

1-1 By: Duncan, Harris S.B. No. 346
1-2 (In the Senate - Filed January 29, 2007; March 6, 2007, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 21, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 21, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 346 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to indemnification provisions in construction contracts.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. The Civil Practice and Remedies Code is amended
1-13 by adding Title 10 to read as follows:

1-14 TITLE 10. ADDITIONAL MISCELLANEOUS PROVISIONS
1-15 CHAPTER 502. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS

1-16 Sec. 502.001. DEFINITIONS. In this chapter:

1-17 (1) "Additional insured" means a person covered under
1-18 another person's insurance policy for an occurrence caused by
1-19 something other than the sole negligence of the first named insured
1-20 under the policy.

1-21 (2) "Construction contract" means a contract or
1-22 agreement entered into or made by an owner, contractor,
1-23 subcontractor, or supplier concerning the construction,
1-24 alteration, remodeling, repair, or maintenance of a building,
1-25 structure, appurtenance, or other improvement to or on public or
1-26 private real property, including moving, demolition, and
1-27 excavation connected with the real property. The term includes a
1-28 contract or agreement described by this subdivision under which the
1-29 construction, alteration, remodeling, repair, or maintenance is
1-30 performed under a consolidated insurance program.

1-31 Sec. 502.002. AGREEMENT VOID AND UNENFORCEABLE. (a) A
1-32 covenant, promise, or understanding contained in a construction
1-33 contract, or in an agreement collateral to or affecting a
1-34 construction contract, is void and unenforceable if it purports to
1-35 indemnify, hold harmless, or defend a person against loss or
1-36 liability for damage that is caused by or results from:

1-37 (1) the breach of contract or warranty by the
1-38 indemnitee;

1-39 (2) the sole or concurrent negligence of the
1-40 indemnitee; or

1-41 (3) a fine, penalty, administrative action, or other
1-42 action assessed by a governmental entity directly against the
1-43 indemnitee except to the extent that the indemnitor contributed to
1-44 the violation upon which the fine, penalty, or administrative
1-45 action is based.

1-46 (b) For the purposes of this section, an indemnitee includes
1-47 the indemnitee's agent or employee or an independent contractor,
1-48 other than the indemnitor, directly responsible to the indemnitee.

1-49 Sec. 502.003. UNENFORCEABLE INSURANCE PROVISIONS. (a) A
1-50 covenant, promise, agreement, or understanding contained in a
1-51 construction contract, or in an agreement collateral to or
1-52 affecting a construction contract, that requires a person to
1-53 provide insurance coverage or does provide insurance coverage, is
1-54 void and unenforceable to the extent that it requires:

1-55 (1) contractual liability coverage that exceeds the
1-56 limitations of the indemnity obligations of this chapter;

1-57 (2) that a person be an additional insured for that
1-58 additional insured person's own negligence; or

1-59 (3) a workers' compensation insurance policy to be
1-60 endorsed to provide a waiver of subrogation.

1-61 (b) An insurance contract may not provide an additional
1-62 insured endorsement or a waiver of subrogation that is in
1-63 contravention of this chapter. Any purported endorsement or waiver

2-1 described by this subsection is void and unenforceable.
2-2 Sec. 502.004. INSURANCE CONTRACTS; WORKERS' COMPENSATION;
2-3 CERTAIN WAIVERS. This chapter does not otherwise affect the
2-4 validity and enforceability of:

- 2-5 (1) an insurance contract;
- 2-6 (2) the benefits or protections under the workers'
2-7 compensation laws of this state; or
- 2-8 (3) a waiver of subrogation between contractors or
2-9 between a principal and a contractor for coverage provided by a
2-10 consolidated insurance program.

2-11 Sec. 502.005. WAIVER PROHIBITED. The provisions of this
2-12 chapter may not be waived by contract or otherwise. Any purported
2-13 waiver of a provision of this chapter is void and unenforceable.

2-14 Sec. 502.006. APPLICABILITY OF OTHER LAW. This chapter
2-15 prevails over any other law that conflicts with or is inconsistent
2-16 with this chapter.

2-17 SECTION 2. Section 2252.902, Government Code, is repealed.

2-18 SECTION 3. This Act applies only to liability for an act of
2-19 negligence under a construction contract entered into on or after
2-20 the effective date of this Act. Liability for an act of negligence
2-21 under a construction contract entered into before the effective
2-22 date of this Act is governed by the law in effect immediately before
2-23 the effective date of this Act, and that law is continued in effect
2-24 for that purpose.

2-25 SECTION 4. This Act takes effect September 1, 2007.

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