

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

As Engrossed: S4/3/13

# A Bill

SENATE BILL 917

5 By: Senator Holland  
6

## 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.  
12  
13

### Subtitle

14 TO CLARIFY THAT LIMITATIONS ON LIABILITY  
15 ARISING OUT OF DEATH OR BODILY INJURY ARE  
16 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 unenforceable as against public policy~~  
27 ~~to the extent that a party to the construction contract or construction~~  
28 ~~agreement is required to indemnify, defend, or hold harmless another party~~  
29 ~~against A provision in a construction agreement or construction contract is~~  
30 ~~void and unenforceable as against public policy if it requires\*~~

31 ~~(1) Damage from death or bodily injury to a person arising out~~  
32 ~~of the sole negligence of the indemnitee, its agent, representative,~~  
33 ~~subcontractor, or supplier an entity or that entity's surety or insurer to~~  
34 ~~indemnify, insure, defend, or hold harmless another entity against liability~~  
35 ~~for damage arising out of death or bodily injury to a person or persons or~~  
36 ~~damage to property, which arises out of the negligence or fault of the~~



1 ~~indemnitee, its agents, representatives, subcontractors, or suppliers; or~~  
2 ~~(2) Damage to property arising out of the sole negligence of the~~  
3 ~~indemnitee, its agent, representative, subcontractor, or supplier.~~

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

7 ~~(c) A provision or understanding in a construction agreement or~~  
8 ~~construction contract that attempts to circumvent this section by making the~~  
9 ~~construction agreement or construction contract subject to the laws of~~  
10 ~~another state is unenforceable as against public policy A provision,~~  
11 ~~covenant, clause, or understanding written in a construction agreement or~~  
12 ~~construction contract that conflicts with the provisions and intent of this~~  
13 ~~section or attempts to circumvent this section by making the construction~~  
14 ~~agreement or construction contract subject to the laws of another state, or~~  
15 ~~that requires any litigation, arbitration, or other alternative dispute~~  
16 ~~resolution proceeding arising from the construction agreement or construction~~  
17 ~~contract to be conducted in another state, is void and unenforceable.~~

18  
19 SECTION 3. Arkansas Code § 4-56-104(e), concerning construction  
20 contracts that contain a hold harmless clause, is amended to read as follows:

21 ~~(e) The parties to a construction contract or construction agreement~~  
22 ~~may enter into an agreement in which:~~

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

27 ~~(2) The first party requires the second party to provide~~  
28 ~~liability insurance coverage for the first party's negligence or fault if the~~  
29 ~~construction contract or construction agreement requires the second party to~~  
30 ~~obtain insurance and the construction contract or construction agreement~~  
31 ~~limits the second party's obligation to the cost of the required insurance;~~

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

35 ~~(4) The first party requires the second party to name the first~~  
36 ~~party as an additional insured as a part of the construction agreement or~~

1 ~~construction contract~~ The provisions of this section do not affect any  
 2 provision in a construction agreement or construction contract that requires  
 3 an entity or that entity's surety or insurer to indemnify another entity  
 4 against liability for damage arising out of death or bodily injury to  
 5 persons, or damage to property, but such indemnification shall not exceed any  
 6 amounts that are greater than that represented by the degree or percentage of  
 7 negligence or fault attributable to the indemnitors, its agents,  
 8 representatives, subcontractors, or suppliers.

9  
 10 SECTION 4. Arkansas Code § 22-9-214(b), concerning the  
 11 unenforceability of a public construction contract that contains a hold  
 12 harmless clause, is amended to read as follows:

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

20 ~~(1) Damage from death or bodily injury to a person arising out~~  
 21 ~~of the sole negligence of the indemnitee, its agent, representative,~~  
 22 ~~subcontractor, or supplier An entity or that entity's surety or insurer to~~  
 23 ~~indemnify, insure, defend, or hold harmless another entity against liability~~  
 24 ~~for damage arising out of death or bodily injury to a person or persons or~~  
 25 ~~damage to property, which arises out of the negligence or fault of the~~  
 26 ~~indemnitee, its agents, representatives, subcontractors, or suppliers; or~~

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

29  
 30 SECTION 5. Arkansas Code § 22-9-214(c), concerning public  
 31 construction contracts that contain a hold harmless clause, is amended to  
 32 read as follows:

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

1 policy A provision, covenant, clause, or understanding in a construction  
2 agreement or construction contract that conflicts with the provisions and  
3 intent of this section or attempts to circumvent this section by making the  
4 construction agreement or construction contract subject to the laws of  
5 another state, or that requires any litigation, arbitration, or other dispute  
6 resolution proceeding arising from the construction agreement or construction  
7 contract to be conducted in another state, is void and unenforceable.

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9 SECTION 6. Arkansas Code § 22-9-214(e), concerning public construction  
10 contracts that contain a hold harmless clause, is amended to read as follows:

11 (e) ~~The parties to a public construction contract or public~~  
12 ~~construction agreement may enter into an agreement in which:~~

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

17 ~~(2) The first party requires the second party to provide~~  
18 ~~liability insurance coverage for the first party's negligence or fault if the~~  
19 ~~public construction contract or public construction agreement requires the~~  
20 ~~second party to obtain insurance and the public construction contract or~~  
21 ~~public construction agreement limits the second party's obligation to the~~  
22 ~~cost of the required insurance;~~

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

26 ~~(4) The first party requires the second party to name the first~~  
27 ~~party as an additional insured as a part of the public construction agreement~~  
28 ~~or public construction contract The provisions of this section do not affect~~  
29 ~~any provision in a construction agreement or construction contract that~~  
30 ~~requires an entity or that entity's surety or insurer to indemnify another~~  
31 ~~entity against liability for damage arising out of death or bodily injury to~~  
32 ~~persons, or damage to property, but such indemnification shall not exceed any~~  
33 ~~amounts that are greater than that represented by the degree or percentage of~~  
34 ~~negligence or fault attributable to the indemnitors, its agents,~~  
35 ~~representatives, subcontractors, or suppliers.~~

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*/s/Holland*