

## **BILL ANALYSIS**

Senate Research Center

S.B. 1605  
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Jurisprudence  
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As Filed

### **DIGEST**

Currently, under a Texas Supreme Court decision, Texas has adopted the doctrine of express negligence. This doctrine provides that parties seeking to indemnify an indemnitee from the consequences of its own actions must express that intent in specific terms within the four corners of the contract. Under case law, it is not clear what language will suffice within the contract, and what must be proved by which party when there is a settlement followed by a claim of indemnity. This bill would set forth the necessary contractual provisions for an indemnification and release agreement.

### **PURPOSE**

As proposed, S.B. 1605 sets forth the necessary contractual provisions for an indemnification and release agreement.

### **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 Chapter 35D, Business & Commerce Code, by adding Section 35.43, as follows:

Sec. 35.43. ENFORCEABILITY OF INDEMNIFICATION AGREEMENT OR RELEASE AGREEMENT. Defines "disclosure criterion," "indemnification agreement," "indemnify," and "release agreement." Provides that the legality, validity, or enforceability of an indemnification agreement is not affected by the fact that all or part of the indemnification agreement or a release agreement does not meet a disclosure criterion. Provides that an indemnification agreement entered into on or after September 1, 1997, does not require a party to indemnify against loss, liability, cost, or other expense to the extent any loss, liability, cost or expense results from the indemnitee's future negligence unless the contract that includes the indemnification agreement contains a statement that the parties intend that result. Sets forth the provision that satisfies the requirement set forth in Subsection (c). Prohibits a loss, liability, cost, or expense, for purpose of Subsection (c), from being deemed to result from a party's negligence unless the extent of negligence is determined by a court at law having competent jurisdiction or through binding mediation or arbitration. Provides that Subsection (d) of this section does not apply to an indemnification agreement if the indemnitor is a consumer, as defined in the Deceptive Trade Practices-Consumer Protection Act.

SECTION 2. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 3. Emergency clause.