

By: Creighton

S.B. No. 807

A BILL TO BE ENTITLED

AN ACT

relating to choice of law and venue for certain construction contracts.

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

SECTION 1. The heading to Chapter 272, Business & Commerce Code, is amended to read as follows:

CHAPTER 272. LAW APPLICABLE TO CERTAIN CONSTRUCTION CONTRACTS [~~FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS~~]

SECTION 2. Chapter 272, Business & Commerce Code, is amended by adding Section 272.0001 and amending Sections 272.001 and 272.002 to read as follows:

Sec. 272.0001. DEFINITION. In this chapter, "construction contract" means a contract, subcontract, or agreement entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, 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 an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

1 Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This
2 section applies only to a construction contract concerning ~~[that is~~
3 ~~principally for the construction or repair of an improvement to]~~
4 real property located in this state.

5 (b) If a construction contract or an agreement collateral to
6 or affecting the construction contract contains a provision making
7 the contract or agreement or any conflict arising under the
8 contract or agreement subject to another state's law, litigation in
9 the courts of another state, or arbitration in another state, that
10 provision is voidable by a [the] party obligated by the contract or
11 agreement to perform the work that is the subject of the
12 construction contract ~~[or repair]~~.

13 Sec. 272.002. INAPPLICABILITY OF CHAPTER ~~[CONTRACT~~
14 ~~PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY~~
15 ~~IMPROVEMENTS]~~. This chapter does not apply to a construction ~~[(a)~~
16 ~~For purposes of this chapter, a contract is principally for the~~
17 ~~construction or repair of an improvement to real property located~~
18 ~~in this state if the contract obligates a party, as the party's~~
19 ~~principal obligation under the contract, to provide labor or labor~~
20 ~~and materials as a general contractor or subcontractor for the~~
21 ~~construction or repair of an improvement to real property located~~
22 ~~in this state.~~

23 ~~[(b) For purposes of this chapter, a contract is not~~
24 ~~principally for the construction or repair of an improvement to~~
25 ~~real property located in this state if the]~~ contract that:

26 (1) is a partnership agreement or other agreement
27 governing an entity or trust;

1 (2) provides for a loan or other extension of credit
2 and the party promising to perform the work that is the subject of
3 the construction contract [~~construct or repair the improvement~~] is
4 doing so as part of the party's agreements with the lender or other
5 person who extends credit; or

6 (3) is for the management of real property or
7 improvements and the obligation to perform the work that is the
8 subject of the construction contract [~~construct or repair the~~
9 ~~improvement~~] is part of that management.

10 [~~(c) Subsections (a) and (b) do not provide an exclusive~~
11 ~~list of the situations in which a contract is or is not principally~~
12 ~~for the construction or repair of an improvement to real property~~
13 ~~located in this state.~~]

14 SECTION 3. The changes in law made by this Act apply only to
15 a contract, or an agreement collateral to or affecting a contract,
16 entered into on or after the effective date of this Act. A
17 contract, or an agreement collateral to or affecting a contract,
18 entered into before the effective date of this Act is governed by
19 the law as it existed immediately before the effective date of this
20 Act, and that law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect September 1, 2017.