

BILL ANALYSIS

C.S.S.B. 807
By: Creighton
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the protections provided for certain construction-related contracts concerning real property in Texas with respect to another state's law, litigation in the courts of another state, or arbitration in another state should be extended to other types of construction-related contracts. C.S.S.B. 807 seeks to provide for this extension.

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.S.B. 807 amends the Business & Commerce Code to change the type of construction-related contract to which the statutory provision making voidable a contract provision that subjects the contract or any conflict arising under the contract to another state's law, litigation in the courts of another state, or arbitration in another state applies from a contract principally for the construction or repair of an improvement to real property located in Texas to a construction contract, as defined by the bill, concerning real property located in Texas or an agreement collateral to or affecting the construction contract. The bill changes the party that may void the provision from the party obligated by the contract to perform the construction or repair to the party obligated by the contract or agreement to perform the work that is the subject of the construction contract.

C.S.S.B. 807 defines "construction contract" as a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, or repair of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The bill includes in the term an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

C.S.S.B. 807 retains the inapplicability of the voidable contract provision to certain contracts but changes the purpose of the applicable contracts from the construction or repair of the real property improvement to the performance of work that is the subject of the construction contract.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 807 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. The heading to Chapter 272, Business & Commerce Code, is amended.

SECTION 2. Chapter 272, Business & Commerce Code, is amended by adding Section 272.0001 and amending Sections 272.001 and 272.002 to read as follows:

Sec. 272.0001. DEFINITION. In this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, repair, or maintenance of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This section applies only to a construction contract concerning [that is principally for the construction or repair of an improvement to] real property located in this state.

(b) If a construction contract or an agreement collateral to or affecting the construction contract contains a provision making the contract or agreement or any conflict arising under the contract or agreement subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by a [the] party obligated by the contract or agreement to perform the work that is the subject of the construction

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Chapter 272, Business & Commerce Code, is amended by adding Section 272.0001 and amending Sections 272.001 and 272.002 to read as follows:

Sec. 272.0001. DEFINITION. In this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, or repair of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This section applies only to a construction contract concerning [that is principally for the construction or repair of an improvement to] real property located in this state.

(b) If a construction contract or an agreement collateral to or affecting the construction contract contains a provision making the contract or agreement or any conflict arising under the contract or agreement subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by a [the] party obligated by the contract or agreement to perform the work that is the subject of the construction

~~contract [or repair].~~

~~Sec. 272.002. INAPPLICABILITY OF CHAPTER [CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS].~~

~~This chapter does not apply to a construction [(a) For purposes of this chapter, a contract is principally for the construction or repair of an improvement to real property located in this state if the contract obligates a party, as the party's principal obligation under the contract, to provide labor or labor and materials as a general contractor or subcontractor for the construction or repair of an improvement to real property located in this state.~~

~~[(b) For purposes of this chapter, a contract is not principally for the construction or repair of an improvement to real property located in this state if the] contract that:~~

- ~~(1) is a partnership agreement or other agreement governing an entity or trust;~~
- ~~(2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract [construct or repair the improvement] is doing so as part of the party's agreements with the lender or other person who extends credit; or~~
- ~~(3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract [construct or repair the improvement] is part of that management.~~

~~[(c) Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state.]~~

SECTION 3. The changes in law made by this Act apply only to a contract, or an agreement collateral to or affecting a contract, entered into on or after the effective date of this Act. A contract, or an agreement collateral to or affecting a contract, entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

~~contract [or repair].~~

~~Sec. 272.002. INAPPLICABILITY OF CHAPTER [CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS].~~

~~This chapter does not apply to a construction [(a) For purposes of this chapter, a contract is principally for the construction or repair of an improvement to real property located in this state if the contract obligates a party, as the party's principal obligation under the contract, to provide labor or labor and materials as a general contractor or subcontractor for the construction or repair of an improvement to real property located in this state.~~

~~[(b) For purposes of this chapter, a contract is not principally for the construction or repair of an improvement to real property located in this state if the] contract that:~~

- ~~(1) is a partnership agreement or other agreement governing an entity or trust;~~
- ~~(2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract [construct or repair the improvement] is doing so as part of the party's agreements with the lender or other person who extends credit; or~~
- ~~(3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract [construct or repair the improvement] is part of that management.~~

~~[(c) Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state.]~~

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.