

By: Nixon

H.B. No. 1626

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to third-party civil liability for certain persons  
3 entering into building or construction contracts.

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

5 SECTION 1. Sections 408.001(a) and (b), Labor Code, are  
6 amended to read as follows:

7 (a) Recovery of workers' compensation benefits is the  
8 exclusive remedy of an employee covered by workers' compensation  
9 insurance coverage or a legal beneficiary against:

10 (1) the employer or an agent or employee of the  
11 employer for the death of or a work-related injury sustained by the  
12 employee; or

13 (2) a premises owner, general contractor, or hiring  
14 contractor under Section 417.0011.

15 (b) This section does not prohibit the recovery of exemplary  
16 damages by the surviving spouse or heirs of the body of a deceased  
17 employee whose death was caused by an intentional act or omission of  
18 the employer or other person described by Subsection (a)(2) or by  
19 the employer's or other person's gross negligence.

20 SECTION 2. Section 417.001(a), Labor Code, is amended to  
21 read as follows:

22 (a) Except as provided by Section 417.0011, an [An] employee  
23 or legal beneficiary may seek damages from a third party who is or  
24 becomes liable to pay damages for an injury or death that is

1 compensable under this subtitle and may also pursue a claim for  
2 workers' compensation benefits under this subtitle.

3 SECTION 3. Chapter 417, Labor Code, is amended by adding  
4 Section 417.0011 to read as follows:

5 Sec. 417.0011. THIRD-PARTY LIABILITY FOR BUILDING OR  
6 CONSTRUCTION. (a) In this section:

7 (1) "Building or construction" has the meaning  
8 assigned that term by Section 406.096.

9 (2) "General contractor" means a person who undertakes  
10 to procure the performance of work or a service either separately or  
11 through the use of subcontractors or independent contractors. The  
12 term includes a principal contractor, original contractor, prime  
13 contractor, or other similar term.

14 (3) "Hiring contractor" means a subcontractor or  
15 independent contractor who, in the course of regular business,  
16 subcontracts all or part of the work to be performed to other  
17 persons.

18 (b) An employee of a subcontractor or independent  
19 contractor, or a legal beneficiary of the employee, may not seek  
20 damages from a third party who is a premises owner, general  
21 contractor, or hiring contractor engaged in building or  
22 construction for an injury or death that is compensable under this  
23 subtitle if:

24 (1) workers' compensation insurance coverage is  
25 provided as required by Section 406.096; or

26 (2) the premises owner, general contractor, or hiring  
27 contractor elects to provide or require workers' compensation

1 insurance coverage.

2 (c) A premises owner, general contractor, or hiring  
3 contractor subject to Subsection (b) is secondarily liable for the  
4 workers' compensation insurance coverage obligation of a  
5 subcontractor or independent contractor if the subcontractor or  
6 independent contractor fails to maintain the coverage. The  
7 premises owner, general contractor, or hiring contractor is not  
8 liable for the injury or death of a partner or an executive officer  
9 of the subcontractor or independent contractor or for the injury or  
10 death of a subcontractor or independent contractor who is a sole  
11 proprietor with no employees.

12 (d) A premises owner, general contractor, or hiring  
13 contractor subject to Subsection (b) may not require a  
14 subcontractor or independent contractor who provides workers'  
15 compensation insurance coverage as required by Section 406.096 to  
16 indemnify or hold harmless the premises owner, general contractor,  
17 or hiring contractor for an injury or death for which an employee of  
18 a subcontractor or independent contractor, or a legal beneficiary  
19 of the employee, may not seek damages under Subsection (b) or for  
20 which the premises owner, general contractor, or hiring contractor  
21 is not liable under Subsection (c). The provisions of a covenant,  
22 promise, or agreement that purport to require indemnification are  
23 void and unenforceable. This subsection does not affect any other  
24 provision of a covenant, promise, or agreement, or any other type of  
25 indemnification, including an indemnification for property damage  
26 or for a person not subject to this section.

27 SECTION 4. The change in law made by this Act applies only

1 to a claim based on a compensable injury that occurs on or after the  
2 effective date of this Act. A claim based on a compensable injury  
3 that occurs before the effective date of this Act is governed by the  
4 law in effect on the date the injury occurred, and the former law is  
5 continued in effect for that purpose.

6 SECTION 5. This Act takes effect September 1, 2005.