

By: Leach, Lucio III, et al.

H.B. No. 1999

Substitute the following for H.B. No. 1999:

By: Smith

C.S.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

1 components in the construction;

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

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

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

12 (4) "Contractor" means a person engaged in the
13 business of developing, constructing, fabricating, repairing,
14 altering, or remodeling improvements to real property.

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

19 (6) "Governmental entity" means:

20 (A) the state;

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

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

25 (D) a board, commission, department, office, or
26 other agency in the executive branch of state government, including
27 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, including a governmental entity whose
23 interest arose from the purchase of the affected public building or
24 public work after any relevant construction contract was entered
25 into or relevant activity was performed; and

26 (3) asserted against a contractor, subcontractor,
27 supplier, or design professional.

1 (b) This chapter does not apply to:

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

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

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

8 (4) a project that receives money from a state or
9 federal highway fund; or

10 (5) a civil works project as defined by Section
11 2269.351, Government Code.

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

17 (1) identifies the specific construction defect on
18 which the claim is based;

19 (2) describes the present physical condition of the
20 affected structure; and

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

25 Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. Before
26 bringing an action asserting a claim to which this chapter applies,
27 the governmental entity must allow each party with whom the

1 governmental entity has a contract for the design or construction
2 of an affected structure and who is subject to the claim and any
3 known subcontractor or supplier who is subject to the claim:

4 (1) a reasonable opportunity to inspect any
5 construction defect or related condition identified in the report
6 for a period of 30 days after sending the report required by Section
7 2272.003; and

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

9 (A) correct any construction defect or related
10 condition identified in the report; or

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

14 Sec. 2272.005. TOLLING OF LIMITATIONS PERIOD. If the
15 report and opportunity to correct required by Sections 2272.003 and
16 2272.004 are provided during the final year of the limitations
17 period applicable to the claim, the limitations period is tolled
18 until the first anniversary of the date on which the report is
19 provided.

20 Sec. 2272.006. DISMISSAL. (a) If a governmental entity
21 brings an action asserting a claim to which this chapter applies
22 without complying with Sections 2272.003 and 2272.004, the court,
23 arbitrator, or other adjudicating authority shall dismiss the
24 action without prejudice.

25 (b) If an action is dismissed without prejudice under
26 Subsection (a) and the governmental entity brings a second action
27 asserting a claim to which this chapter applies without complying

1 with Sections 2272.003 and 2272.004, the court, arbitrator, or
2 other adjudicating authority shall dismiss the action with
3 prejudice.

4 Sec. 2272.007. RECOVERY OF INSPECTION COSTS. If a report
5 provided by a governmental entity under Section 2272.003 identifies
6 a construction defect for which the governmental entity recovers
7 damages, the damages awarded to the governmental entity against the
8 party responsible for that construction defect shall include
9 reasonable amounts paid by the governmental entity to obtain the
10 report with respect to identification of that construction defect.

11 Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.
12 This chapter does not prohibit or limit a governmental entity from
13 making emergency repairs to the property as necessary to protect
14 the health, safety, and welfare of the public or a building
15 occupant.

16 Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in
17 connection with a potential claim against the party, receives a
18 written notice of an alleged construction defect or a report under
19 Section 2272.003 identifying a construction defect and provides the
20 notice or report to the party's insurer, the insurer shall treat the
21 provision of the notice or report to the party as the filing of a
22 suit asserting that claim against the party for purposes of the
23 relevant policy terms.

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

27 (b) Section 2272.009, Government Code, as added by this Act,

1 applies only to an insurance policy delivered, issued for delivery,
2 or renewed on or after January 1, 2020.

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