

FIRST REGULAR SESSION

HOUSE BILL NO. 481

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

1479H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 434.100, RSMo, and to enact in lieu thereof one new section relating to construction contracts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 434.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 434.100, to read as follows:

434.100. 1. Except as provided in subsection [2] **3** of this section, in any contract or agreement for public or private construction work, a [party's] covenant, promise or agreement **made by a party** to indemnify [or] , hold harmless [another person from] , **insure for liability, or defend a person against liability, claims, damages, losses, including economic losses or expenses, including attorney's fees, that are caused by** that person's own negligence or wrongdoing is void as against public policy and wholly unenforceable.

2. For purposes of this section, the terms "person" and "party" mean an individual, corporation, limited liability company, partnership, partner, joint venture, trust, trustee, and any other entity recognized by law. For purposes of this section, the terms "person" and "party" mean the person's or party's officers, employees, agents, subcontractors, suppliers, or others for whom the party or person is responsible.

3. The provisions of subsection 1 of this section shall not apply to:

(1) A party's covenant, promise or agreement to indemnify or hold harmless, **insure or defend** another person from the party's own negligence or wrongdoing or the negligence or wrongdoing of the party's subcontractors and suppliers of any tier;

(2) A party's promise to:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(a) Cause another person or entity to be covered or named as an insured or additional**
18 **insured in [an] a liability insurance contract that provides liability coverage for the person**
19 **named as an additional insured for the negligence or wrongdoing of the party making the**
20 **promise; or**

21 **(b) Purchase a project-specific insurance policy, including an owner's or**
22 **contractor's protective liability insurance, project management protective liability**
23 **insurance, or builder's risk insurance;**

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25 **Provided, however, any requirement in any contract or agreement for public or private**
26 **construction work that a party name another person as an additional insured in that**
27 **party's liability insurance contract for the purpose of providing liability insurance or**
28 **indemnification or defense for the benefit of another person for that person's own**
29 **negligence or wrongdoing is void against public policy and wholly unenforceable;**

30 (3) A contract or agreement between state agencies or political subdivisions or between
31 such governmental agencies;

32 (4) A contract or agreement between a private person and such governmental entities for
33 the use or operation of public property or a public facility;

34 (5) A contract or agreement with the owner of the public property for the construction,
35 use, maintenance or operation of a private facility when it is located on such public property;

36 (6) A permit, authorization or contract with such governmental entities for the movement
37 of property on the public highways, roads or streets of this state or any political subdivision;

38 (7) Construction bonds, or insurance contracts or agreements;

39 (8) [An agreement containing a party's promise to indemnify, defend or hold harmless
40 another person, if the agreement also requires the party to obtain specified limits of insurance to
41 insure the indemnity obligation and the party had the opportunity to recover the cost of the
42 required insurance in its contract price; provided, however, that in such case the party's liability
43 under the indemnity obligation shall be limited to the coverage and limits of the required
44 insurance; or

45 (9) [Railroads regulated by the Federal Railroad Administration.

46 [3.] **4.** For the purposes of this section, "construction work" shall include, but not be
47 limited to, the **design, development, construction, reconstruction, renovation,** alteration,
48 maintenance or repair of any [building, structure, highway, bridge, viaduct, or pipeline, or]
49 **public or private real property, buildings, structures, improvements, highways, streets,**
50 **roads, bridges, viaducts, shafts, wells, water or sewer systems, gas or other distribution**
51 **systems, pipelines, or appliances, including demolition, moving or excavation connected**
52 **therewith, and shall include the furnishing of surveying, design, engineering, supervision,**

53 **testing, observation, development,** planning or management services, or labor, materials or
54 equipment, in connection with such work.

55 [4.] **5.** The provisions of this section shall apply only to contracts or agreements entered
56 into after August 28, [1999] **2013.**

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