

By Senator Bennett

21-1293-03

See HB 1235

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

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

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

21 725.06 Construction contracts; limitation on
22 indemnification; agreements to insure.--

23 (1) Except as otherwise provided in paragraphs (a) and
24 (b), any portion of any agreement or contract for or in
25 connection with, or any guarantee of or in connection with,
26 any construction, alteration, repair, or demolition of a
27 building, structure, appurtenance, or appliance, including
28 moving and excavating associated therewith, between an owner
29 of real property, ~~and an~~ architect, engineer, general
30 contractor, subcontractor, sub-subcontractor, or materialman
31 or any combination thereof wherein any party referred to

1 herein promises to insure or obtain insurance for, indemnify,
2 or hold harmless the other party to the agreement, contract,
3 or guarantee for liability for damages to persons or property
4 caused in whole or in part by any act, omission, or default of
5 the indemnitee arising from the contract or its performance,
6 shall be void and unenforceable as against public policy
7 ~~unless the contract contains a monetary limitation on the~~
8 ~~extent of the indemnification that bears a reasonable~~
9 ~~commercial relationship to the contract and is part of the~~
10 ~~project specifications or bid documents, if any.~~

11 ~~Notwithstanding the foregoing, the monetary limitation on the~~
12 ~~extent of the indemnification provided to the owner of real~~
13 ~~property by any party in privity of contract with such owner~~
14 ~~shall not be less than \$1 million per occurrence, unless~~
15 ~~otherwise agreed by the parties.~~

16 (a) Indemnification provisions in any such agreements,
17 contracts, or guarantees may ~~not~~ require that the indemnitor
18 indemnify the indemnitee for damages to persons or property
19 ~~caused in whole or in part by any act, omission, or default of~~
20 ~~a party other than:~~

21 1.(a) The indemnitor; or

22 2.(b) Any of the indemnitor's contractors,

23 subcontractors, sub-subcontractors, materialmen, or agents of
24 any tier or their respective employees, as long as the
25 indemnitor also is found to be at fault. ~~or~~

26 ~~(c) The indemnitee or its officers, directors, agents,~~
27 ~~or employees. However, such indemnification shall not include~~
28 ~~claims of, or damages resulting from, gross negligence, or~~
29 ~~willful, wanton or intentional misconduct of the indemnitee or~~
30 ~~its officers, directors, agents or employees, or for statutory~~
31 ~~violation or punitive damages except and to the extent the~~

1 ~~statutory violation or punitive damages are caused by or~~
2 ~~result from the acts or omissions of the indemnitor or any of~~
3 ~~the indemnitor's contractors, subcontractors,~~
4 ~~sub-subcontractors, materialmen, or agents of any tier or~~
5 ~~their respective employees.~~

6 (b)(2) A construction contract for a public agency or
7 in connection with a public agency's project may require a
8 party to that contract to indemnify and hold harmless the
9 other party to the contract, their officers and employees,
10 from liabilities, damages, losses and costs, including, but
11 not limited to, reasonable attorney's fees, to the extent
12 caused by the negligence, recklessness, or intentional
13 wrongful misconduct of the indemnifying party and persons
14 employed or utilized by the indemnifying party in the
15 performance of the construction contract.

16 (2) If, as part of any agreement or contract for or in
17 connection with, or any guarantee of or in connection with,
18 any construction, alteration, repair, or demolition of a
19 building, structure, appurtenance, or appliance, including
20 moving and excavating associated with such activities, between
21 the owner of real property, an architect, engineer, general
22 contractor, subcontractor, sub-subcontractor, or materialman
23 or any combination of such persons, a policy of insurance
24 extends certain coverage rights to an additional insured for
25 liability arising out of the acts, errors, or omissions of the
26 named insured, such additional insured coverage shall only
27 provide liability protection to the additional insured for the
28 imputed or vicarious liability imposed on the additional
29 insured as a direct consequence of the negligent acts or
30 omissions of the named insured.

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1 (3) If a subcontractor, sub-subcontractor, or
2 materialman obtains a policy of insurance extending specified
3 coverage rights to an additional insured for liability arising
4 out of the acts, errors, or omissions of the named insured, as
5 required by the general contractor or subcontractor, and a
6 certificate or policy of insurance is supplied to the general
7 contractor or subcontractor prior to the commencement of work,
8 the general contractor or subcontractor shall not use the lack
9 of proper insurance as a reason to withhold payment to the
10 subcontractor, sub-subcontractor, or materialman for work
11 completed. Commencement of work by the subcontractor,
12 sub-subcontractor, or materialman waives the right of the
13 general contractor or the subcontractor to withhold payment
14 for that reason. This right also shall apply to renewal of the
15 certificate as long as the renewal certificate is identical or
16 contains substantially similar terms as set forth in the
17 initial certificate ~~Except as specifically provided in~~
18 ~~subsection (2), a construction contract for a public agency or~~
19 ~~in connection with a public agency's project may not require~~
20 ~~one party to indemnify, defend, or hold harmless the other~~
21 ~~party, its employees, officers, directors, or agents from any~~
22 ~~liability, damage, loss, claim, action, or proceeding, and any~~
23 ~~such contract provision is void as against public policy of~~
24 ~~this state.~~

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

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