

By: Eiland, Van Arsdale

H.B. No. 1217

Substitute the following for H.B. No. 1217:

By: Eiland

C.S.H.B. No. 1217

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain insurance provisions in construction contracts.

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

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.75 to read as follows:

Art. 21.75. INSURANCE AND RISK TRANSFER AGREEMENTS IN CERTAIN CONSTRUCTION CONTRACTS

Sec. 1. DEFINITIONS. In this article:

(1) "Additional insured" means a person covered under another person's insurance policy for an occurrence caused by something other than the sole negligence of the named insured under the policy, or an indemnitee under an indemnification agreement.

(2) "Construction contract" means a contract or agreement made or entered into by an owner, contractor, subcontractor, or supplier concerning the construction, alteration, remodeling, repair, or maintenance of a building, structure, appurtenance, or other improvement to or on private or public real property, including moving, demolition, and excavation connected with the real property.

(3) "Construction insurance provision" means a covenant, promise, agreement, or understanding contained in a construction contract, or in an agreement collateral to or affecting a construction contract, that:

1 (A) requires a person to provide insurance
2 coverage;

3 (B) provides insurance coverage; or

4 (C) requires insurance coverage for an
5 indemnitee under an indemnification agreement.

6 Sec. 2. CERTAIN INSURANCE PROVISIONS UNENFORCEABLE. (a) A
7 construction insurance provision is void and unenforceable to the
8 extent that the provision requires that:

9 (1) a person, including an indemnitee under an
10 indemnification agreement:

11 (A) be an additional insured; or

12 (B) provide a waiver of subrogation; or

13 (2) the named insured's insurance policy be endorsed
14 to provide a waiver of subrogation.

15 (b) An insurance policy provision or endorsement that
16 provides for an additional insured or a waiver of subrogation in
17 contravention of this article is void.

18 Sec. 3. CERTAIN CONSTRUCTION CONTRACT PROVISIONS
19 UNENFORCEABLE. A covenant, promise, or understanding contained in
20 a construction contract, or in an agreement collateral to or
21 affecting a construction contract, is void and unenforceable if it
22 purports to indemnify, hold harmless, or defend a person against
23 loss or liability for damage that:

24 (1) is caused by or results from the sole or concurrent
25 negligence of the indemnitee, the indemnitee's agent or employee,
26 or an independent contractor, other than the indemnitor, directly
27 responsible to the indemnitee; and

1 (2) arises or results from:

2 (A) personal injury or death;

3 (B) property damage;

4 (C) a fine, penalty, administrative action, or
5 other action assessed by a governmental entity directly against the
6 indemnitee, the indemnitee's agent or employee, or an independent
7 contractor directly responsible to the indemnitee; or

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

10 Sec. 4. INSURANCE CONTRACTS; WORKERS' COMPENSATION. This
11 article does not otherwise affect the validity and enforceability
12 of:

13 (1) an insurance policy or contract; or

14 (2) the benefits or protections established under the
15 workers' compensation laws of this state.

16 Sec. 5. WAIVER PROHIBITED. The provisions of this article
17 may not be waived by contract or otherwise.

18 Sec. 6. APPLICABILITY OF OTHER LAW. This article prevails
19 over any other law that conflicts with or is inconsistent with this
20 article.

21 SECTION 2. Section 2252.902, Government Code, is repealed.

22 SECTION 3. The changes in law made by this Act apply only to
23 a contract or agreement entered into on or after the effective date
24 of this Act. A contract or agreement entered into before the
25 effective date of this Act is governed by the applicable law in
26 effect immediately before the effective date of this Act, and that
27 law is continued in effect for that purpose.

1 SECTION 4. This Act takes effect September 1, 2005.