

By: Duncan

S.B. No. 555

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) "Claim" includes a loss or liability for a claim, damage, expense, or governmentally imposed fine, penalty, administrative action, or other action.

(2) "Construction contract" means a contract, subcontract, or agreement or a performance bond assuring the performance of any of the foregoing, entered into or made by an owner, contractor, construction manager, subcontractor, supplier, material or equipment lessor, for the construction, alteration, renovation, remodeling, repair, or maintenance of, or for the furnishing of material or equipment for, 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 an agreement to which a contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications to the construction contract.

1 (3) "Indemnitor" means a party to a construction
2 contract that is required to provide indemnification or additional
3 insured status to another party to the construction contract or to a
4 third party.

5 Sec. 502.002. PERMISSIBLE CONTRACT PROVISION. Parties may
6 agree in a construction contract upon an indemnity or additional
7 insured provision that is not prohibited by this chapter.

8 Sec. 502.003. AGREEMENT VOID AND UNENFORCEABLE.

9 (a) Except as provided by Section 502.004, a provision in a
10 construction contract, or in an agreement collateral to or
11 affecting a construction contract, is void and unenforceable as
12 against public policy if it requires an indemnitor to indemnify,
13 hold harmless, or defend another party to the construction contract
14 or a third party against a claim to the extent that the claim is
15 caused by the negligence or fault, breach or violation of a statute,
16 ordinance, governmental regulation, standard, or rule, or breach of
17 contract of the indemnitee, its agent or employee, or any third
18 party under the control or supervision of the indemnitee, other
19 than the indemnitor or its agent, employee, or subcontractor of any
20 tier.

21 Sec. 502.004. EXCEPTION FOR EMPLOYEE CLAIM. Section
22 502.003 does not apply to a provision in a construction contract
23 that requires a person to indemnify, hold harmless, or defend
24 another party to the construction contract or a third party against
25 a claim for the bodily injury or death of an employee of the
26 indemnitor, its agent, or its subcontractor of any tier.

27 Sec. 502.005. UNENFORCEABLE ADDITIONAL INSURANCE

1 PROVISION. A provision in a construction contract that requires
2 the purchase of additional insured coverage, or any coverage
3 endorsement or provision within an insurance policy providing
4 additional insured coverage, is void and unenforceable to the
5 extent that it requires or provides coverage, the scope of which is
6 prohibited under this chapter for an agreement to indemnify, hold
7 harmless, or defend.

8 Sec. 502.006. EXCLUSIONS. This chapter does not affect:

9 (1) an insurance policy, including a policy issued
10 under an owner-controlled or owner-sponsored consolidated
11 insurance program or a contractor-controlled or
12 contractor-sponsored consolidated insurance program, except a
13 policy under Sections 502.003 and 502.005;

14 (2) a cause of action for breach of contract or
15 warranty that exists independently of an indemnity obligation;

16 (3) a provision in a construction contract that
17 requires the indemnitor to purchase or maintain insurance covering
18 the acts or omissions of the indemnitor;

19 (4) indemnity provisions contained in loan and
20 financing documents, other than construction contracts to which the
21 contractor and owner's lender are parties as provided under Section
22 502.001(2);

23 (5) general agreements of indemnity required by
24 sureties as a condition of execution of bonds for construction
25 contracts;

26 (6) the benefits and protections under the workers'
27 compensation laws of this state;

1 (7) the benefits or protections under the governmental
2 immunity laws of this state; or

3 (8) agreements subject to the provisions of Chapter
4 127.

5 Sec. 502.007. LIABILITY INSURANCE. This chapter does not
6 otherwise affect a construction contract provision that requires a
7 party to the contract to purchase:

8 (1) owners and contractors protective liability
9 insurance;

10 (2) railroad protective liability insurance;

11 (3) contractors all-risk insurance; or

12 (4) builders all-risk insurance.

13 Sec. 502.008. PROHIBITION OF WAIVER. The provisions of
14 this chapter may not be waived by contract or otherwise. Any
15 purported waiver is void and unenforceable.

16 Sec. 502.009. APPLICABILITY OF TEXAS LAW. Under this
17 chapter, the law of this state, exclusive of this state's
18 choice-of-law rules that would apply the laws of another
19 jurisdiction, shall apply to every construction contract agreement
20 affecting improvements to real property within the State of Texas.

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 an original construction contract with an owner of an improvement
24 or contemplated improvement that is entered into on or after the
25 effective date of this Act. If an original construction contract
26 with an owner of an improvement or contemplated improvement is
27 entered into on or after the effective date of this Act, the changes

1 in law made by this Act apply to a related subcontract, purchase
2 order contract, personal property lease agreement, and insurance
3 policy. If an original construction contract with an owner of an
4 improvement or contemplated improvement is entered into before the
5 effective date of this Act, that original construction contract and
6 a related subcontract, purchase order contract, personal property
7 lease agreement, and insurance policy are governed by the law in
8 effect immediately before the effective date of this Act, and that
9 law is continued in effect for that purpose.

10 SECTION 4. This Act takes effect September 1, 2009.