

85R19292 AJA-F

By: Workman, Anderson of McLennan, Villalba H.B. No. 2343

Substitute the following for H.B. No. 2343:

By: Romero, Jr. C.S.H.B. No. 2343

A BILL TO BE ENTITLED

AN ACT

relating to prerequisites to asserting certain claims arising from certain construction defects.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 130A to read as follows:

CHAPTER 130A. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 130A.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) "Commercial use" does not include residential or industrial use.

(3) "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.

(4) "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 components in the construction;

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

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

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

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

(6) "Design professional" means a person licensed as an architect, interior designer, landscape architect, engineer, surveyor, or geologist.

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

(8) "Supplier" means a person who provides only

materials, equipment, or other supplies for the construction.

Sec. 130A.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a claim:

(1) for:

(A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property intended wholly or partly for commercial use; or

(B) indemnification for damages described by Paragraph (A);

(2) asserted by a person with an interest in the real property affected by the alleged construction defect, including a person whose interest arose from the purchase of the affected property after any relevant construction contract was entered into or relevant activity was performed; and

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

(b) This chapter does not apply to:

(1) a claim asserted by a contractor, subcontractor, supplier, or design professional;

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

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

(4) a defect or design claim covered by Section 82.119,

Property Code;

(5) a contract entered into by the Texas Department of Transportation; or

(6) a project that receives money from a state or federal highway fund.

Sec. 130A.003. INSPECTION AND REPORT. (a) Before bringing an action asserting a claim to which this chapter applies, the claimant must obtain from an independent third-party licensed professional engineer an inspection of the improvement affected by the alleged construction defect and a written report that:

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

(2) describes the present physical condition of the affected improvement; and

(3) describes any modification, maintenance, or repairs to the improvement made by the claimant or others.

(b) The claimant must provide written notice of the inspection required by this section to each party who is subject to the claim not later than the 10th day before the date the inspection will occur. The notice must:

(1) identify the party who will conduct the inspection and prepare the report;

(2) identify each specific area of the improvement to be inspected; and

(3) include the date and time the inspection will occur.

(c) Each party subject to the claim or the party's representative may attend the inspection required by this section.

Sec. 130A.004. OPPORTUNITY TO CORRECT. Before bringing an action asserting a claim to which this chapter applies, the claimant must allow each party subject to the claim at least 150 days after the date the report required by Section 130A.003 is provided to the party to inspect and correct any construction defect or related condition identified in the report.

Sec. 130A.005. TOLLING OF LIMITATIONS PERIOD. If the notice of inspection required by Section 130A.003 is provided during the final year of the limitations period applicable to the claim, the limitations period is tolled until the first anniversary of the date on which the notice is provided.

Sec. 130A.006. ABATEMENT; DISMISSAL. (a) If a person brings an action asserting a claim to which this chapter applies without complying with Sections 130A.003 and 130A.004, the court, arbitrator, or other adjudicating authority may abate the action for not more than one year on a showing that the person bringing the action intends to comply with those sections.

(b) Except as provided by Subsection (a), if a person brings an action asserting a claim to which this chapter applies without complying with Sections 130A.003 and 130A.004, the court, arbitrator, or other adjudicating authority shall dismiss the action. The dismissal may be with prejudice at the discretion of the court, arbitrator, or other adjudicating authority.

SECTION 2. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.