

Senate Study Bill 1085 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON DANDEKAR)

A BILL FOR

1 An Act relating to indemnification provisions in construction
2 contracts.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 537A.5 Indemnity agreements —
2 construction contracts.

3 1. As used in this section:

4 *a. "Construction contract"* means a public, private, foreign,
5 or domestic contract or agreement relating to the construction,
6 alteration, repair, or maintenance of any real property in
7 this state and includes agreements for architectural services,
8 demolition, design services, development, engineering services,
9 excavation, or other improvement relating to real property,
10 including buildings, shafts, wells, and structures, whether on
11 ground, aboveground, or underground.

12 *b. "Indemnify" or "hold harmless"* includes any requirement
13 to name the indemnitee as an additional insured in the
14 indemnitor's insurance coverage.

15 *c. "Lower-tier party"* means a party to the contract that
16 acts as a subcontractor, specialty contractor, or supplier.

17 *d. "Upper-tier party"* means a party to the contract that
18 acts as a general contractor.

19 2. A provision in a construction contract that requires
20 one party to the contract to indemnify, hold harmless, insure,
21 or defend the other party to the contract, including the other
22 party's officers, employees, or agents, against liability,
23 claims, damages, losses, or expenses, including attorney
24 fees, arising out of bodily injury to persons or damage to
25 property caused by or resulting from, in whole or in part,
26 the negligence, act, or omission of the indemnitee or the
27 officers, employees, or agents of the indemnitee, is void and
28 unenforceable as contrary to public policy.

29 3. A construction contract may contain a provision
30 requiring indemnity, but such a provision shall be enforced
31 only to the extent that the provision requires either of the
32 following:

33 *a. One party to the contract to indemnify, hold harmless,*
34 or insure the other party to the contract, including the other
35 party's officers, employees, or agents, against liability,

1 claims, damages, losses, or expenses, including attorney
2 fees, only to the extent that the liability, claims, damages,
3 losses, or expenses are caused by, or arise out of, the acts
4 or omissions of the indemnitor or the officers, employees, or
5 agents of the indemnitor.

6 *b.* A party to the contract to purchase a project-specific
7 insurance policy, including an owner's or contractor's
8 protective insurance, project management protective liability
9 insurance, or builder's risk insurance.

10 4. This section does not apply to the indemnity of a surety
11 by a principal on any surety bond or to an insurer's obligation
12 to its insureds.

13 5. If an upper-tier party to a construction contract is
14 named as an additional insured or additionally named insured
15 on a commercial general liability or similar liability policy
16 of insurance of a lower-tier party to a construction contract,
17 the coverage to the upper-tier party shall be limited to the
18 cost of defense and vicarious liability, and the policy shall
19 not extend coverage for the upper-tier party's own negligence,
20 whether sole or partial.

21 6. If a court action or other binding dispute resolution
22 proceeding is brought or initiated against an upper-tier party
23 for personal injury by an employee of a lower-tier party to a
24 construction contract, and it is ultimately determined that the
25 upper-tier party to the construction contract has no liability
26 to the employee other than vicarious liability, the upper-tier
27 party has a claim of indemnity for all costs, including costs
28 of experts and attorney fees, associated with defending such
29 action against any party in the contractual chain determined
30 to have any liability for the personal injury. Any liability
31 of the employee for the employee's own personal injury shall
32 be attributed to the employee's employer for purposes of this
33 subsection. This indemnification obligation shall be joint and
34 several among the parties found liable for the personal injury.

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EXPLANATION

1 This bill relates to indemnification provisions in
2 construction contracts.

3 The bill provides that a provision in a construction
4 contract which requires one party to the contract to indemnify
5 the other party against claims based on acts or omissions
6 of the party being indemnified is void and unenforceable as
7 contrary to public policy. The bill provides that an indemnity
8 provision in a construction contract is enforceable if it
9 requires one party to the contract to indemnify the other
10 party against claims based on acts or omissions of the party
11 providing the indemnification, or if it requires a party
12 to purchase a project-specific insurance policy, including
13 an owner's or contractor's protective insurance, project
14 management protective liability insurance, or builder's risk
15 insurance. The bill does not apply to the indemnity of a
16 surety by a principal on any surety bond or to an insurer's
17 obligation to its insureds.

18 The bill defines a "lower-tier party" to a contract to mean
19 a party to the contract that acts as a subcontractor, specialty
20 contractor, or supplier. The bill defines an "upper-tier
21 party" to a contract to mean a party to the contract that
22 acts as a general contractor. The bill provides that if
23 an upper-tier party to a construction contract is named as
24 an additional insured or additionally named insured on a
25 commercial general liability or similar liability policy of
26 insurance of a lower-tier party to a construction contract,
27 the coverage to the upper-tier party is limited to the cost
28 of defense and vicarious liability, and the policy will not
29 extend coverage for the upper-tier party's negligence. The
30 bill provides that if a court action or other binding dispute
31 resolution proceeding is brought against an upper-tier party
32 for personal injury by an employee of a lower-tier party
33 to a construction contract, and it is determined that the
34 upper-tier party to the construction contract has no liability
35 to the employee other than vicarious liability, the upper-tier

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1 party has a claim of indemnity for all costs associated with
2 defending the action against any party in the contractual chain
3 determined to have any liability for the personal injury.
4 The bill provides that any liability of the employee for the
5 employee's own personal injury shall be attributed to the
6 employee's employer for purposes of such an action. The bill
7 provides that such an indemnification obligation will be joint
8 and several among the parties found liable for the personal
9 injury.