

By: Thompson of Harris

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), and (f) to read as
16 follows:

17 (c) Except as provided by Subsection (f), 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 the owner does not provide a copy of the incorporated document to
22 the original contractor before the contract is executed. This
23 subsection does not preclude the owner from redacting information
24 from a document to be incorporated into the contract, provided that
25 any redacted information may not be incorporated into the contract
26 by reference or otherwise.

27 (d) Except as provided by Subsection (f), a provision in a

1 construction contract between a subcontractor and an original
2 contractor that incorporates the terms and conditions of another
3 document, by reference or otherwise, is voidable by the
4 subcontractor if the original contractor does not provide a copy of
5 the incorporated document to the subcontractor before the contract
6 is executed. This subsection does not preclude the original
7 contractor from redacting information from a document to be
8 incorporated into the contract, provided that any redacted
9 information may not be incorporated into the contract by reference
10 or otherwise.

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

15 (f) Subsections (c) and (d) do not apply to the
16 incorporation of a publicly available document.

17 SECTION 4. The changes in law made by this Act apply only to
18 a contract that is entered into on or after the effective date of
19 this Act.

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