

Senate Study Bill 3186

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CO=CHAIRPERSONS BEHN and
WARNSTADT)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to indemnity provisions in construction
2 contracts.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5715XC 81
5 kk/je/5

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1 1 Section 1. NEW SECTION. 537A.11 INDEMNITY AGREEMENTS ==
1 2 CONSTRUCTION CONTRACTS.
1 3 1. As used in this section:
1 4 a. "Construction contract" means a public, private,
1 5 foreign, or domestic contract or agreement relating to the
1 6 construction, alteration, repair, or maintenance of any real
1 7 property in this state and includes agreements for
1 8 architectural services, demolition, design services,
1 9 development, engineering services, excavation, or other
1 10 improvement relating to real property, including buildings,
1 11 shafts, wells, and structures, whether on, above, or
1 12 underground.
1 13 b. "Indemnify" or "hold harmless" includes any requirement
1 14 to name the indemnified party as an additional insured in the
1 15 indemnitor's insurance coverage.
1 16 c. "Lower=tier party" means a party to the contract that
1 17 acts as a subcontractor, specialty contractor, or supplier.
1 18 d. "Upper=tier party" means a party to the contract that
1 19 acts as a general contractor.
1 20 2. A provision in a construction contract that requires
1 21 one party to the contract to indemnify, hold harmless, insure,
1 22 or defend the other party to the contract, including the other
1 23 party's officers, employees, or agents, against liability,
1 24 claims, damages, losses, or expenses, including attorney fees,
1 25 arising out of bodily injury to persons or damage to property
1 26 caused by or resulting from, in whole or in part, the
1 27 negligence, act, or omission of the indemnitee or the
1 28 officers, employees, or agents of the indemnitee, is void and
1 29 unenforceable as against the public policy of this state.
1 30 3. A construction contract may contain a provision and
1 31 shall be enforced only to the extent that the contract
1 32 requires either of the following:
1 33 a. One party to the contract to indemnify, hold harmless,
1 34 or insure the other party to the contract, including the other
1 35 party's officers, employees, or agents, against liability,
2 1 claims, damages, losses, or expenses, including attorney fees,
2 2 only to the extent that the liability, claims, damages,
2 3 losses, or expenses are caused by, or arise out of, the acts
2 4 or omissions of the indemnitor or the officers, employees, or
2 5 agents of the indemnitor.
2 6 b. A party to the contract to purchase a project-specific
2 7 insurance policy, including an owner's or contractor's
2 8 protective insurance, project management protective liability
2 9 insurance, or builder's risk insurance.
2 10 4. This section does not apply to the indemnity of a
2 11 surety by a principal on any surety bond or to an insurer's
2 12 obligation to its insureds.
2 13 5. If an upper=tier party to a construction contract is
2 14 named as an additional insured or additionally named insured
2 15 on a commercial general liability or similar liability policy

2 16 of insurance of a lower=tier party to a construction contract,
2 17 the coverage to the upper=tier party shall be limited to the
2 18 cost of defense and vicarious liability, and the policy shall
2 19 not extend coverage for the upper=tier party's own negligence,
2 20 whether sole or partial.
2 21 6. If a court action or other binding dispute resolution
2 22 proceeding is brought or initiated against an upper=tier party
2 23 for personal injury by an employee of a lower=tier party to a
2 24 construction contract, and it is ultimately determined that
2 25 the upper=tier party to the construction contract has no
2 26 liability to the employee other than vicarious liability, the
2 27 upper=tier party has a claim of indemnity for all costs,
2 28 including costs of experts and attorney fees, associated with
2 29 defending such action against any party in the contractual
2 30 chain determined to have any liability for the personal
2 31 injury. Any liability of the employee for the employee's own
2 32 personal injury shall be attributed to the employee's employer
2 33 for purposes of this subsection. This indemnification
2 34 obligation shall be joint and several among the parties found
2 35 liable for the personal injury.

3 1 EXPLANATION

3 2 This bill relates to the use of indemnity provisions in
3 3 construction contracts. The bill prohibits the use of a
3 4 provision in a construction contract that requires one party
3 5 of the contract to indemnify or hold harmless the other party
3 6 to the contract for damages arising out of the negligence,
3 7 act, or omission of the indemnitee or the officers, employees,
3 8 or agents of the indemnitee as void and unenforceable as
3 9 against public policy.

3 10 The bill provides that a construction contract may either
3 11 contain a provision requiring a party to the contract to
3 12 purchase a project-specific insurance policy, or a provision
3 13 that requires one party of the contract to indemnify or hold
3 14 harmless the other party to the contract for damages arising
3 15 out of the negligence, act, or omission of the indemnitor or
3 16 the officers, employees, or agents of the indemnitor. The
3 17 bill does not apply to the indemnity of a surety by a
3 18 principal on a surety bond.

3 19 The bill provides that if an upper=tier party to a
3 20 construction contract is named as an additional insured on a
3 21 liability policy of a lower=tier party to a construction
3 22 contract, the coverage of the policy to the upper=tier party
3 23 shall be limited to the cost of defense and vicarious
3 24 liability and not to the upper=tier party's own negligence.

3 25 The bill also provides that if a court action or binding
3 26 dispute proceeding is brought by an employee of a lower=tier
3 27 party against an upper=tier party to a construction contract
3 28 and the upper=tier party is found to be without liability
3 29 other than vicarious liability, the upper=tier party shall
3 30 have a claim of indemnity for all costs of the court action or
3 31 dispute resolution proceeding.

3 32 The bill provides definitions of the terms "construction
3 33 contract", "indemnify" or "hold harmless", "lower=tier party",
3 34 and "upper=tier party".

3 35 LSB 5715XC 81

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