

BILL ANALYSIS

C.S.H.B. 2416
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Supreme Court has previously ruled that attorney's fees awarded to a prevailing party are considered costs and not damages under a commercial general liability insurance policy. It has been suggested that this ruling leaves contractors exposed, even in covered insurance claims, to potentially large awards for attorney's fees. In some cases, a contractor could have an otherwise covered case but still be forced to go to trial if the insurance carrier disagrees with the plaintiff's assessment of damages. If the plaintiff gets an award of attorney's fees, these costs will not be covered by the policy even if the rest of the damages are covered, which creates a sizeable gap in coverage. C.S.H.B. 2416 seeks to fill this coverage gap by authorizing a person to recover attorney's fees as compensatory damages for breach of a construction contract.

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. 2416 amends the Civil Practice and Remedies Code to authorize a person to recover reasonable attorney's fees from an individual, corporation, or other entity from which recovery is permitted under applicable law as compensatory damages for breach of a construction contract. This authorization may not be construed to create or imply a private cause of action or independent basis to recover attorney's fees.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2416 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original authorized a person to recover reasonable attorney's fees from an individual or corporation as compensatory damages for breach of a construction contract. The substitute authorizes a person to recover such fees from any entity from which recovery is permitted under applicable law and provides for the definition of construction contract.

The substitute contains a provision not included in the original establishing that the bill's authorization to recover attorney's fees as compensatory damages may not be construed to create or imply a private cause of action or independent basis to recover attorney's fees.