

CHAPTER NO. 722

HOUSE BILL NO. 3122

By Representative Caldwell

Substituted for: Senate Bill No. 3043

By Senator McNally

AN ACT to amend Tennessee Code Annotated, Title 12, relative to limitation of liability under state contracts.

WHEREAS, the General Assembly finds that it is in the best interest of the public to attract the maximum number of qualified vendors for state contracts for goods and services; and

WHEREAS, the General Assembly finds that it serves a public purpose to encourage participation by qualified vendors for state contracts; and

WHEREAS, companies may be reluctant to bid on certain state contracts due to the possibility of unlimited liability on damages for negligence under those contracts; and

WHEREAS, the state has suffered from a lack of qualified vendors in certain procurement efforts because of objections to potential unlimited liability; and

WHEREAS, companies who do bid in unlimited liability situations may increase the price of their bids or proposals to cover this situation, even where such liability is remotely possible, causing an increase in costs to the taxpayers of this State; and

WHEREAS, it serves the public purpose to allow responsible state officials to allow state contractors to include limitations of liability on damages for negligence in certain state contracts when the alternatives would be higher prices or lack of goods or services; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 3, Part 3, is amended by adding the following as a new appropriately designated section:

12-3-3___. (a) The Commissioner of General Services may authorize the procurement of goods through a bid solicitation process in which a limitation of liability is authorized by the commissioner and set forth in the documents initiating the bidding process. Such procurement may be undertaken only in accordance with rules and regulations describing the circumstances in which such procurement will be permitted and what types of limitations of liability will be allowed. The Commissioner of General Services has the power and shall be required to adopt and submit rules and regulations to the board of standards for approval.

(b) The rules and regulations, as presented to the board of standards by the commissioner, shall describe the circumstances in which such procurement will be permitted, the types of limitations of liability to be allowed and shall be based on and

include the following criteria. The commissioner shall not authorize limitation of the liability of a contractor unless the commissioner determines that:

(1) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the material at a higher price, if the state refused to allow a limitation of liability;

(2) The limitations and any alternative contract language are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(3) The state will not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

The rules and regulations shall also allow the commissioner to authorize negotiation of a limitation on a contractor's liability in circumstances where the applicable procurement process has failed to provide a qualified bidder.

(c) In no event shall a limitation of liability permitted by this section be negotiated or authorized for an amount less than two (2) times the value of the contract.

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following as a new appropriately designated section:

12-4-1____. (a) The Commissioner of Finance and Administration may authorize the procurement of services in which the contractor's liability is limited. Such procurement may be undertaken only in accordance with rules and regulations promulgated by the Commissioner of Finance and Administration as set forth in Tennessee Code Annotated, Section 12-4-109(a)(1)(A). Such rules shall describe the circumstances in which such procurement will be permitted and the types of limitations of liability to be allowed.

(b) The commissioner may also authorize negotiation of a limitation on a contractor's liability, pursuant to rules and regulations to be promulgated by the commissioner in accordance with Tennessee Code Annotated, Section 12-4-109(a)(1)(A), in circumstances where the applicable procurement process has failed to provide a qualified bidder.

(c) The commissioner shall not authorize a limitation of the liability of a contractor unless the commissioner determines that:

(1) Allowing the limitation of liability is necessary to prevent harm to the state from failing to obtain the goods or services sought, or from obtaining the material at a higher price, if the state refused to allow a limitation of liability;

(2) The limitations and any alternative contract language are commercially reasonable in light of the risks to the state created by the type of goods or services purchased and the purposes for which they will be used; and

(3) The state will not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct.

(d) In no event shall a limitation of liability permitted by this section be negotiated or authorized for an amount less than two (2) times the value of the contract.

SECTION 3. This act shall not be construed as limiting third party actions against any contractor of the state.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 8, 2000


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of May 2000


DON SUNDQUIST, GOVERNOR