

By: Turner

H.B. No. 2928

A BILL TO BE ENTITLED

AN ACT

relating to the payment or application of funds under construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 272.001, Business & Commerce Code, is amended to read as follows:

Sec. 272.001. VOIDABLE CONTRACT PROVISIONS [~~PROVISION~~].

SECTION 2. Section 272.001, Business & Commerce Code, is amended by adding Subsection (c) to read as follows:

(c) If a construction contract contains a provision that allows a party to the contract to wholly or partly withhold payment owed under one contract to satisfy a claim or damages alleged under another contract, that provision is voidable by the party whose payment may be withheld under the provision.

SECTION 3. Section 28.003, Property Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, a good faith dispute does not include a dispute relating to a contract, work order, contractual arrangement, or any other agreement between the parties that is not related to the contract for construction under which payment is requested or required.

SECTION 4. Section 162.031, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A trustee who retains or otherwise diverts trust funds

1 due to a dispute, including an alleged default, arising under a  
2 construction contract other than the contract in connection with  
3 which the trust funds were received by or placed under the control  
4 or direction of the trustee has misapplied the trust funds.

5 SECTION 5. Subchapter B, Chapter 162, Property Code, is  
6 amended by adding Section 162.034 to read as follows:

7 Sec. 162.034. ATTORNEY'S FEES. The court may award costs  
8 and reasonable attorney's fees in an action brought under this  
9 subchapter.

10 SECTION 6. (a) Except as provided by Subsection (b) of this  
11 section, the changes in law made by this Act apply only to a  
12 contract that is entered into on or after the effective date of this  
13 Act.

14 (b) Section 162.034, Property Code, as added by this Act,  
15 applies only to an action commenced on or after the effective date  
16 of this Act.

17 SECTION 7. This Act takes effect September 1, 2023.