



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 871

ADOPTED

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H871-AST-44 [v.4]

Page 1 of 3

Amends Title [NO]
Second Edition

Date June 26, 2019

Senator Newton

1 moves to amend the bill on page 1, line 8, through page 2, line 2, by rewriting those lines to read:
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6 **""§ 22B-1. Construction-Certain indemnity and defend agreements invalid.**

7 (a) Any promise or agreement Provisions in, or in connection with, a contract
8 or construction agreement or design professional agreement relative to the design, planning,
9 construction, alteration, repair or maintenance of a building, structure, highway, road,
10 appurtenance or appliance, including moving, demolition and excavating connected therewith,
11 purporting to require a promisor to indemnify or hold harmless the promisee, the promisee's
12 independent contractors, agents, employees, or indemnitees against liability for damages arising
13 out of bodily injury to persons or damage to property proximately caused by or resulting from
14 the negligence, in whole or in part, of the promisee, its independent contractors, agents,
15 employees, or indemnitees, is against public policy and is policy, void and unenforceable.
16 Nothing contained in this section-subsection shall prevent or prohibit a contract, promise or
17 agreement whereby a promisor shall indemnify or hold harmless any promisee or the promisee's
18 independent contractors, agents, employees or indemnitees against liability for damages resulting
19 from the sole negligence of the promisor, its agents or employees.

20 (b) Provisions in, or in connection with, a construction agreement or design professional
21 agreement purporting to require a promisor to indemnify or hold harmless the promisee, the
22 promisee's independent contractors, agents, employees, indemnitees, or any other person or entity
23 against losses, damages, or expenses are against public policy, void and unenforceable unless the
24 the fault of the promisor or its derivative parties is a proximate cause of the loss, damage or
25 expense indemnified.

26 (c) Provisions in, or in connection with, a construction agreement that includes design
27 professional services or a design professional agreement purporting to require a design
28 professional to defend a promisee, the promisee's independent contractors, agents, or employees,
29 the promisee's indemnitees, or any other person or entity against liability or claims for damages
30 or expenses, including attorney's fees, proximately caused or allegedly caused by the professional
31 negligence, in whole or in part, of the promisor, the promisee, or their derivative parties, whether
32 the claim is alleged or brought in tort or contract, is against public policy, void and unenforceable.



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Page 2 of 3

1 (d) Nothing in this section shall be interpreted to exclude from any indemnity or hold
2 harmless provisions enforceable under subsections (a) and (b) of this section attorneys' fees,
3 litigation or arbitration expenses or court costs actually incurred by the promisee to defend
4 against third party claims alleged in any court, tribunal, or alternative dispute resolution
5 procedure required of the promisee by law or by contract, if the fault of the promisor or its
6 derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses or
7 court costs to be indemnified.

8 (e) This section shall not affect an insurance contract, workers' compensation, or any
9 other agreement issued by an insurer, nor shall this section apply to promises or agreements under
10 which a public utility as defined in G.S. 62-3(23) including a railroad corporation as an
11 indemnitee-insurer. This section shall not apply to contracts entered into by the Department of
12 Transportation pursuant to G.S. 136-28.1, lien or bond claims asserted under Chapter 44A of the
13 General Statutes.

14 (f) For purposes of this section, the following definitions shall apply:

- 15 (1) Construction agreement. – Any promise or agreement in, or in connection
16 with, a contract or agreement relative to the design, planning, construction,
17 alteration, repair or maintenance of a building, structure, highway, road,
18 appurtenance or appliance, including moving, demolition and excavating
19 connected therewith.
- 20 (2) Defend. – Any obligation to pay for or furnish counsel at the expense of the
21 promisor to defend a promisee, the promisee's independent contractors,
22 agents, employees, or indemnitees against claims alleged or brought against
23 the promisee, the promisee's independent contractors, agents, employees, or
24 indemnitees by a third party alleged or brought in any court or other tribunal,
25 including forms of alternative dispute resolution required by law or contract,
26 before the court or tribunal has reached a final determination of fault.
- 27 (3) Derivative parties. – With respect to a party, any of that party's subcontractors,
28 agents, employees, or other persons or entities for which the party may be
29 liable or responsible as a result of any statutory, tort, or contractual duty.
- 30 (4) Design professional. – A person or entity who is licensed under and provides
31 professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of
32 the General Statutes.
- 33 (5) Design professional agreement. – Any promise or agreement in, or in
34 connection with, a contract or agreement with a design professional to provide
35 design professional services.
- 36 (6) Design professional services. – A service or work performed by a design
37 professional for which licensure is required under Chapters 83A, 89A, 89C,
38 89E, or 89F of the General Statutes.
- 39 (7) Fault. – A breach of contract; negligent, reckless or intentional act or omission
40 constituting a tort under applicable statutes or common law; or violations of
41 applicable statutes or regulations.

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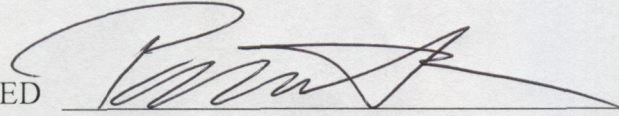


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Page 3 of 3

- 1 (8) Subcontractor. – Any person or entity, of any tier, providing labor or material
- 2 through the promisor for use on the project at issue in the applicable
- 3 construction agreement or design professional agreement.";
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- 5 and on page 2, line 4, by deleting "October" and substituting "August".

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 45-0 FAILED _____ TABLED _____

Sarah Holland
June 26, 2019

ADOPTED

