

By: Leach, et al.

H.B. No. 1418

Substitute the following for H.B. No. 1418:

By: Krause

C.S.H.B. No. 1418

A BILL TO BE ENTITLED

AN ACT

relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 59 to read as follows:

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.0001. DEFINITIONS. In this chapter:

(1) "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.

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

(3) "Critical infrastructure facility" has the meaning assigned by Section 423.0045, Government Code, provided that the absence of fencing or signage described in the definition provided by that section does not disqualify an item listed in that

1 definition from being classified or treated as a critical  
2 infrastructure facility for purposes of this chapter. The term  
3 includes:

4 (A) pipelines and pipeline appurtenances or  
5 facilities, including pipes, valves, meters, pumps, compressors,  
6 treating and processing facilities, cathodic protection  
7 facilities, and any other equipment, facilities, devices,  
8 structures, and buildings used or intended for use in the  
9 gathering, transportation, treating, or processing of oil, gas, or  
10 other minerals, and the liquefied or gaseous substances,  
11 constituents, products, or mixtures derived from those minerals  
12 through refining, processing, or other methods;

13 (B) utility-scale equipment or facilities to  
14 transmit or distribute electricity; and

15 (C) utility-scale water storage facilities.

16 (4) "Design-build contract" means a contract in which  
17 a single contractor agrees to:

18 (A) construct, repair, alter, or remodel an  
19 improvement to real property; and

20 (B) be responsible for the development of plans,  
21 specifications, or other design or bid documents used by the  
22 contractor to construct, repair, alter, or remodel the improvement.

23 (5) "Subcontractor" means a contractor directly  
24 retained and compensated by another contractor to perform labor or  
25 perform labor and supply materials in the construction.

26 SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

27 Sec. 59.0051. APPLICABILITY OF SUBCHAPTER. (a) This

1 subchapter applies only to a contract for the construction or  
2 repair of an improvement to real property.

3 (b) This subchapter does not apply to a contract entered  
4 into by a person for the construction or repair of a critical  
5 infrastructure facility owned or operated by the person or any  
6 building, structure, improvement, appurtenance, or other facility  
7 owned by the person that is necessary to the operation of and  
8 directly related to the critical infrastructure facility. For  
9 purposes of this subsection, "person" includes a parent,  
10 subsidiary, affiliated entity, joint venture partner, or owner of  
11 the person.

12 (c) This chapter does not apply to the construction, repair,  
13 alteration, or remodeling of an improvement to real property if:

14 (1) the construction, repair, alteration, or  
15 remodeling is performed under a design-build contract; and

16 (2) the part of the plans, specifications, or other  
17 design or bid documents for which the contractor is responsible  
18 under the contract is the part alleged to be defective.

19 Sec. 59.0052. LIMITATION ON CONTRACTOR'S LIABILITY AND  
20 RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not  
21 responsible for the consequences of defects in and may not warranty  
22 the accuracy, adequacy, sufficiency, or suitability of plans,  
23 specifications, or other design or bid documents provided to the  
24 contractor by:

25 (1) the person with whom the contractor entered into  
26 the contract; or

27 (2) another person on behalf of the person with whom

1 the contractor entered into the contract.

2 (b) A contractor must, within a reasonable time of learning  
3 of the defect, disclose in writing to the person with whom the  
4 contractor enters into a contract the existence of any known defect  
5 in the plans, specifications, or other design or bid documents that  
6 is discovered by the contractor before or during construction.

7 (c) A contractor who fails to disclose a condition as  
8 required by Subsection (b) may be liable for the consequences of  
9 defects that result from the failure to disclose.

10 Sec. 59.0053. STANDARD OF CARE FOR CERTAIN DESIGNS. Design  
11 services provided under a design-build contract are subject to the  
12 same standard of care requirements provided in Section 130.0021,  
13 Civil Practice and Remedies Code.

14 Sec. 59.0054. WAIVER PROHIBITED. This subchapter may not  
15 be waived by a contractor, subcontractor, or owner. A purported  
16 waiver of this subchapter in violation of this section is void.

17 SECTION 2. The heading to Chapter 130, Civil Practice and  
18 Remedies Code, is amended to read as follows:

19 CHAPTER 130. LIABILITY PROVISIONS [~~INDEMNIFICATION~~] IN CERTAIN  
20 CONSTRUCTION CONTRACTS

21 SECTION 3. Chapter 130, Civil Practice and Remedies Code,  
22 is amended by adding Section 130.0021 to read as follows:

23 Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

24 (a) A construction contract for architectural or engineering  
25 services or a contract related to the construction or repair of an  
26 improvement to real property that contains architectural or  
27 engineering services as a component part must require that the

1 architectural or engineering services be performed with the  
2 professional skill and care ordinarily provided by competent  
3 architects or engineers practicing under the same or similar  
4 circumstances and professional license.

5 (b) If a contract described by Subsection (a) contains a  
6 provision establishing a different standard of care than the  
7 standard described by Subsection (a):

8 (1) the provision is void and unenforceable; and

9 (2) the standard of care described by Subsection (a)  
10 applies to the performance of the architectural or engineering  
11 services.

12 (c) Section 130.004 does not limit the applicability of this  
13 section.

14 SECTION 4. Section 130.004, Civil Practice and Remedies  
15 Code, is amended to read as follows:

16 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)  
17 Except as provided by Section 130.002(b) or 130.0021, this chapter  
18 does not apply to an owner of an interest in real property or  
19 persons employed solely by that owner.

20 (b) Except as provided by Section 130.002(b) or 130.0021,  
21 this chapter does not prohibit or make void or unenforceable a  
22 covenant or promise to:

23 (1) indemnify or hold harmless an owner of an interest  
24 in real property and persons employed solely by that owner; or

25 (2) allocate, release, liquidate, limit, or exclude  
26 liability in connection with a construction contract between an  
27 owner or other person for whom a construction contract is being

1 performed and a registered architect or licensed engineer.

2 SECTION 5. (a) The changes in law made by this Act apply  
3 only to a contract entered into on or after the effective date of  
4 this Act. A contract entered into before the effective date of this  
5 Act is governed by the law in effect when the contract was entered  
6 into, and the former law is continued in effect for that purpose.

7 (b) An original contract for the construction or repair of  
8 an improvement to real property with the owner of an interest in  
9 real property that is entered into before the effective date of this  
10 Act, and a subcontract or purchase order for providing labor or  
11 materials associated with that original contract, whether the  
12 subcontract or purchase order is entered into before, on, or after  
13 the effective date of this Act, is governed by the law in effect  
14 when the original contract was entered into, and the former law is  
15 continued in effect for that purpose.

16 SECTION 6. This Act takes effect September 1, 2021.