

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 S2/28/07*

# A Bill

HOUSE BILL 1387

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

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) A clause in a public construction agreement or public construction  
20 contract entered into after the effective date of this section is  
21 unenforceable as against public policy to the extent that a party to the  
22 public construction contract or public construction agreement is required to  
23 indemnify, defend, or hold harmless another party against liability in whole  
24 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 provision or understanding in a public construction agreement or  
31 public construction contract that attempts to circumvent this section by  
32 making the public construction agreement or public construction contract  
33 subject to the laws of another state is unenforceable as against public  
34 policy.

35 (d) A clause described under subsections (b) and (c) of this section  
36 is severable from the public construction agreement or public construction

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

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

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

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

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

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

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

24 4-56-104. Hold harmless clause in construction contracts  
25 unenforceable.

26 (a) As used in this section:

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

31 (A) Alteration;

32 (B) Design;

33 (C) Erection;

34 (D) Reconditioning;

35 (E) Renovation;

36 (F) Repair; or

1 (G) Replacement;

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

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

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

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

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

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

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

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

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

34 (e) This section shall not apply to a construction contract or  
35 construction agreement in which:

36 (1) The first party indemnifies, defends, or holds harmless the

1 second party from the first party's negligence or fault or from the  
2 negligence or fault of the first party's agent, representative, subcontractor  
3 or supplier;

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

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

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

15 /s/ Hyde  
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