

Amend the Merritt amendment to **CSHB 4** by striking Chapter 145, Civil Practice and Remedies Code, as added by the amendment (page 1, lines 6-29 of the amendment) and substituting the following:

CHAPTER 145. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 145.001. DEFINITION. In this chapter, "construction contract" means a contract or agreement made and entered into by a contractor, construction manager, subcontractor, supplier, or equipment lessor, concerning construction, alteration, or repair.

Sec. 145.002. AGREEMENT VOID AND UNENFORCEABLE. (a) Except as proved by Subsection (b), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that:

(1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraphs (A), (B), or (C).

(b) A covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, may provide for a person to indemnify, hold harmless, or defend another person against loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of:

(1) the indemnitor;

(2) the indemnitor's subcontractor, supplier, or equipment lessor;

(3) any lower-tier subcontractor, supplier, or equipment lessor of the indemnitor's subcontractor; or

(4) any independent contractor directly responsible to a person described in Subdivisions (1)-(3).

Sec. 145.003. CERTAIN LAWS AND CONTRACTS UNAFFECTED. (a) This chapter does not affect the validity and enforceability of:

(1) an insurance contract;

(2) benefits and protections under the workers' compensation laws of this state; or

(3) any statutory right of contribution.

(b) This chapter does not affect a contract covered by (Section 2252.902, Government Code.) Government Buildings (GSA) Indemnity provisions in construction contracts

Sec. 145.004. WAIVER PROHIBITED. This chapter may not be waived by contract or otherwise.