

By: Thompson of Harris

H.B. No. 2268

Substitute the following for H.B. No. 2268:

By: Collier

C.S.H.B. No. 2268

A BILL TO BE ENTITLED

AN ACT

relating to a provision in a construction contract that incorporates the terms and conditions of another document.

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

SECTION 1. Section 272.0001, Business & Commerce Code, is amended to read as follows:

Sec. 272.0001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Construction~~["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, or repair 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.

(2) "Copy" means an accurate reproduction of an original document reproduced in paper form or in an electronic format that a person can access, download, save, and print for the person's own records.

(3) "Original contract" means an agreement to which an

1 owner is a party either directly or by implication of law.

2 (4) "Original contractor" means a person contracting  
3 with an owner directly or through the owner's agent.

4 (5) "Owner" means a person who owns any interest in  
5 real property or an authorized agent, trustee, or receiver of the  
6 person.

7 (6) "Subcontractor" means a person who furnishes labor  
8 or materials to fulfill an obligation to an original contractor or  
9 to a subcontractor of any tier to perform all or part of the work  
10 required by an original contract.

11 SECTION 2. The heading to Section 272.001, Business &  
12 Commerce Code, is amended to read as follows:

13 Sec. 272.001. VOIDABLE CONTRACT PROVISIONS [~~PROVISION~~].

14 SECTION 3. Section 272.001, Business & Commerce Code, is  
15 amended by adding Subsections (c), (d), (e), (f), (g), and (h) to  
16 read as follows:

17 (c) Except as provided by Subsection (g), a provision in a  
18 construction contract between an original contractor and owner that  
19 incorporates the terms and conditions of another document, by  
20 reference or otherwise, is voidable by the original contractor if,  
21 on written request, the owner does not provide a copy of the  
22 incorporated document to the original contractor on or before the  
23 10th day before the date the contract is executed. This subsection  
24 does not preclude the owner from redacting information from a  
25 document to be incorporated into the contract, provided that any  
26 redacted information may not be incorporated into the contract by  
27 reference or otherwise. The owner may request the original

1 contractor to sign, date, and submit to the owner a written  
2 statement acknowledging receipt of the copy of the incorporated  
3 document. The written statement acknowledging receipt must be  
4 provided separately from the construction contract.

5 (d) Except as provided by Subsection (g), a provision in a  
6 construction contract between a subcontractor and an original  
7 contractor that incorporates the terms and conditions of another  
8 document, by reference or otherwise, is voidable by the  
9 subcontractor if, on written request, the original contractor does  
10 not provide a copy of the incorporated document to the  
11 subcontractor on or before the 10th day before the date the contract  
12 is executed. This subsection does not preclude the original  
13 contractor from redacting information from a document to be  
14 incorporated into the contract, provided that any redacted  
15 information may not be incorporated into the contract by reference  
16 or otherwise. The original contractor may request the  
17 subcontractor to sign, date, and submit to the original contractor  
18 a written statement acknowledging receipt of the copy of the  
19 incorporated document. The written statement acknowledging  
20 receipt must be provided separately from the construction contract.

21 (e) Except as provided by Subsection (g), a provision in a  
22 construction contract between a subcontractor and another  
23 subcontractor that incorporates the terms and conditions of another  
24 document, by reference or otherwise, is voidable by the  
25 subcontractor who is to furnish labor or materials to fulfill an  
26 obligation to the other subcontractor if, on written request, the  
27 subcontractor to whom the requesting subcontractor is obligated

1 does not provide a copy of the incorporated document to the  
2 requesting subcontractor on or before the 10th day before the date  
3 the contract is executed. This subsection does not preclude a  
4 subcontractor from redacting information from a document to be  
5 incorporated into the contract, provided that any redacted  
6 information may not be incorporated into the contract by reference  
7 or otherwise. The subcontractor providing the copy of the document  
8 may request the other subcontractor to sign, date, and submit a  
9 written statement acknowledging receipt of the copy of the  
10 incorporated document. The written statement acknowledging  
11 receipt must be provided separately from the construction contract.

12 (f) A provision in a construction contract made void by a  
13 party to the contract under Subsection (c), (d), or (e) is void only  
14 to the extent of the provision's applicability to the incorporated  
15 document not provided to the party.

16 (g) Subsections (c), (d), and (e) do not apply to the  
17 incorporation of a publicly available document.

18 (h) An owner, original contractor, or subcontractor may  
19 provide a copy of an incorporated document to the other party to a  
20 construction contract under Subsection (c), (d), or (e) by  
21 providing a link to the document on an Internet website or file  
22 hosting service that may be accessed by the other party free of  
23 charge for the duration of the contract. The version of the  
24 incorporated document that is accessible on the date the party  
25 receives the information necessary to access the document is the  
26 version of the document that is incorporated into the contract.

27 SECTION 4. The changes in law made by this Act apply only to

1 a contract that is entered into on or after the effective date of  
2 this Act.

3 SECTION 5. This Act takes effect September 1, 2019.