

## **BILL ANALYSIS**

Senate Research Center

S.B. 241  
By: West  
Jurisprudence  
2-14-97  
As Filed

### **DIGEST**

Currently, Texas law does not prohibit building home contractors from using funds obtained for the purpose of building one project to finance a totally separate project. Upon declaring bankruptcy, these builders, often, leave homes unfinished and do not repay their customers, or do not compensate suppliers and subcontractors for services rendered. This bill would require the creation and maintenance of a construction account trust fund by a contractor when a contract is made between a contractor and property owner to construct improvements costing in excess of \$5,000 to a residential homestead.

### **PURPOSE**

As proposed, S.B. 241 sets forth the conditions and guidelines for the creation and maintenance of a construction account trust fund by a contractor when a contract is made between a contractor and property owner to construct improvements costing in excess of \$5,000 to a residential homestead.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 162.001, Property Code, by adding Subsection (c), to provide that if a contractor and property owner have entered into a written construction contract for the improvement of specific real property in this state before the commencement of construction of the improvement and the contract provides for the payment by the owner of the costs of construction and a reasonable fee specified in the contract payable to the contractor, the fee paid to the contractor is not considered trust funds.

SECTION 2. Amends Section 162.003, Property Code, to make a nonsubstantive change.

SECTION 3. Amends Section 162.005, Property Code, to redefine "intent to defraud." Defines "direct cost," "indirect cost," "financial institution," and "construction account." Makes conforming changes.

SECTION 4. Amends Chapter 162A, Property Code, by adding Sections 162.006 and 162.007, as follows:

Sec. 162.006. CONSTRUCTION ACCOUNT REQUIRED IN CERTAIN CIRCUMSTANCES. Requires trust funds to be deposited in a construction account in a financial institution by a contractor when a contract is made between a contractor and property owner to construct improvements costing in excess of \$5,000 to a residential homestead. Requires the financial institution to refer to the account as a "construction account."

Sec. 162.007. MANAGEMENT OF CONSTRUCTION ACCOUNTS. Sets forth the required record-keeping guidelines for a construction account required to be maintained by a contractor under this subchapter.

SECTION 5. Amends Section 162.032, Property Code, by adding Subsection (c), to provide that a trustee commits a Class A misdemeanor if the trustee violates Section 162.006 or 162.007 of this subchapter.

SECTION 6. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 7. Emergency clause.