

Amend CSSB 1952 (House Committee Report) by adding the following PART, appropriately numbered, and renumbering subsequent parts accordingly:

PART \_\_\_\_ . CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

ARTICLE \_\_A. INDEMNIFICATION PROVISIONS IN CONSTRUCTION CONTRACTS

SECTION \_\_A.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. ENFORCEMENT OF CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 138.001. DEFINITION. In this chapter, "construction contract" means a contract or agreement entered into or made by an owner, contractor, subcontractor, or supplier concerning the construction, alteration, repair, troubleshooting, or maintenance of a building, structure, appurtenance, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

Sec. 138.002. AGREEMENT VOID AND UNENFORCEABLE. A provision, promise, understanding, or covenant contained in, collateral to, or affecting a construction contract is void and unenforceable to the extent that it provides or purports to provide to the indemnitee defense or indemnity, or both, against loss or liability that:

(1) is caused by or results from the sole or concurrent negligence, including strict liability, of the indemnitee, an agent or employee of the indemnitee, or an independent contractor directly responsible to the indemnitee; and

(2) arises or results from:

(A) death or bodily injury to a person;

(B) damage to property;

(C) a fine, penalty, administrative action, or other action by a governmental entity; or

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

Sec. 138.003. EFFECT ON INSURANCE POLICY. A provision in a construction contract requiring an insurance policy provision or endorsement that would frustrate or circumvent the prohibitions of this chapter, including the payment of all or a portion of an

indemnitor's insurance premium by an indemnitee, is also void and unenforceable.

Sec. 138.004. WAIVER PROHIBITED. The provisions of this chapter may not be waived by contract or otherwise.

Sec. 138.005. CONFLICT OF LAWS. A covenant, promise, agreement, or understanding that is contained in or collateral to or that affects a construction contract or a related insurance policy provision or endorsement and that provides that the law of another state will apply to the contractual relationship between the indemnitor and the indemnitee is against public policy and void if the premises where the labor is performed or the materials are delivered under the contract are in this state or its territorial reach.

Sec. 138.006. APPLICABILITY OF OTHER LAW. This chapter prevails over any other law that conflicts with or is inconsistent with this chapter.

SECTION \_\_A.02. (a) Chapter 138, Civil Practice and Remedies Code, as added by this article, applies to a construction contract entered into or renewed on or after the effective date of this article and to any specific, terminable performance of a specific job or activity begun under a construction contract after the effective date of this article, including performance under a master or general service agreement, a blanket or maintenance contract, or any similar agreement or contract that purports to provide indemnity to the indemnitee for all or part of the work performed, in whatever form and by whatever name, regardless of whether the agreement or contract was entered into or renewed before the effective date of this article.

(b) Except as provided by Subsection (a) of this section, a construction contract entered into or renewed before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.