

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1944

By: Representative Hyde

For An Act To Be Entitled

AN ACT TO CLARIFY LANGUAGE REGARDING INSURANCE
COVERAGE FOR CONSTRUCTION CONTRACTS; AND FOR
OTHER PURPOSES.

Subtitle

TO CLARIFY LANGUAGE REGARDING INSURANCE
COVERAGE FOR CONSTRUCTION CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 22-9-214 is amended to read as follows:

22-9-214. Hold harmless clause in public construction contracts
unenforceable.

(a) As used in this section:

(1) "Construction" means any of the following services, ~~or~~
functions, or combination of the following services or functions to construct
a building, building site, or structure, ~~or~~ to construct a permanent
improvement to a building, building site, or structure, including sitework:

- (A) Alteration;
- (B) Design;
- (C) Erection;
- (D) Reconditioning;
- (E) Renovation;
- (F) Repair; or
- (G) Replacement;

(2)(A) "Public construction agreement" means an agreement in
which one (1) party is a public entity and the agreement is the bargain of



1 the parties in fact as found in their language or inferred from other
 2 circumstances, including course of performance, course of dealing, or usage
 3 of trade as provided in § 4-1-303.

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

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

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

14 (b) A clause in a public construction agreement or public construction
 15 contract entered into after July 31, 2007 is unenforceable as against public
 16 policy to the extent that a party to the public construction contract or
 17 public construction agreement is required to indemnify, defend, or hold
 18 harmless another party against:

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

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

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

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

34 ~~(e) This section shall not apply to a public construction contract or~~
 35 ~~public construction agreement in which~~ The parties to a public construction
 36 contract or public construction agreement may enter into an agreement in

1 which:

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

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

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

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

18
19 SECTION 2. Arkansas Code § 4-56-104 is amended to read as follows:
20 4-56-104. Hold harmless clause in construction contracts
21 unenforceable.

22 (a) As used in this section:

23 (1) "Construction" means any of the following services, ~~or~~
24 functions, or combination of the following services or functions to construct
25 a building, building site, or structure, ~~or to construct a permanent~~
26 improvement to a building, building site, or structure, including sitework:

- 27 (A) Alteration;
- 28 (B) Design;
- 29 (C) Erection;
- 30 (D) Reconditioning;
- 31 (E) Renovation;
- 32 (F) Repair; or
- 33 (G) Replacement;

34 (2)(A) "Construction agreement" means the bargain of the parties
35 in fact, as found in their language or inferred from other circumstances,
36 including course of performance, course of dealing, or usage of trade as

provided in § 4-1-303.

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

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

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

(b) A clause in a construction agreement or construction contract entered into after July 31, 2007 is unenforceable as against public policy to the extent that a party to the construction contract or construction agreement is required to indemnify, defend, or hold harmless another party against:

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

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

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

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

~~(e) This section shall not apply to a construction contract or construction agreement in which~~ The parties to a public construction contract or public construction agreement may enter into an agreement in which:

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

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

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

9 (4) The first party requires the second party to name the first
10 party as an additional insured as a part of the construction agreement or
11 construction contract.