

HOUSE BILL No. 5466

March 13, 2012, Introduced by Reps. Heise, Haugh, Potvin, Wayne Schmidt, Horn,
Knollenberg, Pettalia, Huuki and Haveman and referred to the Committee on Judiciary.

A bill to amend 1966 PA 165, entitled

"An act to invalidate certain requirements for indemnity in the
construction industry,"

by amending the title and section 1 (MCL 691.991) and by adding
sections 2, 3, and 4.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to invalidate certain requirements for indemnity in the
~~construction industry.~~ **AGREEMENTS RELATIVE TO THE DESIGN,
CONSTRUCTION, ALTERATION, REPAIR, OR MAINTENANCE OF BUILDINGS,
STRUCTURES, APPURTENANCES, APPLIANCES, OR INFRASTRUCTURE.**

Sec. 1. ~~A covenant, promise, agreement or understanding in, or~~
**AN AGREEMENT IS AGAINST PUBLIC POLICY AND IS VOID AND UNENFORCEABLE
IF BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:**

(A) THE AGREEMENT IS IN, in connection with, or collateral to

1 a contract ~~or agreement relative to~~ **FOR** the **DESIGN**, construction,
 2 alteration, repair, or maintenance of a ~~building,~~ structure,
 3 ~~appurtenance and appliance,~~ including **ASSOCIATED** moving,
 4 demolition, and ~~OR~~ excavating. ~~connected therewith, purporting to~~
 5 ~~indemnify the promisee~~

6 (B) **THE AGREEMENT WOULD INDEMNIFY A PARTY TO THE AGREEMENT**
 7 against liability for damages arising out of bodily injury to
 8 persons or damage to property caused by or resulting from the sole
 9 negligence of ~~the promisee or indemnitee,~~ **THAT PARTY OR** his **OR HER**
 10 agents or employees. ~~, is against public policy and is void and~~
 11 ~~unenforceable.~~

12 **SEC. 2. AN AGREEMENT BETWEEN A PUBLIC ENTITY AND A CONTRACTOR**
 13 **IS AGAINST PUBLIC POLICY AND IS VOID AND UNENFORCEABLE IF BOTH OF**
 14 **THE FOLLOWING REQUIREMENTS ARE MET:**

15 (A) **THE AGREEMENT IS IN, IN CONNECTION WITH, OR COLLATERAL TO**
 16 **A CONTRACT FOR THE DESIGN, CONSTRUCTION, ALTERATION, REPAIR, OR**
 17 **MAINTENANCE OF A STRUCTURE, INCLUDING ASSOCIATED MOVING,**
 18 **DEMOLITION, OR EXCAVATING.**

19 (B) **THE AGREEMENT WOULD REQUIRE THE CONTRACTOR TO DO ANY OF**
 20 **THE FOLLOWING:**

21 (i) **DEFEND A PARTY OTHER THAN THE PUBLIC ENTITY FROM CLAIMS.**

22 (ii) **ASSUME ANY LIABILITY OR INDEMNIFY THE PUBLIC ENTITY FOR ANY**
 23 **AMOUNT GREATER THAN AN AMOUNT CALCULATED BASED ON THE DEGREE OF FAULT**
 24 **OF THE CONTRACTOR.**

25 **SEC. 3. THIS ACT DOES NOT AFFECT THE APPLICATION OF 1964 PA 170,**
 26 **MCL 691.1401 TO 691.1419.**

27 **SEC. 4. AS USED IN THIS ACT:**

1 (A) "CONTRACTOR" MEANS ANY OF THE FOLLOWING WHO ARE LICENSED IN
2 THIS STATE:

3 (i) AN ARCHITECT.

4 (ii) A PROFESSIONAL ENGINEER.

5 (iii) A SURVEYOR.

6 (iv) A PERSON WHO, PURSUANT TO A CONTRACT WITH THE OWNER OR LESSEE
7 OF REAL PROPERTY, PROVIDES AN IMPROVEMENT TO REAL PROPERTY.

8 (B) "PUBLIC ENTITY" MEANS ALL OF THE FOLLOWING:

9 (i) THIS STATE, ANY PUBLIC BODY CORPORATE IN THIS STATE, AND ANY
10 NONINCORPORATED PUBLIC BODY IN THIS STATE, INCLUDING, BUT NOT LIMITED
11 TO, A CITY, VILLAGE, TOWNSHIP, COUNTY, SCHOOL DISTRICT, INTERMEDIATE
12 SCHOOL DISTRICT, OR AUTHORITY OR AN INSTITUTION OF HIGHER EDUCATION
13 DESCRIBED IN OR ESTABLISHED UNDER SECTION 4, 5, 6, OR 7 OF ARTICLE
14 VIII OF THE STATE CONSTITUTION OF 1963.

15 (ii) ANY AGENCY OF AN ENTITY DESCRIBED IN SUBPARAGRAPH (i) .

16 (iii) ANY EMPLOYEE OR OTHER AGENT OF AN ENTITY DESCRIBED IN
17 SUBPARAGRAPH (i) OR (ii) , INCLUDING, BUT NOT LIMITED TO, A CONSTRUCTION
18 MANAGER RETAINED BY THE ENTITY.

19 (C) "STRUCTURE" MEANS AN APPLIANCE, APPURTENANCE, BUILDING,
20 INFRASTRUCTURE, OR OTHER STRUCTURE.