

By: Duncan, Harris

S.B. No. 346

A BILL TO BE ENTITLED

AN ACT

relating to indemnification provisions in construction contracts.

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

SECTION 1. The Civil Practice and Remedies Code is amended by adding Title 10 to read as follows:

TITLE 10. ADDITIONAL MISCELLANEOUS PROVISIONS

CHAPTER 502. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 502.001. DEFINITIONS. In this chapter:

(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 first named insured under the policy.

(2) "Construction contract" means a contract or agreement entered into or made 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 public or private real property, including moving, demolition, and excavation connected with the real property. The term includes a contract or agreement described by this subdivision under which the construction, alteration, remodeling, repair, or maintenance is performed under a consolidated insurance program.

Sec. 502.002. AGREEMENT VOID AND UNENFORCEABLE. (a) A covenant, promise, or understanding contained in a construction

1 contract, or in an agreement collateral to or affecting a
2 construction contract, is void and unenforceable if it purports to
3 indemnify, hold harmless, or defend a person against loss or
4 liability for damage that is caused by or results from:

5 (1) the breach of contract or warranty by the
6 indemnitee;

7 (2) the sole or concurrent negligence of the
8 indemnitee; or

9 (3) a fine, penalty, administrative action, or other
10 action assessed by a governmental entity directly against the
11 indemnitee except to the extent that the indemnitor contributed to
12 the violation upon which the fine, penalty, or administrative
13 action is based.

14 (b) For the purposes of this section, an indemnitee includes
15 the indemnitee's agent or employee or an independent contractor,
16 other than the indemnitor, directly responsible to the indemnitee.

17 Sec. 502.003. UNENFORCEABLE INSURANCE PROVISIONS. (a) A
18 covenant, promise, agreement, or understanding contained in a
19 construction contract, or in an agreement collateral to or
20 affecting a construction contract, that requires a person to
21 provide insurance coverage or does provide insurance coverage, is
22 void and unenforceable to the extent that it requires:

23 (1) contractual liability coverage that exceeds the
24 limitations of the indemnity obligations of this chapter;

25 (2) that a person be an additional insured for that
26 additional insured person's own negligence; or

27 (3) a workers' compensation insurance policy to be

1 endorsed to provide a waiver of subrogation.

2 (b) An insurance contract may not provide an additional
3 insured endorsement or a waiver of subrogation that is in
4 contravention of this chapter. Any purported endorsement or waiver
5 described by this subsection is void and unenforceable.

6 Sec. 502.004. INSURANCE CONTRACTS; WORKERS' COMPENSATION;
7 CERTAIN WAIVERS. This chapter does not otherwise affect the
8 validity and enforceability of:

9 (1) an insurance contract;

10 (2) the benefits or protections under the workers'
11 compensation laws of this state; or

12 (3) a waiver of subrogation between contractors or
13 between a principal and a contractor for coverage provided by a
14 consolidated insurance program.

15 Sec. 502.005. WAIVER PROHIBITED. The provisions of this
16 chapter may not be waived by contract or otherwise. Any purported
17 waiver of a provision of this chapter is void and unenforceable.

18 Sec. 502.006. APPLICABILITY OF OTHER LAW. This chapter
19 prevails over any other law that conflicts with or is inconsistent
20 with this chapter.

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

22 SECTION 3. This Act applies only to liability for an act of
23 negligence under a construction contract entered into on or after
24 the effective date of this Act. Liability for an act of negligence
25 under a construction contract entered into before the effective
26 date of this Act is governed by the law in effect immediately before
27 the effective date of this Act, and that law is continued in effect

1 for that purpose.

2 SECTION 4. This Act takes effect September 1, 2007.