

## **BILL ANALYSIS**

Senate Research Center  
77R7518 ATP-F

H.B. 2311  
By: Bosse (Harris)  
State Affairs  
5/1/2001  
Engrossed

### **DIGEST AND PURPOSE**

On a typical construction project, the property owner contracts with a general contractor who, in turn, contracts with subcontractors to perform electrical, plumbing, or other work. Most contracts between general contractors and subcontractors contain contingent payment clauses that make payment from the general contractor to the subcontractor contingent upon the general contractor being paid by the owner. By agreeing to a contingent payment clause, the subcontractor waives any contractual right to sue the general contractor for nonpayment. As a result, subcontractors may not receive compensation for the work they perform. H.B. 2311 provides that a contract between a general contractor and a subcontractor that contains a contingent payment clause is void.

### **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. SHORT TITLE. Provides that this Act may be cited as the Subcontractor's Right to be Paid Act.

SECTION 2. LEGISLATIVE FINDINGS. Provides legislative findings.

SECTION 3. Amends Chapter 35D, Business & Commerce Code, by adding Section 35.521, as follows:

Sec. 35.521. AGREEMENT FOR PAYMENT OF CONSTRUCTION SUBCONTRACTOR. Defines "improvement," "original contractor," "owner," and "subcontractor." Provides that a provision in a contract or other agreement that provides that the payment of a subcontractor for work performed or materials furnished is conditioned on the receipt of payment by the original contractor or another subcontractor from another person, including the owner for whom the improvement is being made, is void. Prohibits a person from waiving this section by contract or other means. Provides that a purported waiver of this section is void.

SECTION 4. Effective date: September 1, 2001. Makes application of this Act prospective regarding a contract or agreement entered into on or after the effective date of this Act.