# BILL ANALYSIS

Senate Research Center

C.S.S.B. 346
By: Duncan, Harris
State Affairs
3/21/2007
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. Most construction contracts also require a contractor or subcontractor to purchase an "additional insured" endorsement to its insurance policy, which effectively requires an 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. 346 makes each party liable for its own negligence and prohibits transferring liability by contract or other means, thereby restoring the doctrine that an entity is responsible for that entity's own actions.

## 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 "additional insured" and "construction contract."

Sec. 502.002. AGREEMENT VOID AND UNENFORCEABLE. (a) 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 liability for damage that is caused by certain actions of the indemnitee or from loss or a fine, penalty, administrative, or other action assessed by a governmental entity directly against the indemnitee, except to the extent that the indemnitor contributed to the violation upon which the fine, penalty, or administrative action is based.

   (b) Provides that for the purposes of this section, an indemnitee includes the indemnitee's agent, employee, or an independent contractor other than the indemnitor who is directly responsible to the indemnitee.

Sec. 502.003. UNENFORCEABLE INSURANCE PROVISIONS. (a) Provides that a covenant, agreement, promise, or understanding contained in a construction contract or

related agreement that requires a person to provide insurance coverage or provides coverage is void and unenforceable to the extent that it contains certain requirements.

> (b) Prohibits an insurance contract from providing  an additional insured endorsement or waiver or subrogation contravening this chapter and makes any such endorsements or waivers void and unenforceable.

Sec. 502.004.  INSURANCE CONTRACTS;  WORKERS' COMPENSATION; CERTAIN WAIVERS.  Sets forth the types of contract, benefits, protections, and waivers of which this chapter does not otherwise affect the validity or enforceability.

Sec. 502.005.  WAIVER PROHIBITED.  Prohibits the provisions of this chapter from being waived by contract or otherwise and makes any purported waiver of any provisions of this chapter 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 the 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, 2007.