

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 H2/15/07

A Bill

HOUSE BILL 1387

5 By: Representatives Hyde, Anderson, Dunn, Glidewell, *Rosenbaum*
6 By: Senator Salmon
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8

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

16 TO PROMOTE INSURANCE COVERAGE FOR
17 CONSTRUCTION CONTRACTS AND TO PROTECT
18 THE CONSTRUCTION INDUSTRY FROM INSURANCE
19 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 clause
20 in a public construction agreement or public construction contract entered
21 into after the effective date of this section is unenforceable as against
22 public policy to the extent that a party to the public construction contract
23 or public construction agreement or that party's surety or insurer is
24 required to indemnify, insure, defend, or hold harmless another party against
25 liability in whole or in part from:

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

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

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

1 subcontractor, or supplier is unenforceable as against public policy.

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

7 (e) A clause described under subsections (b) and (c) of this section
8 is severable from the public construction agreement or public construction
9 contract and shall not cause the entire public construction agreement or
10 public construction contract to become unenforceable.

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

14 4-56-104. Hold harmless clause in construction contracts
15 unenforceable.

16 (a) As used in this section:

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

21 (A) Alteration;

22 (B) Design;

23 (C) Erection;

24 (D) Reconditioning;

25 (E) Renovation;

26 (F) Repair; or

27 (G) Replacement;

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

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

35 (3)(A) "Construction contract" means the total legal obligation
36 that results from the parties' agreement as supplemented by any other

1 applicable law.

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

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

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

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33 /s/ Hyde, et al
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