

By: Parker

S.B. No. 1040

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), (h), and (i)
16 to read as follows:

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

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

5 (d) Except as provided by Subsections (g) and (h), a
6 provision in a construction contract between a subcontractor and an
7 original contractor that incorporates another document that
8 contains terms and conditions, by reference or otherwise, is
9 voidable by the subcontractor if, on written request, the original
10 contractor does not provide a copy of the incorporated document to
11 the subcontractor on or before the 10th day before the date the
12 contract is executed. This subsection does not preclude the
13 original contractor from redacting information from a document to
14 be 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 Subsections (g) and (h), a
22 provision in a construction contract between a subcontractor and
23 another subcontractor that incorporates another document that
24 contains terms and conditions, by reference or otherwise, is
25 voidable by the subcontractor who is to furnish labor or materials
26 to fulfill an obligation to the other subcontractor if, on written
27 request, the subcontractor to whom the requesting subcontractor is

1 obligated does not provide a copy of the incorporated document to
2 the requesting subcontractor on or before the 10th day before the
3 date 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 or a portion of the incorporated document that was not
16 provided to the party.

17 (g) Subsections (c), (d), and (e) do not apply to the
18 incorporation of a publicly available document accessible with or
19 without charge.

20 (h) Subsections (c), (d), and (e) do not apply in an
21 emergency if all documents incorporated by reference are provided
22 simultaneously with the contract prior to execution. For purposes
23 of this subsection, "emergency" means a sudden, urgent occurrence
24 that requires immediate action.

25 (i) An owner, original contractor, or subcontractor may
26 provide a copy of an incorporated document to the other party to a
27 construction contract under Subsection (c), (d), or (e) by

1 providing a link to the document on an Internet website or file
2 hosting service that may be accessed by the other party free of
3 charge for the duration of the term of the contract. The version of
4 the incorporated document that is accessible on the date the party
5 receives the information necessary to access the document is the
6 version of the document that is incorporated into the contract.

7 SECTION 4. Chapter 272, Business & Commerce Code, is
8 amended by adding Section 272.003 to read as follows:

9 Sec. 272.003. WAIVER OF CHAPTER PROHIBITED. A person may
10 not waive this chapter, including a provision of this chapter, by
11 contract or other means. A purported waiver of this chapter is
12 against public policy and is void.

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

16 SECTION 6. This Act takes effect September 1, 2025.