

BILL ANALYSIS

Senate Research Center
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S.B. 445
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, in construction contracts, owners require general contractors to assume liability for the owner's negligence. Therefore, in case of an accident for which the owner is responsible, a general contractor will be responsible for the damages, including the defense costs of the owner. Similarly, a general contractor requires a subcontractor to assume liability for the general contractor's negligence. Today, a subcontractor can be held liable even though the subcontractor was not involved in the action that led to a damage or injury claim. Although a subcontractor may not have been on the construction site for several months, it can still be held liable. In addition, a subcontractor becomes the "insurer" for the entire project, placing a company and its insurance carrier at risk for the bad acts of others.

Most construction contracts also require that a contractor purchase an "additional insured" endorsement to its insurance policy, effectively requiring an insurance company to provide coverage for another party. This is an alternative method used by a company to get someone else to pay for its liability. The general contractor's insurance policy will provide protection for the general contractor. Without insurance, a construction company will be unable to compete. The insurance of a party to a construction contract should cover the liability for that party and not be required to do so for another.

S.B. 445 provides that each party will be liable for its own negligence and prohibits transferring liability by contract or other means. It will not prohibit a party from making a written agreement that provides for it being liable for its own negligence. S.B. 445 is intended to prohibit a person's insurance policy from providing coverage for another's negligence and restores the doctrine which makes a person responsible for his or her own actions and voids clauses that allow a transfer of this responsibility.

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. DEFINITION. Defines "construction contract."

Sec. 502.002. AGREEMENT VOID AND UNENFORCEABLE. Provides that a covenant, promise, or understanding contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable if it purports to indemnify, hold harmless, or defend a person against loss or liability for certain types of damage.

Sec. 502.003. UNENFORCEABLE INSURANCE PROVISIONS. Provides that a covenant, promise, agreement, or understanding contained in a construction contract, or in an agreement collateral to or affecting a construction contract, that requires a person to

provide insurance coverage or does provide insurance coverage, is void and unenforceable to the extent it makes certain requirements.

Sec. 502.004. INSURANCE CONTRACTS; WORKERS' COMPENSATION. Provides that this chapter does not otherwise affect the validity and enforceability of an insurance contract or the benefits or protections under the workers' compensation laws of this state.

Sec. 502.005. WAIVER PROHIBITED. Prohibits the provisions of this chapter from being waived by contract or otherwise. Provides that any purported waiver is void and unenforceable.

Sec. 502.006. APPLICABILITY OF OTHER LAW. Provides that this chapter prevails over any other law that conflicts with or is inconsistent with this chapter.

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, 2005.