

Bill No. SB 682

Barcode 142028

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Baker) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 627.442, Florida Statutes, is created to read:

627.442 Construction contract insurance provisions; acceptance, rejection, or application.--

(1) If a written construction contract requires a subcontractor, sub-subcontractor, or materialman to provide an insurance policy or certificate of insurance to the general contractor or another subcontractor for work performed or materials provided, which extends coverage rights to an additional insured, the general contractor or subcontractor is deemed to have accepted the insurance policy or certificate of insurance as conforming to the written construction contract unless the general contractor or subcontractor rejects the insurance policy or certificate of insurance in writing within

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1 30 business days for commercial construction projects and 7  
2 business days for residential construction projects after  
3 receipt of the insurance policy or certificate of insurance.  
4 The written rejection must specify the reason for rejection.  
5 However, the general contractor or subcontractor may not be  
6 deemed to have accepted an insurance policy or certificate of  
7 insurance that does not comply with the insurance coverage  
8 limits specified in the construction contract, that was  
9 knowingly and fraudulently altered, or that reflects coverages  
10 or conditions that are not contained in the underlying policy.

11 (2) After a general contractor or subcontractor  
12 accepts an insurance policy or certificate of insurance or is  
13 deemed to have accepted the insurance policy or certificate of  
14 insurance, a general contractor or subcontractor may not use  
15 the lack of conforming insurance as a reason to reject work  
16 previously completed by a subcontractor or sub-subcontractor,  
17 reject materials previously supplied by a materialman, or  
18 withhold payment for work previously completed or materials  
19 previously supplied. However, the general contractor or  
20 subcontractor may reject work previously completed or  
21 materials previously supplied or withhold payment for such  
22 work or materials if the policy or certificate provided by the  
23 subcontractor, sub-subcontractor, or materialman:

24 (a) Does not comply with the insurance coverage limits  
25 specified in the construction contract;

26 (b) Was knowingly and fraudulently altered or reflects  
27 coverages or conditions that are not contained in the  
28 underlying policy; or

29 (c) Is canceled, nonrenewed, or materially and  
30 adversely altered during the term of the construction  
31 contract.

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1       (3) Subsection (1) does not preclude a general  
2 contractor or subcontractor from rejecting as nonconforming an  
3 insurance policy or certificate of insurance previously  
4 accepted or deemed to have been accepted; however, such a  
5 rejection shall be in writing and shall specify the reason for  
6 rejection. A general contractor or subcontractor who rejects  
7 in writing an insurance policy or certificate of insurance as  
8 nonconforming and states the specific reason for such  
9 rejection may withhold payment for the work performed or  
10 materials supplied after the date of the rejection of the  
11 policy or certificate.

12       (4) Notwithstanding any other provision in this  
13 chapter, any person requiring a workers' compensation policy  
14 pursuant to a construction contract may not require that the  
15 policy be issued by an insurer or self-insurance fund that is  
16 rated by a nationally recognized insurance rating service if  
17 the issuing insurer or self-insurance fund is subject to part  
18 V of chapter 631.

19       (5) This section shall not apply if at the time of the  
20 request for proposals or bids, or prior to the subcontractor,  
21 sub-subcontractor, or materialman commencing work or supplying  
22 materials under the construction contract, the general  
23 contractor or subcontractor provides a sample of an acceptable  
24 certificate of insurance or a one-page schedule accurately  
25 reflecting all insurance requirements which extend coverage  
26 rights to an additional insured for that contract to the  
27 subcontractor, sub-subcontractor, or materialman and the  
28 insurance provided by the subcontractor, sub-subcontractor, or  
29 materialman does not comply with the construction contract. A  
30 schedule or sample certificate of insurance issued under this  
31 subsection shall not be deemed to amend or modify the contract

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1 between the parties in any way or to waive any requirement of  
2 the contract unless the schedule or certificate expressly  
3 states that such an amendment, modification, or waiver is  
4 intended.

5 (6) For purposes of this section, term:

6 (a) "Residential construction project" means the  
7 construction, remodeling, repair, or improvement of a  
8 one-family, two-family, or three-family residence not  
9 exceeding two habitable stories above no more than one  
10 uninhabitable story, and accessory-use structures in  
11 connection therewith.

12 (b) "Commercial construction project" means any  
13 construction, remodeling, repair, or improvement that does not  
14 constitute a residential construction project.

15 (7) This section shall apply to contracts entered into  
16 on or after July 1, 2006.

17 Section 2. A contract for the purchase of goods or  
18 services may not contain a clause that conditions payment for  
19 the goods or services on the receipt of payment from any other  
20 person. Any such conditional payment clause is void as a  
21 violation of the public policy of this state.

22 Section 3. This act shall take effect July 1, 2006.

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25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete everything before the enacting clause

28  
29 and insert:

30 A bill to be entitled

31 An act relating to construction contracts;

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1           creating s. 627.442, F.S.; specifying  
2           acceptance of certain insurance provisions of a  
3           construction contract under certain  
4           circumstances; providing exceptions;  
5           prohibiting certain actions after acceptance of  
6           such provisions; providing an exception  
7           authorizing such actions under certain  
8           circumstances; authorizing contractors or  
9           subcontractors to reject certain accepted  
10          construction contract insurance provisions as  
11          nonconforming under certain circumstances;  
12          authorizing such contractors and subcontractors  
13          to withhold payment for work performed or  
14          materials supplied under certain circumstances;  
15          prohibiting rejecting certain policies of  
16          insurance on certain grounds; specifying  
17          nonapplication of construction contract  
18          insurance provisions under certain  
19          circumstances; providing construction;  
20          providing definitions; providing for  
21          application to certain contracts; providing  
22          that a contract for the purchase of goods or  
23          services may not contain a clause that  
24          conditions payment for the goods or services on  
25          the receipt of payment from any other person;  
26          providing an effective date.

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