

FIRST REGULAR SESSION

SENATE BILL NO. 290

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Read 1st time February 16, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1449S.011

AN ACT

To repeal section 434.100, RSMo, and to enact in lieu thereof one new section relating to the treatment of indemnification and hold harmless clauses within construction work 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Section A. Section 434.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 434.100, to read as follows: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 of this section, in any contract or agreement for public or private construction work, a [party's] covenant, promise or agreement to indemnify [or], hold harmless [another person from that person's own], **insure or defend a party against liability, claims, damages, losses, including economic losses, or expenses, including attorney's fees, that are caused by the negligence or wrongdoing of that party or that party's employees, agents, subcontractors, or others for whom that party is responsible**, negligence or wrongdoing is void as against public policy and wholly unenforceable. **For purposes of this subsection, the term "party" shall include the party's officers, employees, or agents.**

2. 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 **and the party's officers, employees, and agents;**

(2) A party's promise to [cause another person or entity to be covered as an insured or additional insured in an insurance contract] **purchase a project-specific insurance policy, including an owner's or contractor's**

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

19 **protective liability insurance, project management protective liability**
20 **insurance, or builder's risk insurance;**

21 (3) A contract or agreement between state agencies or political
22 subdivisions or between such governmental agencies;

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

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

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

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

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

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

41 3. For the purposes of this section, "construction work" shall include, but
42 not be limited to, the **design, development, construction, reconstruction,**
43 **renovation,** alteration, maintenance or repair of any [building, structure,
44 highway, bridge, viaduct, or pipeline, or] **public or private real property,**
45 **buildings, structures, improvements, highways, streets, roads, bridges,**
46 **viaducts, shafts, wells, water or sewer systems, gas or other**
47 **distribution systems, pipelines, or appliances, including** demolition,
48 moving or excavation connected therewith, and shall include the furnishing of
49 surveying, design, engineering, **supervision, testing, observation,**
50 **development,** planning or management services, or labor, materials or
51 equipment, in connection with such work, **but shall not include any such**
52 **work on utility poles or transmission lines utilized by more than one**
53 **municipal utility, utility regulated under chapter 386, rural electric**
54 **cooperative under chapter 394, or any telecommunications, cable**

55 television, or other similar provider.

56 4. As used in this section, "indemnify" or "hold harmless" includes
57 any requirement to name the indemnified party as an additional
58 insured in the indemnitor's insurance coverage for the purpose of
59 providing an indemnification for any liability not otherwise allowed in
60 this section.

61 5. All provisions, covenants, or clauses, in a construction work
62 contract, pursuant to which a substantial portion of the construction
63 work is to be performed in the state of Missouri, shall be made subject
64 to the laws of this state. Any litigation, arbitration, or other dispute
65 resolution proceeding arising from the contract shall be conducted in
66 this state. Any provision, covenant, or clause, in a construction work
67 contract that conflicts with the provisions of this section shall be void
68 and unenforceable.

69 6. The provisions of this section shall apply only to contracts or
70 agreements entered into after August 28, [1999] 2011.

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Bill

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