

HOUSE BILL NO. 482

INTRODUCED BY FORRESTER, GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Construction contract indemnification provisions.** (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs that are ~~not~~ caused by the negligence, recklessness, or intentional misconduct of the OTHER party or the OTHER party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of A THIRD PARTY OR OF the INDEMNIFYING party or the INDEMNIFYING party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services,

alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including any agreement to supply labor, materials, or equipment for an improvement to real property.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [section 1].

NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective July 1, 2003, and applies to construction contracts entered into or renewed on or after July 1, 2003.

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