

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

As Engrossed: H2/8/07

# A Bill

HOUSE BILL 1387

5 By: Representatives Hyde, Anderson, Dunn, Glidewell, *Rosenbaum*  
6 By: Senator Salmon  
7  
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## 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) Reconditioning;



1 (E) Renovation;

2 (F) Repair; or

3 (G) Replacement;

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

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

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

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

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

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

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

30 (c) A clause in a public construction contract or public construction  
31 agreement to exempt, limit, or release one (1) or more parties to a public  
32 construction agreement or public construction contract from liability for  
33 negligence or fault before the negligence or fault occurs in an amount  
34 greater than the amount represented by the degree or percentage of negligence  
35 or fault attributable to the indemnitor, its agent, representative,  
36 subcontractor, or supplier is unenforceable as against public policy.

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

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

9       4-56-104. Hold harmless clause in construction contracts  
10 unenforceable.

11       (a) As used in this section:

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

16                       (A) Alteration;

17                       (B) Design;

18                       (C) Erection;

19                       (D) Reconditioning;

20                       (E) Renovation;

21                       (F) Repair; or

22                       (G) Replacement;

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

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

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

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

36       (b) Except as provided under subsection (c) of this section, a

1 construction agreement or construction contract is unenforceable as against  
2 public policy to the extent that a party to the construction contract or  
3 construction agreement or that party's surety or insurer is required to  
4 indemnify, insure, defend, or hold harmless another party against liability  
5 in whole or in part from:

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

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

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

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

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24 */s/ Hyde, et al*  
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