

BILL ANALYSIS

Senate Research Center

S.B. 530
By: Duncan
Economic Development
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As Filed

DIGEST

Currently, the Civil Practice and Remedies Code does not prohibit certain real property services indemnity agreements. Thus, in construction contracts, owners will require general contractors to assume liability for the owner's negligence. In turn, general contractors will require subcontractors to assume such liability. As a result, a subcontractor may be liable for an accident even though the subcontractor's involvement in the accident may have been minimal. This bill would permit indemnification for a company's actions to the extent of the company's responsibility for that action; permit the indemnitee to require indemnification from the indemnitor for bodily injury or death to an indemnitor or the indemnitor's employees or agents; prohibit the indemnitee from requiring the indemnitor to indemnify the indemnitee for the indemnitee's sole negligence, gross negligence or willful misconduct as well as fines and penalties assessed by governmental entities, and, finally, prohibit waiver of the provisions of this Act by contract.

PURPOSE

As proposed, S.B. 530 provides that certain real property services indemnity agreements are void and unenforceable and limits the indemnification permitted in those agreements that are valid.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 145, as follows:

CHAPTER 145. INDEMNITY PROVISIONS IN CERTAIN AGREEMENTS RELATING TO REAL PROPERTY

Sec. 145.001. DEFINITIONS. Defines "loss," "real property," "real property services," "real property services contract," and "real property services indemnity agreement."

Sec. 145.002. SCOPE OF CHAPTER. Provides that this chapter applies only to a written or oral agreement or understanding concerning the provision of real property services; or a written or oral agreement or understanding under which a person will perform certain acts relating to real property services.

Sec. 145.003. AGREEMENT VOID AND UNENFORCEABLE. Provides that a real property services indemnity agreement is void and unenforceable to the extent the agreement purports to indemnify a person against certain losses.

Sec. 145.004. LIMITED INDEMNIFICATION PERMITTED. Authorizes a real property services indemnity agreement to indemnify a person only for certain losses. Prohibits the liability of a person for indemnity from exceeding the percentage of responsibility for the harm caused by the person in a real property services indemnity agreement authorized in this section. Defines "percentage of responsibility." Provides that this section does not require a person to assume a liability or obligation described in this section.

Sec. 145.005. INSURANCE LIMITATIONS. Sets forth the limits of liability for indemnity under a real property services indemnity agreement authorized under Section 145.004. Prohibits a real property services indemnity agreement that requires a liability insurance policy held by the person obligated to make the indemnification to name the person to be indemnified as an additional insured from requiring coverage for liability other than the liability assumed under the agreement. Provides that the foregoing provision applies without regard to whether the person to be indemnified is named in the policy by endorsement or otherwise. Provides that a policy provision or agreement described by this section, or a different policy provision or endorsement intended to accomplish the same purpose, that imposes obligations on the insurer that are greater than the indemnity obligations authorized by this chapter is void and unenforceable. Provides that a provision in a real property services indemnity agreement that requires a person to provide insurance coverage is void and unenforceable to the extent that the required coverage exceeds the limitations of this section.

Sec. 145.006. EFFECT ON INSURANCE CONTRACT. Provides that except as provided by Section 145.005, this chapter does not affect the applicability, validity, or enforceability of an insurance contract.

Sec. 145.007. WAIVER PROHIBITED. Prohibits the provisions of this chapter from being waived by contract or otherwise.

Sec. 145.008. APPLICATION OF CHAPTER. Provides that this chapter does not apply to indemnity provisions in mineral agreements governed by Chapter 127 of this code.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Emergency clause.