

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S4/3/13
A Bill

SENATE BILL 917

By: Senator Holland

For An Act To Be Entitled

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

Subtitle

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

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

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

~~(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 A provision in a construction agreement or construction contract is void and unenforceable as against public policy if it requires*~~

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



~~indemnitee, its agents, representatives, subcontractors, or suppliers; or~~

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

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

~~(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. A provision, covenant, clause, or understanding written in a construction agreement or construction contract that conflicts with the provisions and intent of this section or attempts to circumvent this section by making the construction agreement or construction contract subject to the laws of another state, or that requires any litigation, arbitration, or other alternative dispute resolution proceeding arising from the construction agreement or construction contract to be conducted in another state, is void and unenforceable.~~

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

~~(e) The parties to a construction contract or 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;~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(e) 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;~~

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

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

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

/s/Holland