

HOUSE BILL NO. 145

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

0145H.021

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Section A. Section 434.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 434.100, to read as follows: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

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

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

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] recklessness;

(2) A party's promise to cause another person [or entity] to be [covered] named as an [insured or] additional insured in [an] a liability insurance contract that provides liability coverage for the person named as an additional insured for the negligence, wrongdoing,

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 **or recklessness of the party making the promise, or purchase an owner's or contractor's**
19 **protective liability insurance or builder's risk insurance;**

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

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

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

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

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

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

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

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

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

45 (2) **The terms "person" and "party" shall include an individual, corporation,**
46 **limited liability company, partnership, partner, joint venture, trust, trustee, any other**
47 **entity recognized by law, the person's or party's officers, employees, agents,**
48 **subcontractors, suppliers, or others for whom the party or person is responsible.**

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

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