

SECOND REGULAR SESSION

HOUSE BILL NO. 1674

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

4186H.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 434.100, RSMo, and to enact in lieu thereof one new section relating to risk transfer in the construction industry.

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Section A. Section 434.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 434.100, to read as follows: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 negligence or wrongdoing is void as against public policy and wholly unenforceable.] **Except as provided in subsection 2 of this section, every party engaged in public or private construction work shall be responsible for any liability arising from such party's own negligence or recklessness, and shall not delegate or otherwise transfer responsibility for damages resulting from negligent, wrongdoing, or reckless construction practices or work to another party. In any contract or agreement for public or private construction work, an indemnitor's covenant, promise, or agreement to indemnify, insure, hold harmless, defend in litigation, or obtain any product through another party, that transfers any liability for negligent or reckless construction practices, work, or wrongdoing from an indemnitor to an insurer or the indemnitor, to indemnify or hold harmless another person, or its employees or agents, that is engaged in such public or private construction work, from that person's own negligence or wrongdoing is against the public policy of this state and shall be void.**

2. The provisions of subsection 1 of this section shall not apply 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 (1) A party's covenant, promise or agreement to indemnify or hold harmless another
18 person from the party's own negligence or wrongdoing or the negligence or wrongdoing of the
19 party's subcontractors and suppliers of any tier;

20 (2) A party's promise to cause another person or entity to be covered as an [insured or]
21 additional insured in an insurance contract **to cover perils and damages that are a result of the**
22 **party's negligence only;**

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

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

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

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

31 (7) Construction bonds[, or insurance contracts or agreements];

32 (8) [An agreement containing a party's promise to indemnify, defend or hold harmless
33 another person, if the agreement also requires the party to obtain specified limits of insurance to
34 insure the indemnity obligation and the party had the opportunity to recover the cost of the
35 required insurance in its contract price; provided, however, that in such case the party's liability
36 under the indemnity obligation shall be limited to the coverage and limits of the required
37 insurance] **An agreement indemnifying a party for the payment of any damages in excess**
38 **of such party's or such party's employees' or agents' own comparative liability, as**
39 **calculated using pure comparative fault, where such payments to a plaintiff are required**
40 **by the doctrine of joint and several liability under section 537.067 or by other general or**
41 **common law; or**

42 (9) Railroads regulated by the Federal Railroad Administration.

43 3. For the purposes of this section, "construction work" shall include, but not be limited
44 to, the construction, alteration, maintenance or repair of any building, structure, highway, bridge,
45 viaduct, or pipeline, or demolition, moving or excavation connected therewith, and shall include
46 the furnishing of surveying, design, engineering, planning or management services, or labor,
47 materials or equipment, in connection with such work.

48 4. The provisions of this section shall apply only to contracts or agreements entered into
49 after August 28, 1999.

✓