

By: Leach

H.B. No. 2657

A BILL TO BE ENTITLED

AN ACT

relating to voidable provisions contained in certain construction contracts.

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. Chapter [272](#), Business & Commerce Code, is

1 amended by adding Section 272.003 to read as follows:

2 Sec. 272.003. WAIVER OF CHAPTER PROHIBITED. A person may
3 not waive this chapter, including a provision of this chapter, by
4 contract or other means. A purported waiver of this chapter is
5 void.

6 SECTION 5. The changes in law made by this Act apply only to
7 a contract that is entered into or renewed on or after the effective
8 date of this Act.

9 SECTION 6. This Act takes effect September 1, 2023.