

BILL ANALYSIS

Senate Research Center
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H.B. 2416
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Supreme Court has previously ruled that attorney's fees awarded to a prevailing party are considered costs and not damages under a commercial general liability insurance policy. It has been suggested that this ruling leaves contractors exposed, even in covered insurance claims, to potentially large awards for attorney's fees. In some cases, a contractor could have an otherwise covered case but still be forced to go to trial if the insurance carrier disagrees with the plaintiff's assessment of damages. If the plaintiff gets an award of attorney's fees, these costs will not be covered by the policy even if the rest of the damages are covered, which creates a sizeable gap in coverage. H.B. 2416 seeks to fill this coverage gap by authorizing a person to recover attorney's fees as compensatory damages for breach of a construction contract.

H.B. 2416 amends current law relating to the recovery of attorney's fees as compensatory damages for certain claims.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Civil Practice and Remedies Code, by adding Section 38.0015, as follows:

Sec. 38.0015. RECOVERY OF ATTORNEY'S FEES AS COMPENSATORY DAMAGES. (a) Authorizes a person to recover reasonable attorney's fees from an individual, corporation, or other entity from which recovery is permitted under Section 38.001 (Recovery of Attorney's Fees) as compensatory damages for breach of a construction contract as defined by Section 130.001 (Definition).

(b) Prohibits Section 38.0015 from being construed to create or imply a private cause of action or independent basis to recover attorney's fees.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.