

FIRST REGULAR SESSION

SENATE BILL NO. 448

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 17, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2135S.01I

AN ACT

To repeal section 434.100, RSMo, and to enact in lieu thereof one new section relating to the assignment of liability in contracts for construction work.

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Section A. Section 434.100, RSMo, is repealed and one new section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

434.100. 1. Except as provided in subsection 2 of this section[.]:

2 **(1) Every party who enters into a contract or agreement for**
3 **public or private construction work shall be responsible for any**
4 **liability or damages arising from the party's own negligence,**
5 **wrongdoing, or recklessness, and shall not transfer, delegate, or assign**
6 **responsibility for liability or damages resulting from the party's own**
7 **negligence, wrongdoing, or recklessness to another person;**

8 **(2) In any contract or agreement for public or private construction work,**
9 **a party's covenant, promise or agreement to insure for liability, defend**
10 **against liability, indemnify or hold harmless another person from that person's**
11 **own negligence [or], wrongdoing, or recklessness is void as against public policy**
12 **and wholly unenforceable.**

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

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

18 (2) A party's promise to cause another person [or entity] to be [covered]
19 **named** as an [insured or] additional insured in [an] **a liability** insurance

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 contract **that provides liability coverage for the person named as an**
21 **additional insured for the negligence, wrongdoing, or recklessness of**
22 **the party making the promise, or purchase an owner's or contractor's**
23 **protective liability insurance or builder's risk insurance;**

24 (3) A contract or agreement between state agencies or political
25 subdivisions or between such governmental agencies;

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

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

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

35 (7) Construction bonds, or insurance contracts or agreements; **or**

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

43 (9)] Railroads regulated by the Federal Railroad Administration.

44 3. For the purposes of this section[,]:

45 (1) "Construction work" shall include, but not be limited to, the **design,**
46 **development,** construction, **reconstruction, renovation,** alteration,
47 maintenance or repair of any [building, structure, highway, bridge, viaduct, or
48 pipeline, or] **public or private real property, buildings, structures,**
49 **improvements, highways, streets, roads, bridges, viaducts, shafts, wells,**
50 **water or sewer systems, gas or other distribution systems, pipelines, or**
51 **appliances including** demolition, moving or excavation connected therewith,
52 and shall include the furnishing of surveying, design, engineering, **supervision,**
53 **testing, observation, development,** planning or management services, or
54 labor, materials or equipment, in connection with such work; **and**

55 (2) The terms "person" and "party" shall include an individual,

56 **corporation, limited liability company, partnership, partner, joint**
57 **venture, trust, trustee, any other entity recognized by law, the person's**
58 **or party's officers, employees, agents, subcontractors, suppliers, or**
59 **others for whom the party or person is responsible.**

60 4. The provisions of this section shall apply only to contracts or
61 agreements entered into after August 28, [1999] **2015.**

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