

By: Smithee

H.B. No. 3604

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain insurance provisions in construction contracts.

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

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.75 to read as follows:

Art. 21.75. INSURANCE AND RISK TRANSFER AGREEMENTS IN CERTAIN CONSTRUCTION CONTRACTS

Sec. 1. DEFINITIONS. In this article:

(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 named insured under the policy, or an indemnitor under an indemnification agreement.

(2) "Construction contract" means a contract or agreement made or entered into 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 real property, including moving, demolition, and excavation connected with the real property.

(3) "Construction insurance provision" means a covenant, promise, agreement, or understanding contained in a construction contract, or in an agreement collateral to or affecting a construction contract, that:

1 (A) requires a person to provide insurance
2 coverage;
3 (B) provides insurance coverage; or
4 (C) requires insurance coverage for an
5 indemnitee under an indemnification agreement.

6 Sec. 2. CERTAIN INSURANCE PROVISIONS UNENFORCEABLE. (a) A
7 construction insurance provision is void and unenforceable to the
8 extent that the provision requires that:

9 (1) a person, including an indemnitee under an
10 indemnification agreement, be an additional insured; or

11 (2) the insurance policy be endorsed to provide a
12 waiver of subrogation.

13 (b) An insurance policy provision or endorsement that
14 provides for an additional insured or a waiver of subrogation in
15 contravention of this article is void.

16 Sec. 3. WAIVER PROHIBITED. The provisions of this article
17 may not be waived by contract or otherwise.

18 Sec. 4. APPLICABILITY OF OTHER LAW. This article prevails
19 over any other law that conflicts with or is inconsistent with this
20 article.

21 SECTION 2. The changes in law made by this Act apply only to
22 a contract or agreement entered into on or after the effective date
23 of this Act. A contract or agreement entered into before the
24 effective date of this Act is governed by the applicable law in
25 effect immediately before the effective date of this Act, and that
26 law is continued in effect for that purpose.

27 SECTION 3. This Act takes effect September 1, 2011.