

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015

# A Bill

SENATE BILL 726

4  
5 By: Senator Files

## For An Act To Be Entitled

8 AN ACT TO PROMOTE FAIR AND EQUITABLE ALLOCATION OF  
9 LIABILITY IN CONSTRUCTION CONTRACTS; AND FOR OTHER  
10 PURPOSES.

## Subtitle

11  
12  
13  
14 TO PROMOTE FAIR AND EQUITABLE ALLOCATION  
15 OF LIABILITY IN CONSTRUCTION CONTRACTS.  
16  
17

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

19  
20 SECTION 1. Arkansas Code § 4-56-104(b), concerning the  
21 unenforceability of a construction contract that contains a hold harmless  
22 clause, is amended to read as follows:

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

29 (1) ~~Damage from death or bodily injury to a person arising out~~  
30 ~~of the sole negligence of the indemnitee, its agent, representative,~~  
31 ~~subcontractor, or supplier~~ liability for damage arising out of the death of  
32 or bodily injury to a person or persons or damage to property, which arises  
33 out of the negligence or fault of the indemnitee, its agents,  
34 representatives, subcontractors, or suppliers; ~~or~~

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



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

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

12  
13 SECTION 3. Arkansas Code § 4-56-104(e), concerning construction  
14 contracts that contain a hold harmless clause, is amended to read as follows:

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

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

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

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

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

1 negligence or fault attributable to the indemnitors, its agents,  
2 representatives, subcontractors, or suppliers.

3  
4 SECTION 4. Arkansas Code § 22-9-214(b) and (c), concerning the  
5 unenforceability of a public construction contract that contains a hold  
6 harmless clause, are amended to read as follows:

7 (b) A ~~clause~~ provision in a public construction agreement or public  
8 construction contract ~~entered into after July 31, 2007,~~ is void and  
9 unenforceable as against public policy ~~to the extent that a party to the~~  
10 ~~public construction contract or public construction agreement is required to~~  
11 ~~indemnify, defend, or hold harmless another party against~~ if it requires:

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

15 (2) ~~Damage to property arising out of the sole negligence of the~~  
16 ~~indemnitee, its agent, representative, subcontractor, or supplier~~ an entity  
17 or that entity's surety or insurer to indemnify, insure, defend, or hold  
18 harmless another entity against liability for damage arising out of the death  
19 of or bodily injury to a person or persons or damage to property, which  
20 arises out of negligence or fault of the indemnitee, its agents,  
21 representatives, subcontractors, or suppliers.

22 (c) A provision, covenant, clause, or understanding in a public  
23 construction agreement or public construction contract that conflicts with  
24 the provisions and intent of this section or attempts to circumvent this  
25 section by making the public construction agreement or public construction  
26 contract subject to the laws of another state, or that requires any  
27 litigation, arbitration, or other dispute resolution proceeding arising from  
28 the construction agreement or construction contract to be conducted in  
29 another state, is void and unenforceable as against public policy.

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

33 (e) The ~~parties to~~ provisions of this section do not affect any  
34 provision in a public construction contract or public construction agreement  
35 ~~may enter into an 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,~~  
3 ~~subcontractor, 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 ~~public construction contract or public construction agreement requires the~~  
7 ~~second party to obtain insurance and the public construction contract or~~  
8 ~~public construction agreement limits the second party's obligation to the~~  
9 ~~cost of the required insurance;~~

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

13 ~~(4) The first party requires the second party to name the first~~  
14 ~~party as an additional insured as a part of the public construction agreement~~  
15 ~~or public construction contract that requires an entity or that entity's~~  
16 ~~surety or insurer to indemnify another entity against liability for damage~~  
17 ~~arising out of the death of or bodily injury to persons or damage to~~  
18 ~~property, but such indemnification shall not exceed any amounts that are~~  
19 ~~greater than that represented by the degree or percentage of negligence or~~  
20 ~~fault attributable to the indemnitors, its agents, representatives,~~  
21 ~~subcontractors, or suppliers.~~

22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36