arbitrator, or other adjudicating authority shall dismiss the
14 action without prejudice.

15 (b) If an action is dismissed without prejudice under
16 Subsection (a) and the governmental entity brings a second action
17 asserting a claim to which this chapter applies without complying
18 with Sections 2272.003 and 2272.004, the court, arbitrator, or
19 other adjudicating authority shall dismiss the action with
20 prejudice.

21 Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report
22 provided by a governmental entity under Section 2272.003 identifies
23 a construction defect that is corrected under Section 2272.004 or
24 for which the governmental entity recovers damages, the party
25 responsible for that construction defect shall pay the reasonable
26 amounts incurred by the governmental entity to obtain the report
27 with respect to identification of that construction defect.

1 Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.

2 This chapter does not prohibit or limit a governmental entity from
3 making emergency repairs to the property as necessary to protect
4 the health, safety, and welfare of the public or a building
5 occupant.

6 Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in
7 connection with a potential claim against the party, receives a
8 written notice of an alleged construction defect or a report under
9 Section 2272.003 identifying a construction defect and provides the
10 notice or report to the party's insurer, the insurer shall treat the
11 provision of the notice or report to the party as the filing of a
12 suit asserting that claim against the party for purposes of the
13 relevant policy terms.

14 SECTION 2. (a) Chapter 2272, Government Code, as added by
15 this Act, applies only to a cause of action that accrues on or after
16 the effective date of this Act.

17 (b) Section 2272.009, Government Code, as added by this Act,
18 applies only to an insurance policy delivered, issued for delivery,
19 or renewed on or after January 1, 2020.

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2019.