

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 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;

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:

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

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

21
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:

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

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

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

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

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

