

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 874 of the Regular Session

1 State of Arkansas As Engrossed: H2/8/07 H2/15/07 S2/28/07 S3/28/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 1387

4

5 By: Representatives Hyde, Anderson, Dunn, Glidewell, *Rosenbaum*

6 By: Senator Salmon

7

8

9

For An Act To Be Entitled

10

AN ACT TO PROMOTE INSURANCE COVERAGE FOR

11

CONSTRUCTION CONTRACTS; TO PROTECT THE

12

CONSTRUCTION INDUSTRY FROM INSURANCE POLICY

13

LIMITATIONS; AND FOR OTHER PURPOSES.

14

15

Subtitle

16

TO PROMOTE INSURANCE COVERAGE FOR

17

CONSTRUCTION CONTRACTS AND TO PROTECT

18

THE CONSTRUCTION INDUSTRY FROM INSURANCE

19

POLICY LIMITATIONS.

20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Arkansas Code Title 22, Chapter 9, Subchapter 2 is amended

25 to add an additional section to read as follows:

26 22-9-214. Hold harmless clause in public construction contracts

27 unenforceable.

28 (a) As used in this section:

29 (1) "Construction" means any of the following services or

30 functions or combination of the following services or functions to construct

31 a building, building site, or structure, or permanent improvement to a

32 building, building site, or structure:

33 (A) Alteration;

34 (B) Design;

35 (C) Erection;



1 (D) Reconditioning;

2 (E) Renovation;

3 (F) Repair; or

4 (G) Replacement;

5 (2)(A) "Public construction agreement" means an agreement in
6 which one (1) party is a public entity and the agreement is the bargain of
7 the parties in fact as found in their language or inferred from other
8 circumstances, including course of performance, course of dealing, or usage
9 of trade as provided in § 4-1-303.

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

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

17 (B) "Public construction contract" does not include an
18 insurance contract, a construction bond or a contract to defend a party
19 against liability.

20 (b) A clause in a public construction agreement or public construction
21 contract entered into after the effective date of this section is
22 unenforceable as against public policy to the extent that a party to the
23 public construction contract or public construction agreement is required to
24 indemnify, defend, or hold harmless another party against:

25 (1) Damage from death or bodily injury to a person arising out
26 of the sole negligence or fault of the indemnitee, its agent, representative,
27 subcontractor, or supplier; or

28 (2) Damage to property arising out of the sole negligence or
29 fault of the indemnitee, its agent, representative, subcontractor, or
30 supplier.

31 (c) A provision or understanding in a public construction agreement or
32 public construction contract that attempts to circumvent this section by
33 making the public construction agreement or public construction contract
34 subject to the laws of another state is unenforceable as against public
35 policy.

36 (d) A clause described under subsections (b) and (c) of this section

1 is severable from the public construction agreement or public construction
2 contract and shall not cause the entire public construction agreement or
3 public construction contract to become unenforceable.

4 (e) This section shall not apply to a public construction contract or
5 public construction agreement in which:

6 (1) The first party indemnifies, defends, or holds harmless the
7 second party from the first party's negligence or fault or from the
8 negligence or fault of the first party's agent, representative, subcontractor
9 or supplier;

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

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

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

22
23 SECTION 2. Arkansas Code Title 4, Chapter 56, is amended to add an
24 additional section to read as follows:

25 4-56-104. Hold harmless clause in construction contracts
26 unenforceable.

27 (a) As used in this section:

28 (1) "Construction" means any of the following services or
29 functions or combination of the following services or functions to construct
30 a building, building site, or structure, or permanent improvement to a
31 building, building site, or structure:

32 (A) Alteration;

33 (B) Design;

34 (C) Erection;

35 (D) Reconditioning;

36 (E) Renovation;

1 (F) Repair; or

2 (G) Replacement;

3 (2)(A) "Construction agreement" means the bargain of the parties
4 in fact, as found in their language or inferred from other circumstances,
5 including course of performance, course of dealing, or usage of trade as
6 provided in § 4-1-303.

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

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

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

16 (b) A clause in a construction agreement or construction contract
17 entered into after the
18 effective date of this section is unenforceable as against public policy to
19 the extent that a party to the construction contract or construction
20 agreement is required to indemnify, defend, or hold harmless another party
21 against:

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

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

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

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

36 (e) This section shall not apply to a construction contract or

1 construction agreement in which:

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

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

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

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

17 /s/ Hyde

18
19 APPROVED: 4/3/2007
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36