



HB 1235

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A bill to be entitled  
 An act relating to insurance under construction contracts;  
 amending s. 725.06, F.S.; including promises to insure or  
 obtain insurance for certain parties to construction  
 contracts for certain actions as void and unenforceable;  
 providing exceptions; providing for limited liability  
 protection for additional insured coverage under certain  
 agreements or contracts; prohibiting a contractor or  
 subcontractor from withholding payment to certain  
 subcontractors, sub-subcontractors, or materialmen under  
 certain insurance policies under certain circumstances;  
 providing conditions; revising application; providing an  
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 725.06, Florida Statutes, is amended to  
 read:

725.06 Construction contracts; limitation on  
 indemnification; agreements to insure.--

(1) Except as otherwise provided in paragraphs (a) and  
(b), any portion of any agreement or contract for or in  
 connection with, or any guarantee of or in connection with, any  
 construction, alteration, repair, or demolition of a building,  
 structure, appurtenance, or appliance, including moving and  
 excavating associated therewith, between an owner of real  
 property, ~~and an~~ architect, engineer, general contractor,  
 subcontractor, sub-subcontractor, or materialman or any  
 combination thereof wherein any party referred to herein  
 promises to insure or obtain insurance for, indemnify, or hold



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31 harmless the other party to the agreement, contract, or  
 32 guarantee for liability for damages to persons or property  
 33 caused in whole or in part by any act, omission, or default of  
 34 the indemnitee arising from the contract or its performance,  
 35 shall be void and unenforceable as against public policy unless  
 36 ~~the contract contains a monetary limitation on the extent of the~~  
 37 ~~indemnification that bears a reasonable commercial relationship~~  
 38 ~~to the contract and is part of the project specifications or bid~~  
 39 ~~documents, if any. Notwithstanding the foregoing, the monetary~~  
 40 ~~limitation on the extent of the indemnification provided to the~~  
 41 ~~owner of real property by any party in privity of contract with~~  
 42 ~~such owner shall not be less than \$1 million per occurrence,~~  
 43 ~~unless otherwise agreed by the parties.~~

44 (a) Indemnification provisions in any such agreements,  
 45 contracts, or guarantees may ~~not~~ require that the indemnitor  
 46 indemnify the indemnitee for damages to persons or property  
 47 caused ~~in whole or in part~~ by any act, omission, or default of a  
 48 ~~party other than:~~

49 1.(a) The indemnitor; or

50 2.(b) Any of the indemnitor's contractors, subcontractors,  
 51 sub-subcontractors, materialmen, or agents of any tier or their  
 52 respective employees, as long as the indemnitor also is found to  
 53 be at fault. ~~or~~

54 ~~(c) The indemnitee or its officers, directors, agents, or~~  
 55 ~~employees. However, such indemnification shall not include~~  
 56 ~~claims of, or damages resulting from, gross negligence, or~~  
 57 ~~willful, wanton or intentional misconduct of the indemnitee or~~  
 58 ~~its officers, directors, agents or employees, or for statutory~~  
 59 ~~violation or punitive damages except and to the extent the~~  
 60 ~~statutory violation or punitive damages are caused by or result~~



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61 ~~from the acts or omissions of the indemnitor or any of the~~  
62 ~~indemnitor's contractors, subcontractors, sub-subcontractors,~~  
63 ~~materialmen, or agents of any tier or their respective~~  
64 ~~employees.~~

65 (b)(2) A construction contract for a public agency or in  
66 connection with a public agency's project may require a party to  
67 that contract to indemnify and hold harmless the other party to  
68 the contract, their officers and employees, from liabilities,  
69 damages, losses and costs, including, but not limited to,  
70 reasonable attorney's fees, to the extent caused by the  
71 negligence, recklessness, or intentional wrongful misconduct of  
72 the indemnifying party and persons employed or utilized by the  
73 indemnifying party in the performance of the construction  
74 contract.

75 (2) If, as part of any agreement or contract for or in  
76 connection with, or any guarantee of or in connection with, any  
77 construction, alteration, repair, or demolition of a building,  
78 structure, appurtenance, or appliance, including moving and  
79 excavating associated with such activities, between the owner of  
80 real property, an architect, engineer, general contractor,  
81 subcontractor, sub-subcontractor, or materialman or any  
82 combination of such persons, a policy of insurance extends  
83 certain coverage rights to an additional insured for liability  
84 arising out of the acts, errors, or omissions of the named  
85 insured, such additional insured coverage shall only provide  
86 liability protection to the additional insured for the imputed  
87 or vicarious liability imposed on the additional insured as a  
88 direct consequence of the negligent acts or omissions of the  
89 named insured.



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90           (3) If a subcontractor, sub-subcontractor, or materialman  
91 obtains a policy of insurance extending specified coverage  
92 rights to an additional insured for liability arising out of the  
93 acts, errors, or omissions of the named insured, as required by  
94 the general contractor or subcontractor, and a certificate or  
95 policy of insurance is supplied to the general contractor or  
96 subcontractor prior to the commencement of work, the general  
97 contractor or subcontractor shall not use the lack of proper  
98 insurance as a reason to withhold payment to the subcontractor,  
99 sub-subcontractor, or materialman for work completed.

100 Commencement of work by the subcontractor, sub-subcontractor, or  
101 materialman waives the right of the general contractor or the  
102 subcontractor to withhold payment for that reason. This right  
103 also shall apply to renewal of the certificate as long as the  
104 renewal certificate is identical or contains substantially  
105 similar terms as set forth in the initial certificate ~~Except as~~  
106 ~~specifically provided in subsection (2), a construction contract~~  
107 ~~for a public agency or in connection with a public agency's~~  
108 ~~project may not require one party to indemnify, defend, or hold~~  
109 ~~harmless the other party, its employees, officers, directors, or~~  
110 ~~agents from any liability, damage, loss, claim, action, or~~  
111 ~~proceeding, and any such contract provision is void as against~~  
112 ~~public policy of this state.~~

113           (4) This section does not affect any contracts,  
114 agreements, or guarantees entered into before the effective date  
115 of this section ~~or any renewals thereof.~~

116           Section 2. This act shall take effect upon becoming a law.