

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 540 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/12/09

A Bill

HOUSE BILL 1944

5 By: Representative Hyde
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY LANGUAGE REGARDING INSURANCE
10 COVERAGE FOR CONSTRUCTION CONTRACTS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 TO CLARIFY LANGUAGE REGARDING INSURANCE
15 COVERAGE FOR CONSTRUCTION CONTRACTS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 22-9-214 is amended to read as follows:

21 22-9-214. Hold harmless clause in public construction contracts
22 unenforceable.

23 (a) As used in this section:

24 (1) "Construction" means any of the following services, ~~or~~
25 functions, ~~or~~ combination of the following services or functions to construct
26 a building, building site, or structure, ~~or to construct a permanent~~
27 improvement to a building, building site, or structure, including sitework:

- 28 (A) Alteration;
- 29 (B) Design;
- 30 (C) Erection;
- 31 (D) Reconditioning;
- 32 (E) Renovation;
- 33 (F) Repair; or
- 34 (G) Replacement;

35 (2)(A) "Public construction agreement" means an agreement in



1 which one (1) party is a public entity and the agreement is the bargain of
2 the parties in fact as found in their language or inferred from other
3 circumstances, including course of performance, course of dealing, or usage
4 of trade as provided in § 4-1-303.

5 (B) "Public construction agreement" does not include an
6 insurance contract, a construction bond, or a contract to defend a party
7 against liability; and

8 (3)(A) "Public construction contract" means a contract in which
9 one (1) party is a public entity and the contract is the total legal
10 obligation that results from the parties' agreement under this section and as
11 supplemented by any other applicable law.

12 (B) "Public construction contract" does not include an
13 insurance contract, a construction bond, or a contract to defend a party
14 against liability.

15 (b) A clause in a public construction agreement or public construction
16 contract entered into after July 31, 2007 is unenforceable as against public
17 policy to the extent that a party to the public construction contract or
18 public construction agreement is required to indemnify, defend, or hold
19 harmless another party against:

20 (1) Damage from death or bodily injury to a person arising out
21 of the sole negligence ~~or fault~~ of the indemnitee, its agent, representative,
22 subcontractor, or supplier; or

23 (2) Damage to property arising out of the sole negligence ~~or~~
24 ~~fault~~ of the indemnitee, its agent, representative, subcontractor, or
25 supplier.

26 (c) A provision or understanding in a public construction agreement or
27 public construction contract that attempts to circumvent this section by
28 making the public construction agreement or public construction contract
29 subject to the laws of another state is unenforceable as against public
30 policy.

31 (d) A clause described under subsections (b) and (c) of this section
32 is severable from the public construction agreement or public construction
33 contract and shall not cause the entire public construction agreement or
34 public construction contract to become unenforceable.

35 ~~This section shall not apply to a public construction contract or~~
36 ~~public construction agreement in which~~ The parties to a public construction

1 contract or public construction agreement may enter into an agreement in
2 which:

3 (1) The first party indemnifies, defends, or holds harmless the
4 second party from the first party’s negligence or fault or from the
5 negligence or fault of the first party’s agent, representative,
6 subcontractor, or supplier;

7 (2) The first party requires the second party to provide
8 liability insurance coverage for the first party’s negligence or fault if the
9 public construction contract or public construction agreement requires the
10 second party to obtain insurance and the public construction contract or
11 public construction agreement limits the second party’s obligation to the
12 cost of the required insurance;

13 (3) The first party requires the second party to provide
14 liability insurance coverage for the first party’s negligence or fault under
15 a separate insurance contract with an insurance provider; or

16 (4) The first party requires the second party to name the first
17 party as an additional insured as a part of the public construction agreement
18 or public construction contract.

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20 SECTION 2. Arkansas Code § 4-56-104 is amended to read as follows:

21 4-56-104. Hold harmless clause in construction contracts
22 unenforceable.

23 (a) As used in this section:

24 (1) “Construction” means any of the following services, ~~or~~
25 functions, or combination of the following services or functions to construct
26 a building, building site, or structure, ~~or to construct a permanent~~
27 improvement to a building, building site, or structure, including sitework:

- 28 (A) Alteration;
- 29 (B) Design;
- 30 (C) Erection;
- 31 (D) Reconditioning;
- 32 (E) Renovation;
- 33 (F) Repair; or
- 34 (G) Replacement;

35 (2)(A) “Construction agreement” means the bargain of the parties
36 in fact, as found in their language or inferred from other circumstances,

1 including course of performance, course of dealing, or usage of trade as
2 provided in § 4-1-303.

3 (B) "Construction agreement" does not include an insurance
4 contract, a construction bond, or a contract to defend a party against
5 liability; and

6 (3)(A) "Construction contract" means the total legal obligation
7 that results from the parties' agreement as supplemented by any other
8 applicable law.

9 (B) "Construction contract" does not include an insurance
10 contract, a construction bond, or a contract to defend a party against
11 liability.

12 (b) A clause in a construction agreement or construction contract
13 entered into after July 31, 2007 is unenforceable as against public policy to
14 the extent that a party to the construction contract or construction
15 agreement is required to indemnify, defend, or hold harmless another party
16 against:

17 (1) Damage from death or bodily injury to a person arising out
18 of the sole negligence ~~or fault~~ of the indemnitee, its agent, representative,
19 subcontractor, or supplier; or

20 (2) Damage to property arising out of the sole negligence ~~or~~
21 ~~fault~~ of the indemnitee, its agent, representative, subcontractor, or
22 supplier.

23 (c) A provision or understanding in a construction agreement or
24 construction contract that attempts to circumvent this section by making the
25 construction agreement or construction contract subject to the laws of
26 another state is unenforceable as against public policy.

27 (d) A clause described under subsections (b) and (c) of this section
28 is severable from the construction agreement or construction contract and
29 shall not cause the entire construction agreement or construction contract to
30 become unenforceable.

31 ~~This section shall not apply to a construction contract or~~
32 ~~construction agreement in which~~ The parties to a construction contract or
33 construction agreement may enter into an agreement in which:

34 (1) The first party indemnifies, defends, or holds harmless the
35 second party from the first party's negligence or fault or from the
36 negligence or fault of the first party's agent, representative,

1 subcontractor, or supplier;

2 (2) The first party requires the second party to provide
3 liability insurance coverage for the first party's negligence or fault if the
4 construction contract or construction agreement requires the second party to
5 obtain insurance and the construction contract or construction agreement
6 limits the second party's obligation to the cost of the required insurance;

7 (3) The first party requires the second party to provide
8 liability insurance coverage for the first party's negligence or fault under
9 a separate insurance contract with an insurance provider; or

10 (4) The first party requires the second party to name the first
11 party as an additional insured as a part of the construction agreement or
12 construction contract.

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/s/ Hyde

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APPROVED: 3/24/2009

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