

BILL ANALYSIS

H.B. 2310
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2019, the legislature required school districts and other governmental entities to give architects, engineers, and contractors an opportunity to correct alleged defects after the completion of a construction project. H.B. 2310 extends this effort by continuing to address construction litigation lawsuits by government and non-government entities. Stakeholders maintain that construction defect lawsuits are often filed against everyone involved in the construction of a facility, including subcontractors who might have done work on parts of the facility that have nothing to do with the defects claimed in a lawsuit. H.B. 2310 uses and accelerates two mechanisms for defendants, who are often subcontractors who have nothing to do with an alleged defect, to be dismissed from a construction defect lawsuit. The bill does not create liability but does allow parties to seek attorney fees and costs in some instances.

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 rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 of this bill.

ANALYSIS

H.B. 2310 amends the Civil Practice and Remedies Code to require a claimant's petition in a commercial construction defect claim to do the following with respect to each defendant:

- describe with particularity the observed manifestation of each alleged failure in the commercial property that gives rise to the claim against the defendant;
- state the factual basis for the claimant's assertion that the defendant's services, labor, or materials caused or created, wholly or partly, each described failure; and
- be verified by a person with knowledge of the facts stated in the petition.

H.B. 2310 provides for the dismissal of such a claim on grounds of insufficient pleading. The bill, as follows:

- authorizes a defendant, at the time of filing an original answer, or on or before the 21st day after the date the claimant's petition was served, whichever is later, to move to dismiss the claim against the defendant for failure to comply with the petition requirements;
- establishes that the filing of a motion by a defendant to dismiss automatically abates response deadlines for discovery requests served on the defendant by the claimant who served the petition that is the subject of the motion until the motion has been resolved;
- authorizes a claimant not later than the seventh day before the date of the hearing on the defendant's motion to replead the claim;

- if a claimant repleads a claim, authorizes an affected defendant to supplement or amend the defendant's motion to dismiss without causing a postponement of a hearing on the motion;
- prohibits filing an insufficient petition to avoid the expiration of a limitations period from being considered good cause to extend the response deadline if, in the exercise of reasonable diligence, the claimant could have filed a compliant petition before the expiration of the limitations period;
- on motion of a defendant in accordance with the pleading requirements, requires a court to dismiss without prejudice any claim against the defendant that is not supported by a petition; and
- establishes that the filing of a petition that fails to comply with such requirements does not toll any limitations period applicable to the claim.

H.B. 2310 provides for the dismissal of such a claim on the basis of a defendant establishing no culpability. The bill, as follows:

- authorizes a defendant, in addition to or as an alternative to filing a motion to dismiss a claim for insufficient pleading, to move to dismiss a claim on the ground that no reasonable jury could find that the defendant's services, labor, or materials caused or created the construction defect that is the subject of the claim;
- requires the motion to be verified by a person with knowledge of the facts stated in the motion and to do the following:
 - describe the services, labor, or materials provided by the defendant in regard to the building or other improvement that is the subject of the claim and explain why they did not cause or create the construction defect that is the subject of the claim; and
 - include a stipulation that the defendant will not assert limitations as a defense against the claimant reasserting the same claim against the defendant in a petition that, among other requirements, is based on evidence that was not available to the claimant at the time the motion was heard;
- requires the motion to be filed not later than the 14th day after the earlier of the date of the court's order overruling the motion or the date an agreement resolving the motion is filed;
- if a defendant has not filed a motion to dismiss, requires the motion to be filed at the time of the filing of the defendant's original answer or on or before the 21st day after the date the claimant's petition was served, whichever is later;
- establishes that the filing of the motion automatically abates response deadlines for discovery requests served on the defendant by the claimant until the motion has been resolved;
- authorizes a court, on a showing of good cause, to allow specified and limited discovery relevant to the defendant's motion;
- authorizes a claimant not later than the seventh day before the date of the hearing on the motion to replead the claim or file a verified response;
- requires a court to grant the defendant's motion if the court finds, based on the verified pleadings and summary judgment evidence submitted by the parties, that no reasonable jury could find that the defendant's services, labor, or materials caused or created the construction defect that is the subject of the claim; and
- if the defendant's motion is granted and the claimant files a subsequent petition reasserting the same claim, authorizes a defendant to file a motion to dismiss that claim, and, if that motion is granted, requires the claim to be dismissed with prejudice.

H.B. 2310 requires a hearing on a motion to dismiss based on insufficient pleading or on lack of culpability to be held not later than the 30th day after the date the motion is served on the claimant unless extended by the court for good cause or by agreement of the parties and establishes that a response to either such motion may be supported by evidence that could support a motion for summary judgment.

H.B. 2310 authorizes a court to award costs and reasonable attorney's fees to the prevailing party on ruling on a motion to dismiss under the bill's provisions and requires a court to do so under the following circumstances:

- the motion is granted and the court determines there was no reasonable justification for the claimant having joined the defendant in the action; or
- the motion is overruled and the court determines the defendant used the procedures for the primary purpose of postponing the defendant's obligation to participate in the action.

The bill requires a court to impose an appropriate sanction on a person who verifies a petition or motion or signs an affidavit when the person knew or reasonably should have known the facts stated in the petition, motion, or affidavit were untrue.

The bill defines the following:

- "claimant" as a party pursuing a commercial construction defect claim, including a party designated as a plaintiff, counterclaimant, cross-claimant, third-party plaintiff, or intervenor;
- "commercial construction defect" as a defect, nonconformance, or deficiency in the design, engineering, material, workmanship, or construction of commercial property that causes some type of failure in that property;
- "commercial construction defect claim" as a request in a civil action to recover monetary damages arising from an alleged commercial construction defect;
- "commercial property" as an improvement to publicly or privately owned real property that is used for human habitation or from which a governmental activity or commercial enterprise is conducted, excluding certain residences in a co-op or a highway, roadway, bridge, overpass, or other similar kind of physical infrastructure used by motor vehicles; and
- "petition" as a court pleading, whether original or amended, in which a claimant asserts a commercial construction defect claim, including a petition, counterpetition, cross-petition, and third-party petition.

H.B. 2310 establishes that its procedures and remedies are in addition to other procedures and remedies provided by law. The bill authorizes the Texas Supreme Court to adopt rules to implement the bill's provisions.

H.B. 2310 applies only to an action commenced on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.