

By: Duncan

S.B. No. 1689

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(2) a general contractor as defined in Section 417.0011, if the general contractor has provided worker's compensation insurance coverage for the employee.

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

SECTION 2. Section 417.001(1), Labor Code, is amended to read as follows:

(a) Except as provided by Section 471.0011, an ~~An~~ employee or legal beneficiary may seek damages from a third party who is or

1 becomes liable to pay damages for an injury or death that is  
2 compensable under this subtitle and may also pursue a claim for  
3 workers' compensation benefits under this subtitle.

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

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

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

10 (2) "Contract" means a written agreement enforceable  
11 under law.

12 (3) "General contractor" means a person who undertakes  
13 to procure the performance of work or a service either separately or  
14 through the use of subcontractors. The term includes a principal  
15 contractor, original contractor, prime contractor, or other  
16 similar term. The term does not include a subcontractor.

17 (b) An employee of a subcontractor or a legal beneficiary  
18 of the employee, may not seek damages from a third party who is a  
19 general contractor and who is a party to a building or construction  
20 contract for an injury or death that is compensable under this  
21 subtitle if:

22 (1) workers' compensation insurance coverage for the  
23 employee is provided under the contract as required by Section  
24 406.096, or the general contractor elects in the contract to  
25 provide, and does provide, workers' compensation insurance  
26 coverage for the employee;

27 (2) the employee was employed by a subcontractor who

1 entered into a written contract with the general contractor to  
2 perform building or construction work; and

3 (3) the injury arises out of an act or omission  
4 directly related to the performance of the work under the contract.

5 (c) Nothing in this subtitle prohibits the employee of a  
6 subcontractor performing work under a building or construction  
7 contract from seeking damages from another subcontractor  
8 performing work under the contract.

9 (d) The immunity from liability under this section and Sec.  
10 408.001(a)(2) does not apply to a claim for damages in which the  
11 injury or disease:

12 (1) was caused in whole or in part by exposure to or  
13 the deposit, discharge, or release into the environment of  
14 hazardous chemicals, hazardous wastes, hazardous hydrocarbons,  
15 similarly harmful organic, inorganic, dusts, fibers or mineral  
16 substances, hazardous radiation sources, and other similarly  
17 harmful substances; and

18 (2) did not manifest itself within one year of  
19 exposure to the substance or substances.

20 SECTION 4. Chapter 417, Labor Code, is amended by adding  
21 Section 417.0012 to read as follows:

22 Sec. 417.0012. INDEMNIFICATION AGREEMENTS VOID. A general  
23 contractor defined in Section 417.0011(b) may not require a  
24 subcontractor or independent contractor who provides workers'  
25 compensation insurance as a part of a building or construction  
26 contract to enter into an agreement pertaining to such building or  
27 construction contract and any such agreement is void if it purports

1 to indemnify a person against loss or liability for damage that:

2 (1) is caused by or results from the sole or concurrent  
3 negligence of the indemnitee, his agent or employee, or an  
4 individual contractor directly responsible to the indemnitee; and

5 (2) arises from:

6 (A) personal injury or death;

7 (B) property damage; or

8 (C) any other loss, damage, or expense that  
9 arises from personal injury, death, or property injury.

10 SECTION 5. The change in law made by this Act applies only  
11 to a claim based on a compensable injury that occurs on or after the  
12 effective date of this Act. A claim based on a compensable injury  
13 that occurs before the effective date of this Act is governed by the  
14 law in effect on the date the injury occurred, and the former law is  
15 continued in effect for that purpose.

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