

## BILL ANALYSIS

Senate Research Center  
78R6521 AJA-F

S.B. 1693  
By: Gallegos  
State Affairs  
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As Filed

### DIGEST AND PURPOSE

Currently, on construction projects, general contractors and subcontractors assume liability for accidents on the job, instead of the job owners, regardless of who is to blame. As proposed, S.B. 1693 amends the Civil Practice and Remedies Code to provide that the party at fault is the one liable for damages in a construction contract.

### 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 Title 6, Civil Practice and Remedies Code, by adding Chapter 138, as follows:

#### CHAPTER 138. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 138.001. DEFINITION. Defines "construction contract."

Sec. 138.002. AGREEMENT VOID AND UNENFORCEABLE. Provides that 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 meets certain conditions.

Sec. 138.003. EFFECT ON INSURANCE POLICY. (a) Provides that an insurance policy provision or endorsement that would frustrate or circumvent the prohibitions of this chapter, including a waiver of subrogation and an additional named insured endorsement, is void and unenforceable to that extent, and the policy may apply only to damages arising from the negligence of the person who is the named insured in the policy.

(b) Provides that a provision, promise, understanding, or covenant 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.

(c) Provides that, except as provided by this section, this chapter does not affect the validity of an insurance policy or contract or a benefit conferred by the workers' compensation laws of this state.

Sec. 138.004. WAIVER PROHIBITED. Prohibits the waiver of the provisions of this chapter by contract or otherwise.

Sec. 138.005. CONFLICT OF LAWS. Provides that 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 under certain circumstances.

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

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2003.