

## **BILL ANALYSIS**

C.S.H.B. 1208  
By: Bell  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties express concern about the lack of a requirement for a lender on a construction project to give notice to a prime contractor or a subcontractor when a borrower defaults on the construction loan or financing agreement. These parties note that without such notice, prime contractors, subcontractors, and suppliers may continue to work on a project in default without realizing that there is a strong likelihood they will never be paid for the labor and materials expended on the project. Some contractors, subcontractors, and suppliers have reportedly experienced large losses by continuing to pour labor and materials into a project despite both the lender and the owner being aware of the impending foreclosure of the project due to nonpayment or other default. C.S.H.B. 1208 seeks to remedy this situation.

### **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. 1208 amends the Property Code to require a contractor, not later than the 30th day after the date the contractor sends the contractor's first written pay request, to provide a notice of contractor identification that meets specified requirements to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property or improvement is collateral, the borrower, and, if the borrower is not the owner of the real property, the property owner. The bill does not apply with respect to a loan or financing agreement used primarily for the construction or remodeling of an individual's single-family home, townhouse, or duplex or for land development directly related to the construction or remodeling of an individual's single-family home, townhouse, or duplex. The bill requires the contractor identification notice, if the lender's name, a mailing address, a name of a particular individual, and a reference to these lender notice provisions are provided in the contract between the property owner and the contractor, to be sent to that mailing address and to the attention of the particular individual.

C.S.H.B. 1208 requires the lender to notify each contractor identified in the contractor identification notice not later than the second business day after the date on which the lender sends to the borrower one of the notices, as specified by the bill, in connection with a particular default under the loan or financing agreement. The bill authorizes the lender and contractor to devise and agree on an effective, efficient, and economical method for delivering any such notice and, if the lender and contractor do not devise or agree on the method by which the notice will be

delivered, requires the notice to be delivered by certified mail, return receipt requested.

C.S.H.B. 1208 entitles each contractor and subcontractor providing labor, materials, equipment, or services for an improvement to the property to suspend contractually required performance without penalty or liability for damages for such a suspension if a contractor receives such notice and requires the contractor, not later than the second business day after the date a contractor receives the notice, to notify each of the contractor's subcontractors of the contractor's receipt of the notice and of the subcontractor's right to suspend contractually required performance without penalty or liability for damages for such a suspension.

C.S.H.B. 1208 establishes that a lender is not required to notify a contractor by sending one of the notices, as specified by the bill, in connection with a particular default and that the contractor and the contractor's subcontractors are not entitled to suspend performance if, before the lender sends the notice to the borrower, a written agreement exists between the lender and the contractor that provides for the continued performance by the contractor and for payment to the contractor in the event of an acceleration, set-off, or foreclosure under the loan or financing agreement.

C.S.H.B. 1208 grants a lender that provides timely notice to a contractor by sending one of the notices, as specified by the bill, in connection with a particular default immunity from liability for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan or financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay. The bill establishes that a notice provided by a lender to a contractor under the bill's provisions does not create a cause of action by the borrower or property owner against the lender.

#### **EFFECTIVE DATE**

September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1208 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Chapter 28, Property Code, is amended by adding Section 28.0091 to read as follows:

Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS; SUSPENSION OF PERFORMANCE PENDING CURE. (a) This section applies only to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property or improvement is collateral. This section does not apply with respect to a loan or financing agreement used primarily for personal, family, or household purposes.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 28, Property Code, is amended by adding Section 28.0091 to read as follows:

Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS; SUSPENSION OF PERFORMANCE. (a) This section applies only to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property or improvement is collateral. (b) This section does not apply with respect to a loan or financing agreement used primarily for:  
(1) the construction or remodeling of an individual's single-family home, townhouse,

(b) For an improvement to real property for which financing is provided as described by Subsection (a), the contractor shall provide to the lender:

(1) the contractor's name, physical and mailing addresses and e-mail address, if available, and telephone number; and

(2) the name of the person to whom any notice under this section should be delivered.

(c) Except as provided by Subsection (g), each contractor and subcontractor providing labor, materials, equipment, or services for an improvement to real property for which financing is provided as described by Subsection (a) is entitled to suspend contractually required performance without penalty or liability for damages if a contractor receives notice under Subsection (d).

(d) Except as provided by Subsection (g), a lender shall immediately notify the

or duplex; or

(2) land development directly related to the construction or remodeling of an individual's single-family home, townhouse, or duplex.

(c) For an improvement to real property for which financing is provided as described by Subsection (a), each contractor, not later than the 30th day after the date the contractor sends the contractor's first written pay request, shall provide a notice of contractor identification that complies with Subsection (d) to the lender and the borrower and, if the borrower is not the owner of the real property, to the property owner.

(d) A notice of contractor identification provided under Subsection (c) must:

(1) be sent certified mail, return receipt requested;

(2) be identified by the heading "Notice of Contractor Identification" or words of similar meaning; and

(3) contain:

(A) the contractor's name, mailing address, e-mail address if available, and telephone number;

(B) the street address or project name or other information sufficient to describe the location of the property being improved; and

(C) the name of each person to whom the notice is being given.

(e) If the lender's name, a mailing address, a name of a particular individual, and a reference to this section are provided in the contract between the property owner and the contractor, notice to the lender under Subsection (c) must be sent to that mailing address and to the attention of the particular individual.

(f) Except as provided by Subsection (j), each contractor and subcontractor providing labor, materials, equipment, or services for an improvement to real property for which financing is provided as described by Subsection (a) is entitled to suspend contractually required performance without penalty or liability for damages for suspending contractually required performance if a contractor receives notice under Subsection (g).

(g) Except as provided by Subsection (j), a lender shall notify each contractor identified

contractor identified under Subsection (b) on the earliest date on which the lender sends to the borrower one of the following notices in connection with a particular default under the loan or financing agreement:

(1) a notice of intention to accelerate;

(2) a notice of acceleration;

(3) a notice of set-off; or

(4) a notice of foreclosure.

(e) A lender and a contractor may devise and agree on an effective, efficient, and economical method for delivering any notice required under Subsection (d). If the lender and the contractor do not devise or agree on the method by which the notice will be delivered, the notice must be delivered by certified mail, return receipt requested.

(f) On receipt of notice under Subsection (d), a contractor shall immediately notify each of the contractor's subcontractors of the contractor's receipt of the notice and of the subcontractor's right under this section as a result of the notice to suspend contractually required performance without penalty or liability for damages.

(g) A lender is not required to notify a contractor under Subsection (d) and the contractor and the contractor's subcontractors are not entitled to suspend performance under this section if, before the lender sends a notice described by Subsection (d) to the borrower, a written agreement exists between the lender and the contractor that:

(1) provides for the continued performance by the contractor and for payment to the contractor in the event of a default by the borrower or property owner under the loan or financing agreement;

(2) provides for notice from the lender to the contractor that the borrower or property owner is in default under the loan or financing agreement; and

(3) requires that, on the receipt of notice under Subdivision (2), the contractor shall immediately notify the contractor's subcontractors of the borrower's or property owner's default under the loan or financing agreement.

(h) A lender that provides timely notice to a

under Subsection (c) not later than the second business day after the date on which the lender sends to the borrower one of the following notices in connection with a particular default under the loan or financing agreement:

(1) a notice of acceleration;

(2) a notice of set-off; or

(3) a notice of foreclosure.

(h) A lender and a contractor may devise and agree on an effective, efficient, and economical method for delivering any notice required under Subsection (g). If the lender and the contractor do not devise or agree on the method by which the notice will be delivered, the notice must be delivered by certified mail, return receipt requested.

(i) Not later than the second business day after the date a contractor receives notice under Subsection (g), the contractor shall notify each of the contractor's subcontractors of the contractor's receipt of the notice and of the subcontractor's right under this section as a result of the notice to suspend contractually required performance without penalty or liability for damages for suspending contractually required performance.

(j) A lender is not required to notify a contractor under Subsection (g) and the contractor and the contractor's subcontractors are not entitled to suspend performance under this section if, before the lender sends a notice described by Subsection (g) to the borrower, a written agreement exists between the lender and the contractor that provides for the continued performance by the contractor and for payment to the contractor in the event of an acceleration, set-off, or foreclosure under the loan or financing agreement.

(k) A lender that provides timely notice to a

contractor under Subsection (d) is not liable for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan or financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay.

SECTION 2. The change in law made by this Act applies only to a construction loan or financing agreement entered into on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2015.

contractor under Subsection (g) is not liable for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan or financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay.

(1) A notice provided by a lender to a contractor under this section does not create a cause of action by the borrower or property owner against the lender.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.