

HB 0135

2004

A bill to be entitled

An act relating to 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), (b), and (c), 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 have someone named an additional insured under his

HB 0135

2004

31 or her insurance policy, indemnify, defend, or hold harmless
 32 another person ~~the other party to the agreement, contract, or~~
 33 party guarantee for liability or for damages to persons or
 34 property caused in whole or in part by any act, omission, or
 35 default of the person or party being indemnified ~~indemnitee~~
 36 ~~arising from the contract or its performance,~~ shall be void and
 37 unenforceable as against public policy. However, this provision
 38 shall not be construed to place limits on indemnity agreements
 39 that are only between a general contractor and the owner of real
 40 property as long as ~~unless~~ the contract contains a monetary
 41 limitation on the extent of the indemnification that bears a
 42 reasonable commercial relationship to the contract and is part
 43 of the project specifications or bid documents, if any.
 44 Notwithstanding the foregoing, the monetary limitation on the
 45 extent of the indemnification provided to the owner of real
 46 property by any party in privity of contract with such owner
 47 shall not be less than \$1 million per occurrence, unless
 48 otherwise agreed by the parties. However, such indemnification
 49 shall not include claims of, or damages resulting from, gross
 50 negligence, or willful, wanton, or intentional misconduct of the
 51 indemnitee or its officers, directors, agents, or employees, or
 52 for statutory violations or punitive damages except and to the
 53 extent the statutory violation or punitive damages are caused by
 54 or result from the negligent acts, omissions, or default of the
 55 indemnitor or any of the indemnitor's contractors,
 56 subcontractors, sub-subcontractors, materialmen, or agents of
 57 any tier or their respective employees.

58 (a) Indemnification provisions in any such agreements,
 59 contracts, or guarantees may ~~not~~ require that the indemnitor
 60 indemnify the indemnitee for damages to persons or property

HB 0135

2004

61 caused ~~in whole or in part~~ by any act, omission, or default of a
 62 ~~party other than:~~

63 ~~1.(a)~~ The indemnitor; or

64 ~~2.(b)~~ Any of the indemnitor's contractors, subcontractors,
 65 sub-subcontractors, materialmen, or agents of any tier or their
 66 respective employees; ~~or~~

67 ~~(c) The indemnitee or its officers, directors, agents, or~~
 68 ~~employees. However, such indemnification shall not include~~
 69 ~~claims of, or damages resulting from, gross negligence, or~~
 70 ~~willful, wanton or intentional misconduct of the indemnitee or~~
 71 ~~its officers, directors, agents or employees, or for statutory~~
 72 ~~violation or punitive damages except and to the extent the~~
 73 ~~statutory violation or punitive damages are caused by or result~~
 74 ~~from the acts or omissions of the indemnitor or any of the~~
 75 ~~indemnitor's contractors, subcontractors, sub-subcontractors,~~
 76 ~~materialmen, or agents of any tier or their respective~~
 77 ~~employees.~~

78 ~~(b)(2)~~ A construction contract for a public agency or in
 79 connection with a public agency's project may require a party to
 80 that contract to indemnify and hold harmless the other party to
 81 the contract, their officers and employees, from liabilities,
 82 damages, losses and costs, including, but not limited to,
 83 reasonable attorney's fees, to the extent caused by the
 84 negligence, recklessness, or intentional wrongful misconduct of
 85 the indemnifying party and persons employed or utilized by the
 86 indemnifying party in the performance of the construction
 87 contract.

88 (c) Any portion of any agreement or contract for or in
 89 connection with, or any guarantee of or in connection with, any
 90 construction, alteration, repair, or demolition of a building,

HB 0135

2004

91 structure, appurtenance, or appliance, including moving and
 92 excavating associated therewith, between an entity regulated by
 93 the Florida Public Service Commission and an architect,
 94 engineer, general contractor, subcontractor, sub-subcontractor,
 95 or materialman or any combination thereof wherein any party
 96 referred to herein promises to indemnify or hold harmless the
 97 other party to the agreement, contract, or guarantee for
 98 liability for damages to persons or property caused in whole or
 99 in part by any negligent act, omission, or default of the
 100 indemnitee arising from the contract or its performance, shall
 101 be void and unenforceable unless the contract contains a
 102 monetary limitation on the extent of the indemnification that
 103 bears a reasonable commercial relationship to the contract and
 104 is part of the project specifications or bid documents, if any.
 105 Notwithstanding the foregoing, the monetary limitation on the
 106 extent of the indemnification provided to the owner of real
 107 property by any party in privity of contract with such owner
 108 shall not be less than \$1 million per occurrence, unless
 109 otherwise agreed to by the parties. Indemnification provisions
 110 in any such agreements, contracts, or guarantees may not require
 111 that the indemnitor indemnify the indemnitee for damages to
 112 persons or property caused in whole or in part by any act,
 113 omission, or default of a party other than:

- 114 1. The indemnitor;
- 115 2. Any of the indemnitor's contractors, subcontractors,
 116 sub-subcontractors, materialmen, or agents of any tier or their
 117 respective employees; or
- 118 3. The indemnitee or its officers, directors, agents, or
 119 employees. However, such indemnification shall not include
 120 claims of, or damages resulting from, gross negligence or

HB 0135

2004

121 willful, wanton, or intentional misconduct of the indemnitee or
 122 its officers, directors, agents, or employees, or for statutory
 123 violation or punitive damages except and to the extent the
 124 statutory violation or punitive damages are caused by or result
 125 from the acts or omissions of the indemnitor or any of the
 126 indemnitor's contractors, subcontractors, sub-subcontractors,
 127 materialmen, or agents of any tier or their respective
 128 employees.

129 (2) If, as part of any agreement or contract for or in
 130 connection with, or any guarantee of or in connection with, any
 131 construction, alteration, repair, or demolition of a building,
 132 structure, appurtenance, or appliance, including moving and
 133 excavating associated with such activities, between or among an
 134 architect, engineer, general contractor, subcontractor, sub-
 135 subcontractor, or materialman or any combination of such
 136 persons, a policy of insurance extends certain coverage rights
 137 to an additional insured for liability arising out of the acts,
 138 errors, or omissions of the named insured, such additional
 139 insured coverage shall only provide liability protection to the
 140 additional insured for the imputed or vicarious liability
 141 imposed on the additional insured as a direct consequence of the
 142 negligent acts or omissions of the named insured.

143 (3) If a written contract requires a subcontractor, sub-
 144 subcontractor, or materialman to provide a policy of insurance
 145 or a certificate of insurance to a general contractor or
 146 subcontractor, extending specific coverage rights to an
 147 additional insured:

148 (a) The general contractor or subcontractor may at any
 149 point prior to the date the subcontractor, sub-subcontractor, or

HB 0135

2004

150 materialman commences work or delivers material to the project,
 151 accept or reject the policy as being nonconforming.

152 (b) If not rejected, the general contractor or
 153 subcontractor shall be deemed to have accepted the policy.

154 (c) The general contractor or subcontractor shall not use
 155 the lack of conforming insurance as a reason to reject work
 156 already completed by a subcontractor, sub-subcontractor, or
 157 material already supplied by the materialman, or withhold
 158 payment to the subcontractor, sub-subcontractor, or materialman
 159 for work already completed or material already supplied ~~Except~~
 160 ~~as specifically provided in subsection (2), a construction~~
 161 ~~contract for a public agency or in connection with a public~~
 162 ~~agency's project may not require one party to indemnify, defend,~~
 163 ~~or hold harmless the other party, its employees, officers,~~
 164 ~~directors, or agents from any liability, damage, loss, claim,~~
 165 ~~action, or proceeding, and any such contract provision is void~~
 166 ~~as against public policy of this state.~~

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

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