

FIRST REGULAR SESSION

HOUSE BILL NO. 696

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOSEN (Sponsor) AND WIELAND (Co-sponsor).

1734L.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 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Section A. Section 434.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 434.100, to read as follows: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** 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 protective liability insurance, project management protective liability insurance, or builder's risk insurance;**

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.

18 (3) A contract or agreement between state agencies or political subdivisions or between
19 such governmental agencies;

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

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

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

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

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

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

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

46 4. As used in this section, "indemnify" or "hold harmless" includes any
47 **requirement to name the indemnified party as an additional insured in the indemnitor's**
48 **insurance coverage for the purpose of providing an indemnification for any liability not**
49 **otherwise allowed in this section.**

50 5. **All provisions, covenants, or clauses in a construction work contract under which**
51 **a substantial portion of the construction work is to be performed in the state of Missouri**
52 **shall be made subject to the laws of this state. Any litigation, arbitration, or other dispute**
53 **resolution proceeding arising from the contract shall be conducted in this state. Any**

54 **provision, covenant, or clause in a construction work contract that conflicts with the**
55 **provisions of this section shall be void and unenforceable.**

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

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