

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 2272.001. DEFINITIONS. In this chapter:

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

(2) "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.

(3) "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.

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

(5) "Design professional" means an individual

registered as an architect under Chapter 1051, Occupations Code, or a person licensed as an engineer under Chapter 1001, Occupations Code.

(6) "Governmental entity" means:

(A) the state;

(B) a municipality, county, public school district, or special-purpose district or authority;

(C) a district, county, or justice of the peace court;

(D) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(E) the legislature or a legislative agency; or

(F) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(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.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.002. 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 that is a public building or public work; or

(B) indemnity or contribution for damages described by Paragraph (A);

(2) asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect; and

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

(b) This chapter does not apply to:

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

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

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

(4) a project that receives money from a state or federal highway fund; or

(5) a civil works project as defined by Section 2269.351.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.0025. WAIVER PROHIBITED. This chapter may not be waived. A purported waiver of this chapter in violation of this section is void.

Added by Acts 2023, 88th Leg., R.S., Ch. 588 (H.B. 2965), Sec. 1, eff. September 1, 2023.

Sec. 2272.003. REPORT. (a) Before bringing an action asserting a claim to which this chapter applies, the governmental entity must provide each party with whom the governmental entity has a contract for the design or construction of an affected structure a written report by certified mail, return receipt requested, that clearly:

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

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

(3) describes any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

(b) Not later than the fifth day after the date a contractor

receives a report under Subsection (a), the contractor must provide a copy of the report to each subcontractor retained on the construction of the affected structure whose work is subject to the claim.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT.

(a) Before bringing an action asserting a claim to which this chapter applies, the governmental entity must allow each party with whom the governmental entity has a contract for the design or construction of an affected structure and who is subject to the claim and any known subcontractor or supplier who is subject to the claim:

(1) a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after sending the report required by Section 2272.003; and

(2) at least 120 days after the inspection to:

(A) correct any construction defect or related condition identified in the report; or

(B) enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

(b) The governmental entity is not required to allow a party to make a correction or repair under Subsection (a) if:

(1) the party:

(A) is a contractor and cannot provide payment and performance bonds to cover the corrective work;

(B) cannot provide liability insurance or workers' compensation insurance;

(C) has been previously terminated for cause by the governmental entity; or

(D) has been convicted of a felony; or

(2) the governmental entity previously complied with the process required by Subsection (a) regarding a construction defect or related condition identified in the report and:

(A) the defect or condition was not corrected as required by Subsection (a)(2)(A) or an agreement under Subsection (a)(2)(B); or

(B) the attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS. If the report and opportunity to correct required by Sections 2272.003 and 2272.004 are provided during the final year of a limitations or repose period applicable to the claim, the limitations or repose period is tolled until the first anniversary of the date on which the report is provided.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.006. DISMISSAL. (a) If a governmental entity brings an action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority shall dismiss the action without prejudice.

(b) If an action is dismissed without prejudice under Subsection (a) and the governmental entity brings a second action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority shall dismiss the action with prejudice.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report provided by a governmental entity under Section 2272.003 identifies a construction defect that is corrected under Section 2272.004 or for which the governmental entity recovers damages, the party responsible for that construction defect shall pay the reasonable

amounts incurred by the governmental entity to obtain the report with respect to identification of that construction defect.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY. This chapter does not prohibit or limit a governmental entity from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in connection with a potential claim against the party, receives a written notice of an alleged construction defect or a report under Section 2272.003 identifying a construction defect and provides the notice or report to the party's insurer, the insurer shall treat the provision of the notice or report to the party as the filing of a suit asserting that claim against the party for purposes of the relevant policy terms.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.