

By: Deshotel

H.B. No. 3201

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain provisions in construction contracts.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. 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

1           (2) arises or results from:

2                   (A) death or bodily injury to a person;

3                   (B) damage to property;

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

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

8           Sec. 138.003. EFFECT ON INSURANCE POLICY. A provision in a  
9 construction contract requiring an insurance policy provision or  
10 endorsement that would frustrate or circumvent the prohibitions of  
11 this chapter, including the payment of all or a portion of an  
12 indemnitor's insurance premium by an indemnitee, is also void and  
13 unenforceable.

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

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

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

1           SECTION 2. (a) This Act applies to a construction contract  
2 entered into or renewed on or after the effective date of this Act  
3 and to any specific, terminable performance of a specific job or  
4 activity begun under a construction contract after the effective  
5 date of this Act, including performance under a master or general  
6 service agreement, a blanket or maintenance contract, or any  
7 similar agreement or contract that purports to provide indemnity to  
8 the indemnitee for all or part of the work performed, in whatever  
9 form and by whatever name, regardless of whether the agreement or  
10 contract was entered into or renewed before the effective date of  
11 this Act.

12           (b) A construction contract entered into or renewed before  
13 the effective date of this Act and any job or activity under the  
14 contract begun before the effective date of this Act is governed by  
15 the law in effect immediately before the effective date of this Act,  
16 and that law is continued in effect for that purpose.

17           SECTION 3. This Act takes effect September 1, 2003.