

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, or expense.

(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, or equipment lessor for the construction, alteration, renovation, 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 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.

(3) "Indemnitor" means a party to a construction contract that is required to provide indemnification or additional

1 insured status to another party to the construction contract or to a
2 third party.

3 Sec. 502.002. AGREEMENT VOID AND UNENFORCEABLE. A
4 provision in a construction contract is void and unenforceable as
5 against public policy if it requires an indemnitor to indemnify,
6 hold harmless, or defend another party to the construction
7 contract, or a third party, against a claim to the extent that the
8 claim is caused by the negligence, fault, breach or violation of a
9 statute, ordinance, or governmental regulation or rule, or
10 contractual breach of the indemnitee, its agent or employee, or any
11 third party under the control or supervision of the indemnitee,
12 other than the indemnitor, its agent, employee, or subcontractor of
13 any tier, and the claim arises from:

14 (1) bodily injury or death, except for the bodily
15 injury or death of an employee of the indemnitor, its agent, or
16 subcontractor of any tier;

17 (2) damage to property;

18 (3) any other type of damage; or

19 (4) a fine, penalty, administrative action, or other
20 action assessed by a governmental entity directly against the
21 indemnitee.

22 Sec. 502.003. UNENFORCEABLE ADDITIONAL INSURANCE
23 PROVISION. A provision in a construction contract that requires
24 the purchase of additional insured coverage, and any coverage
25 endorsement or provision within an insurance policy providing
26 additional insured coverage, is void and unenforceable to the
27 extent that it exceeds the scope of indemnity allowed by this

1 chapter.

2 Sec. 502.004. EXCLUSIONS. This chapter does not affect:

3 (1) a cause of action for breach of contract or
4 warranty that exists independent of an indemnity obligation;

5 (2) a provision in a construction contract that
6 requires the indemnitor to purchase or maintain insurance covering
7 the acts or omissions of the indemnitor;

8 (3) indemnity provisions contained in loan and
9 financing documents, other than construction contracts to which the
10 contractor and owner's lender are parties as provided in Section
11 502.001(2);

12 (4) general agreements of indemnity required by
13 sureties as a condition of execution of bonds for construction
14 contracts;

15 (5) the benefits and protections under the workers'
16 compensation laws of this state;

17 (6) the benefits or protections under the governmental
18 immunity laws of this state; and

19 (7) agreements subject to the provisions of Chapter
20 127.

21 Sec. 502.005. LIABILITY INSURANCE. This chapter does not
22 otherwise affect a construction contract provision that requires a
23 party to the contract to purchase owners and contractors protective
24 liability insurance or railroad protective liability insurance.

25 Sec. 502.006. PROHIBITION OF WAIVER. The provisions of
26 this chapter may not be waived by contract or otherwise. Any
27 purported waiver is void and unenforceable.

1 Sec. 502.007. PERMISSIBLE CONTRACT PROVISION. Parties may
2 agree in a construction contract upon an indemnity or additional
3 insured provision that is not prohibited by this chapter.

4 Sec. 502.008. APPLICABILITY OF TEXAS LAW. Under this
5 chapter, the law of the state, exclusive of the state's
6 choice-of-law rules that would apply the laws of another
7 jurisdiction, shall apply to every construction contract agreement
8 affecting improvements to real property within the state of Texas.

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

10 SECTION 3. This Act applies only to liability under a
11 construction contract entered into on or after the effective date
12 of this Act. Liability under a construction contract entered into
13 before the effective date of this Act is governed by the law in
14 effect immediately before the effective date of this Act, and that
15 law is continued in effect for that purpose.

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