

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013

# A Bill

SENATE BILL 917

4  
5 By: Senator Holland

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THAT LIMITATIONS ON LIABILITY  
9 ARISING OUT OF DEATH OR BODILY INJURY ARE  
10 UNENFORCEABLE IN CONSTRUCTION CONTRACTS; AND FOR  
11 OTHER PURPOSES.

## Subtitle

15 TO CLARIFY THAT LIMITATIONS ON LIABILITY  
16 ARISING OUT OF DEATH OR BODILY INJURY ARE  
17 UNENFORCEABLE IN CONSTRUCTION CONTRACTS.

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

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22 SECTION 1. Arkansas Code § 4-56-104(b), concerning the  
23 unenforceability of a construction contract that contains a hold harmless  
24 clause, is amended to read as follows:

25 (b) A clause in a construction agreement or construction contract  
26 entered into after July 31, 2007, is void and unenforceable as against public  
27 policy to the extent that a party to the construction contract or  
28 construction agreement or that party's surety or insurer is required to  
29 indemnify, insure, defend, or hold harmless another party against:

30 (1) Damage from death or bodily injury to a person arising out  
31 of the ~~sole~~ negligence, in whole or in part, of the indemnitee, ~~its~~ or the  
32 indemnitee's agent, representative, subcontractor, or supplier; or

33 (2) Damage to property arising out of the ~~sole~~ negligence, in  
34 whole or in part, of the indemnitee, ~~its~~ or the indemnitee's agent,  
35 representative, subcontractor, or supplier.

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1 SECTION 2. Arkansas Code § 4-56-104(e), concerning construction  
2 contracts that contain a hold harmless clause, is amended to read as follows:

3 (e) The parties to a construction contract or construction agreement  
4 may enter into an 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,  
8 subcontractor, or supplier;

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

15 (3) The first party requires the second party to provide  
16 liability insurance coverage for the ~~first~~ second party's negligence or fault  
17 under 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 construction agreement or  
20 construction contract.

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22 SECTION 3. Arkansas Code § 22-9-214(b), concerning the  
23 unenforceability of a public construction contract that contains a hold  
24 harmless clause, is amended to read as follows:

25 (b) A clause in a public construction agreement or public construction  
26 contract entered into after July 31, 2007, is void and unenforceable as  
27 against public policy to the extent that a party to the public construction  
28 contract or public construction agreement or that party's surety or insurer  
29 is required to indemnify, insure, defend, or hold harmless another party  
30 against:

31 (1) Damage from death or bodily injury to a person arising out  
32 of the ~~sole~~ negligence, in whole or in part, of the indemnitee, ~~its~~ or the  
33 indemnitee's agent, representative, subcontractor, or supplier; or

34 (2) Damage to property arising out of the ~~sole~~ negligence, in  
35 whole or in part, of the indemnitee, ~~its~~ or the indemnitee's agent,  
36 representative, subcontractor, or supplier.

1 SECTION 4. Arkansas Code § 22-9-214(e), concerning public construction  
2 contracts that contain a hold harmless clause, is amended to read as follows:

3 (e) The parties to a public construction contract or public  
4 construction agreement may enter into an 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,  
8 subcontractor, or supplier;

9 (2) The first party requires the second party to provide  
10 liability insurance coverage for the ~~first~~ second party's negligence or fault  
11 if the public construction contract or public construction agreement requires  
12 the 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~~ second party's negligence or fault  
17 under 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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