

**SB24 INTRODUCED**



1 IVHP66-1  
2 By Senator Albritton  
3 RFD: Judiciary  
4 First Read: 07-Mar-23  
5 PFD: 23-Feb-23



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SYNOPSIS:

Under existing law, indemnification agreements in contracts for the professional services of a design professional or for the construction of a road or bridge are prohibited from requiring a party to the contract to indemnify, hold harmless, or defend another party to the contract for any damages arising from the negligent conduct of the party to be indemnified.

This bill would regulate indemnification agreements between parties to a construction contract to prohibit a party to a construction contract from being required to indemnify, hold harmless, or defend another party to the construction contract for liability caused by the sole negligence, or by the wantonness, recklessness, or intentional misconduct, of the party to be indemnified.

This bill would also prohibit indemnification agreements in a construction contract from requiring a party to the contract to indemnify, hold harmless, or defend another party to the contract for that party's own negligence unless the certain requirements are met, including an agreement on the extent of the monetary limitation of the indemnification. The bill would limit the indemnitor's indemnification obligation to the agreed upon monetary limitation and would require the



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29 indemnitor to obtain insurance for that amount.

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A BILL

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TO BE ENTITLED

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AN ACT

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36 Relating to construction contracts; to provide  
37 regulations for indemnification agreements in certain  
38 construction contracts.

39 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

40 Section 1. As used in this act, the following terms  
41 have the following meanings:

42 (1) CONSTRUCTION CONTRACT. A contract, subcontract,  
43 sub-subcontract, purchase order, or other agreement for or in  
44 connection with the planning, management, construction,  
45 alteration, supply, repair, reconstruction, replacement,  
46 rehabilitation, demolition, or improvement of real property as  
47 part of any private or public construction project in the  
48 State of Alabama.

49 (2) CONTRACTOR. Any individual, firm, corporation,  
50 partnership, or other legal entity that enters into a  
51 construction contract with an owner to improve real property  
52 or perform construction services for the owner.

53 (3) INDEMNITEE. The party or parties that the  
54 indemnitor is obligated to indemnify, hold harmless, or  
55 defend.

56 (4) INDEMNITOR. The party or parties obligated to



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57 indemnify, hold harmless, or defend the indemnitee or another  
58 party.

59 (5) PARTY. A contractor, subcontractor, or owner  
60 involved in or contributing to the construction of a private  
61 or public construction project pursuant to the terms of a  
62 construction contract. The term does not include a public  
63 awarding authority, as defined under Section 39-2-1, Code of  
64 Alabama 1975.

65 (6) SUBCONTRACTOR. Any individual, firm, corporation,  
66 partnership, or other legal entity that contracts to furnish  
67 labor or materials to a contractor or other subcontractor  
68 pursuant to a construction contract.

69 Section 2. (a) A provision, clause, or agreement in a  
70 construction contract shall not require a party to the  
71 construction contract to indemnify, hold harmless, or defend  
72 another party to the construction contract for liability for  
73 damages or losses for bodily injury or property damage, or  
74 losses to a third party, or arising from a third-party claim,  
75 that arise out of, result from, or are caused by the sole  
76 negligence or by the wantonness, recklessness, or intentional  
77 misconduct of the indemnitee or its officers, employees, or  
78 agents.

79 (b)(1) Subject to the limitations of subsection (a), a  
80 party to a construction contract may agree to indemnify,  
81 defend, or hold harmless another party to the construction  
82 contract for liability for damages or losses for bodily injury  
83 or property damage that arise out of, result from, or are  
84 caused by any negligent act or omission of the indemnitee, or



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85 its officers or employees or agents, arising from the  
86 construction contract or its performance, only when all of the  
87 following conditions are satisfied:

88 a. The indemnification agreement is part of the  
89 construction contract.

90 b. The indemnification agreement contains a monetary  
91 limitation on the extent of the indemnification between the  
92 indemnitor and the indemnitee.

93 c. The indemnitor agrees to obtain commercially  
94 available insurance to cover the extent of the indemnification  
95 obligations in an amount sufficient to satisfy the monetary  
96 limitation.

97 (2) A provision, clause, or agreement to indemnify,  
98 hold harmless, or defend another party to the construction  
99 contract, as provided under subdivision (1), shall be  
100 enforceable only to the amount of applicable insurance  
101 required in the construction contract.

102 (c) A provision, clause, or agreement in violation of  
103 this act shall not cause an entire construction contract to be  
104 invalid or unenforceable. On petition to a court of competent  
105 jurisdiction, any such provision, clause, or agreement in  
106 violation of this act shall be modified by the court to be  
107 consistent with this act. Nothing in this act shall affect the  
108 validity or enforceability of the remaining provisions,  
109 clauses, or agreements in the construction contract.

110 Section 3. (a) Any provision of law to the contrary  
111 notwithstanding, this act shall not be interpreted or  
112 construed to affect the following:



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113 (1) The obligation of a party to maintain specific  
114 insurance policies and provide coverage to or include another  
115 party as an additional insured on those policies.

116 (2) The indemnity obligation of a principal to its  
117 surety on a construction surety bond or to the indemnity  
118 obligation of an insurer to its insured.

119 (3) The state's doctrine of joint and several  
120 liability.

121 (4) The state workers' compensation laws.

122 (5) The provisions of a construction contract for the  
123 professional services of a design professional for which  
124 Section 41-9A-3, Code of Alabama 1975, applies.

125 (6) The provisions of a road or bridge construction  
126 contract for which Chapter 9 of Title 39, Code of Alabama  
127 1975, applies.

128 (b) This act shall only apply to indemnity obligations  
129 between parties to a construction contract, as defined in  
130 Section 1, and has no effect on third-party tort claims or  
131 indemnity obligations owed to a public awarding authority, as  
132 defined under Section 39-2-1, Code of Alabama 1975.

133 Section 4. This act shall be effective for any  
134 construction contract executed or awarded on or after the  
135 effective date of this act.

136 Section 5. This act shall be effective January 1, 2024,  
137 following its passage and approval by the Governor, or its  
138 otherwise becoming law.

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