

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.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1387

5 By: Representatives Hyde, Anderson, Dunn, Glidewell
6 By: Senator Salmon
7

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

Subtitle

15 TO PROMOTE INSURANCE COVERAGE FOR
16 CONSTRUCTION CONTRACTS AND TO PROTECT
17 THE CONSTRUCTION INDUSTRY FROM INSURANCE
18 POLICY LIMITATIONS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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;

36 (D) Financing;



- 1 (E) Maintenance;
- 2 (F) Operation;
- 3 (G) Reconditioning;
- 4 (H) Renovation;
- 5 (I) Repair; or
- 6 (J) Replacement;

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

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

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

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

22 (b) Except as provided under subsection (c) of this section, a public
 23 construction agreement or public construction contract is unenforceable as
 24 against public policy to the extent that a party to the public construction
 25 contract or public construction agreement or that party's surety or insurer
 26 is required to indemnify, insure, defend, or hold harmless another party
 27 against liability in whole or in part from:

28 (1) Damage from death of, or bodily injury to, a person arising
 29 out of the negligence or fault of the indemnitee, its agent, representative,
 30 subcontractor, or supplier; or

31 (2) Damage to property arising out of the negligence or fault of
 32 the indemnitee, its agent, representative, subcontractor, or supplier.

33 (c) A clause in a public construction contract or public construction
 34 agreement to exempt, limit, or release one (1) or more parties to a public
 35 construction agreement or public construction contract from liability for
 36 negligence or fault before the negligence or fault occurs in an amount

1 greater than the amount represented by the degree or percentage of negligence
2 or fault attributable to the indemnitor, its agent, representative,
3 subcontractor, or supplier is unenforceable as against public policy.

4 (d) A provision or understanding in a public construction agreement or
5 public construction contract that attempts to circumvent this section by
6 making the public construction agreement or public construction contract
7 subject to the laws of another state is unenforceable as against public
8 policy.

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

12 4-56-104. Hold harmless clause in construction contracts
13 unenforceable.

14 (a) As used in this section:

15 (1) "Construction" means any of the following services or
16 functions or combination of the following services or functions to construct
17 a building, building site, or structure, or permanent improvement to a
18 building, building site, or structure:

- 19 (A) Alteration;
- 20 (B) Design;
- 21 (C) Erection;
- 22 (D) Financing;
- 23 (E) Maintenance;
- 24 (F) Operation;
- 25 (G) Reconditioning;
- 26 (H) Renovation;
- 27 (I) Repair; or
- 28 (J) Replacement;

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

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

36 (3)(A) "Construction contract" means the total legal obligation

1 that results from the parties' agreement as supplemented by any other
2 applicable law.

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

6 (b) Except as provided under subsection (c) of this section, a
7 construction agreement or construction contract is unenforceable as against
8 public policy to the extent that a party to the construction contract or
9 construction agreement or that party's surety or insurer is required to
10 indemnify, insure, defend, or hold harmless another party against liability
11 in whole or in part from:

12 (1) Damage from death or bodily injury to a person arising out
13 of the negligence or fault of the indemnitee, its agent, representative,
14 subcontractor, or supplier; or

15 (2) Damage to property arising out of the negligence or fault of
16 the indemnitee, its agent, representative, subcontractor, or supplier.

17 (c) A construction contract or a construction agreement to exempt,
18 limit, or release one (1) or more parties to a construction contract or a
19 construction agreement from liability for negligence or fault before the
20 negligence or fault occurs in an amount greater than the amount represented
21 by the degree or percentage of negligence or fault attributable to the
22 indemnitor, its agent, representative, subcontractor, or supplier is
23 unenforceable as against public policy.

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

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