

BILL ANALYSIS

Senate Research Center

C.S.S.B. 555
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In construction contracts, owners require general contractors to assume liability for the owner's negligence, and those contractors require any subcontractors under them to do the same. Therefore, in the case of an accident for which the owner is responsible, a general contractor is responsible for any damages incurred, including the defense costs of the owner, and a subcontractor will be responsible for the same due to the general contractor's negligence and be required to pay for the negligence of the owner as well. Most construction contracts also require a contractor or subcontractor to purchase an "additional insured" endorsement to its insurance policy, which effectively requires its insurance company to provide coverage for the other entities involved in the contract. Many construction contracts also make the subcontractor liable for a breach of contract and warranty by the general contractor or make the subcontractor responsible for any fines or penalties assessed by a governmental entity directly against an indemnitee. This essentially makes subcontractors the "insurers" of the entire project, placing the subcontracting company and its insurance carrier at risk for the negligent acts of those entities above them.

C.S.S.B. 555 makes each party liable for its own negligence and prohibits transferring liability by contract or other means in actions involving property damage, bodily injury or death, except for the bodily injury or death of an employee of the indemnitor, its agent, or subcontractor of any tier, a breach of contract or warranty, or a violation of statute, ordinance, governmental regulation or rule. The bill authorizes certain exceptions relating to a claim for the bodily injury or death of an employee.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Civil Practice and Remedies Code by adding Title 10, as follows:

TITLE 10. ADDITIONAL MISCELLANEOUS PROVISIONS

CHAPTER 502. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 502.001. DEFINITIONS. Defines "claim," "construction contract," and "indemnitor."

Sec. 502.002. PERMISSIBLE CONTRACT PROVISION. Authorizes parties to agree in a construction contract upon an indemnity or additional insured provision that is not prohibited by this chapter.

Sec. 502.003. AGREEMENT VOID AND UNENFORCEABLE. (a) Provides that, except as provided by Section 502.004, a provision in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable as against public policy if it requires an indemnitor to indemnify, hold harmless, or defend another party to the construction contract, or a third party, against a claim to the extent that the claim is caused by the negligence, fault, breach or violation of a statute, ordinance, or governmental regulation, standard, or rule, or contractual breach of the

indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitor, its agent, employee, or subcontractor of any tier.

Sec. 502.004. EXCEPTION FOR EMPLOYEE CLAIM. Provides that Section 502.003 does not apply to a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier.

Sec. 502.005. UNENFORCEABLE ADDITIONAL INSURANCE PROVISION. Provides that a provision in a construction contract that requires the purchase of additional insured coverage, or any coverage endorsement or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage, the scope of which is prohibited under this chapter for an agreement to indemnify, hold harmless, or defend.

Sec. 502.006. EXCLUSIONS. Provides that this chapter does not affect certain policies, causes of action, provisions, agreements, and benefits and protections.

Sec. 502.007. LIABILITY INSURANCE. Provides that this chapter does not otherwise affect a construction contract provision that requires a party to the contract to purchase owners and contractors protective liability insurance, railroad protective liability insurance, contractors all-risk insurance, or builders all-risk insurance.

Sec. 502.008. PROHIBITION OF WAIVER. Prohibits the provisions of this chapter from being waived by contract or otherwise. Provides that any purported waiver is void and unenforceable.

Sec. 502.009. APPLICABILITY OF TEXAS LAW. Requires that, under this chapter, the law of the state, exclusive of the state's choice-of-law rules that would apply the laws of another jurisdiction, apply to every construction contract agreement affecting improvements to real property within the state of Texas.

SECTION 2. Repealer: Section 2252.902 (Indemnity Provisions In Construction Contracts), Government Code.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.