

1-1 By: Leach, et al. (Senate Sponsor - Creighton) H.B. No. 1999
 1-2 (In the Senate - Received from the House April 26, 2019;
 1-3 May 7, 2019, read first time and referred to Committee on State
 1-4 Affairs; May 15, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 May 15, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1999 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to certain construction liability claims concerning
 1-22 public buildings and public works.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle F, Title 10, Government Code, is
 1-25 amended by adding Chapter 2272 to read as follows:

1-26 CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

1-27 Sec. 2272.001. DEFINITIONS. In this chapter:

1-28 (1) "Action" means a court or judicial proceeding or
 1-29 an arbitration. The term does not include an administrative
 1-30 action.

1-31 (2) "Construction" includes:

1-32 (A) the initial construction of an improvement to
 1-33 real property;

1-34 (B) the construction of an addition to an
 1-35 improvement to real property; or

1-36 (C) the repair, alteration, or remodeling of an
 1-37 improvement to real property.

1-38 (3) "Construction defect" means a deficiency in the
 1-39 construction of an improvement to real property, including a
 1-40 deficiency in or arising out of the design, specifications,
 1-41 surveying, planning, or supervision of the construction, that is
 1-42 the result of:

1-43 (A) the use of defective materials, products, or
 1-44 components in the construction;

1-45 (B) a violation of a building code applicable by
 1-46 law to the construction;

1-47 (C) a failure of the design of an improvement to
 1-48 real property to meet the professional standards of care applicable
 1-49 at the time of governmental approval of the design or as otherwise
 1-50 applicable if no governmental approval of the design was required
 1-51 or obtained; or

1-52 (D) a failure to perform the construction in
 1-53 accordance with the accepted trade standards for good and
 1-54 workmanlike construction.

1-55 (4) "Contractor" means a person engaged in the
 1-56 business of developing, constructing, fabricating, repairing,
 1-57 altering, or remodeling improvements to real property.

1-58 (5) "Design professional" means an individual
 1-59 registered as an architect under Chapter 1051, Occupations Code, or
 1-60 a person licensed as an engineer under Chapter 1001, Occupations

2-1 Code.
 2-2 (6) "Governmental entity" means:
 2-3 (A) the state;
 2-4 (B) a municipality, county, public school
 2-5 district, or special-purpose district or authority;
 2-6 (C) a district, county, or justice of the peace
 2-7 court;
 2-8 (D) a board, commission, department, office, or
 2-9 other agency in the executive branch of state government, including
 2-10 an institution of higher education as defined by Section 61.003,
 2-11 Education Code;
 2-12 (E) the legislature or a legislative agency; or
 2-13 (F) the Supreme Court of Texas, the Texas Court
 2-14 of Criminal Appeals, a court of appeals, or the State Bar of Texas
 2-15 or another judicial agency having statewide jurisdiction.
 2-16 (7) "Subcontractor" means a contractor directly
 2-17 retained and compensated by another contractor to perform labor or
 2-18 perform labor and supply materials in the construction.
 2-19 (8) "Supplier" means a person who provides only
 2-20 materials, equipment, or other supplies for the construction.
 2-21 Sec. 2272.002. APPLICABILITY OF CHAPTER. (a) This chapter
 2-22 applies only to a claim:
 2-23 (1) for:
 2-24 (A) damages arising from damage to or loss of
 2-25 real or personal property caused by an alleged construction defect
 2-26 in an improvement to real property that is a public building or
 2-27 public work; or
 2-28 (B) indemnity or contribution for damages
 2-29 described by Paragraph (A);
 2-30 (2) asserted by a governmental entity with an interest
 2-31 in the public building or public work affected by the alleged
 2-32 construction defect; and
 2-33 (3) asserted against a contractor, subcontractor,
 2-34 supplier, or design professional.
 2-35 (b) This chapter does not apply to:
 2-36 (1) a claim for personal injury, survival, or wrongful
 2-37 death;
 2-38 (2) a claim involving the construction of residential
 2-39 property covered under Chapter 27, Property Code;
 2-40 (3) a contract entered into by the Texas Department of
 2-41 Transportation;
 2-42 (4) a project that receives money from a state or
 2-43 federal highway fund; or
 2-44 (5) a civil works project as defined by Section
 2-45 2269.351, Government Code.
 2-46 Sec. 2272.003. REPORT. (a) Before bringing an action
 2-47 asserting a claim to which this chapter applies, the governmental
 2-48 entity must provide each party with whom the governmental entity
 2-49 has a contract for the design or construction of an affected
 2-50 structure a written report by certified mail, return receipt
 2-51 requested, that clearly:
 2-52 (1) identifies the specific construction defect on
 2-53 which the claim is based;
 2-54 (2) describes the present physical condition of the
 2-55 affected structure; and
 2-56 (3) describes any modification, maintenance, or
 2-57 repairs to the affected structure made by the governmental entity
 2-58 or others since the affected structure was initially occupied or
 2-59 used.
 2-60 (b) Not later than the fifth day after the date a contractor
 2-61 receives a report under Subsection (a), the contractor must provide
 2-62 a copy of the report to each subcontractor retained on the
 2-63 construction of the affected structure whose work is subject to the
 2-64 claim.
 2-65 Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a)
 2-66 Before bringing an action asserting a claim to which this chapter
 2-67 applies, the governmental entity must allow each party with whom
 2-68 the governmental entity has a contract for the design or
 2-69 construction of an affected structure and who is subject to the

3-1 claim and any known subcontractor or supplier who is subject to the
3-2 claim:
3-3 (1) a reasonable opportunity to inspect any
3-4 construction defect or related condition identified in the report
3-5 for a period of 30 days after sending the report required by Section
3-6 2272.003; and
3-7 (2) at least 120 days after the inspection to:
3-8 (A) correct any construction defect or related
3-9 condition identified in the report; or
3-10 (B) enter into a separate agreement with the
3-11 governmental entity to correct any construction defect or related
3-12 condition identified in the report.
3-13 (b) The governmental entity is not required to allow a party
3-14 to make a correction or repair under Subsection (a) if:
3-15 (1) the party:
3-16 (A) is a contractor and cannot provide payment
3-17 and performance bonds to cover the corrective work;
3-18 (B) cannot provide liability insurance or
3-19 workers' compensation insurance;
3-20 (C) has been previously terminated for cause by
3-21 the governmental entity; or
3-22 (D) has been convicted of a felony; or
3-23 (2) the governmental entity previously complied with
3-24 the process required by Subsection (a) regarding a construction
3-25 defect or related condition identified in the report and:
3-26 (A) the defect or condition was not corrected as
3-27 required by Subsection (a)(2)(A) or an agreement under Subsection
3-28 (a)(2)(B); or
3-29 (B) the attempt to correct the construction
3-30 defect or related condition identified in the report resulted in a
3-31 new construction defect or related condition.
3-32 Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS.
3-33 If the report and opportunity to correct required by Sections
3-34 2272.003 and 2272.004 are provided during the final year of a
3-35 limitations or repose period applicable to the claim, the
3-36 limitations or repose period is tolled until the first anniversary
3-37 of the date on which the report is provided.
3-38 Sec. 2272.006. DISMISSAL. (a) If a governmental entity
3-39 brings an action asserting a claim to which this chapter applies
3-40 without complying with Sections 2272.003 and 2272.004, the court,
3-41 arbitrator, or other adjudicating authority shall dismiss the
3-42 action without prejudice.
3-43 (b) If an action is dismissed without prejudice under
3-44 Subsection (a) and the governmental entity brings a second action
3-45 asserting a claim to which this chapter applies without complying
3-46 with Sections 2272.003 and 2272.004, the court, arbitrator, or
3-47 other adjudicating authority shall dismiss the action with
3-48 prejudice.
3-49 Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report
3-50 provided by a governmental entity under Section 2272.003 identifies
3-51 a construction defect that is corrected under Section 2272.004 or
3-52 for which the governmental entity recovers damages, the party
3-53 responsible for that construction defect shall pay the reasonable
3-54 amounts incurred by the governmental entity to obtain the report
3-55 with respect to identification of that construction defect.
3-56 Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.
3-57 This chapter does not prohibit or limit a governmental entity from
3-58 making emergency repairs to the property as necessary to protect
3-59 the health, safety, and welfare of the public or a building
3-60 occupant.
3-61 Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in
3-62 connection with a potential claim against the party, receives a
3-63 written notice of an alleged construction defect or a report under
3-64 Section 2272.003 identifying a construction defect and provides the
3-65 notice or report to the party's insurer, the insurer shall treat the
3-66 provision of the notice or report to the party as the filing of a
3-67 suit asserting that claim against the party for purposes of the
3-68 relevant policy terms.
3-69 SECTION 2. (a) Chapter 2272, Government Code, as added by

4-1 this Act, applies only to a cause of action that accrues on or after
4-2 the effective date of this Act.

4-3 (b) Section 2272.009, Government Code, as added by this Act,
4-4 applies only to an insurance policy delivered, issued for delivery,
4-5 or renewed on or after January 1, 2020.

4-6 SECTION 3. This Act takes effect immediately if it receives
4-7 a vote of two-thirds of all the members elected to each house, as
4-8 provided by Section 39, Article III, Texas Constitution. If this
4-9 Act does not receive the vote necessary for immediate effect, this
4-10 Act takes effect September 1, 2019.

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