

CHAPTER 118

COURTS

SENATE BILL 07-087

BY SENATOR(S) Tapia, Bacon, Kester, Williams, Keller, Shaffer, and Windels;
 also REPRESENTATIVE(S) Fischer, Cerbo, McKinley, Merrifield, Riesberg, Soper, Butcher, Benefield, Curry, Frangas,
 Gagliardi, Hodge, Liston, McFadyen, Borodkin, Green, Kerr A., Labuda, Levy, and Pommer.

AN ACT

**CONCERNING A PROHIBITION AGAINST THE SHIFTING OF FINANCIAL RESPONSIBILITY FOR NEGLIGENCE
 IN CONSTRUCTION AGREEMENTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-21-111.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-21-111.5. Civil liability cases - pro rata liability of defendants - shifting financial responsibility for negligence in construction agreements. (6) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(I) IT IS IN THE BEST INTERESTS OF THIS STATE AND ITS CITIZENS AND CONSUMERS TO ENSURE THAT EVERY CONSTRUCTION BUSINESS IN THE STATE IS FINANCIALLY RESPONSIBLE UNDER THE TORT LIABILITY SYSTEM FOR LOSSES THAT A BUSINESS HAS CAUSED;

(II) THE PROVISIONS OF THIS SUBSECTION (6) WILL PROMOTE COMPETITION AND SAFETY IN THE CONSTRUCTION INDUSTRY, THEREBY BENEFITTING COLORADO CONSUMERS;

(III) CONSTRUCTION BUSINESSES IN RECENT YEARS HAVE BEGUN TO USE CONTRACT PROVISIONS TO SHIFT THE FINANCIAL RESPONSIBILITY FOR THEIR NEGLIGENCE TO OTHERS, THEREBY CIRCUMVENTING THE INTENT OF TORT LAW;

(IV) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DUTY OF A BUSINESS TO BE RESPONSIBLE FOR ITS OWN NEGLIGENCE BE NONDELEGABLE;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(V) CONSTRUCTION BUSINESSES MUST BE ABLE TO OBTAIN LIABILITY INSURANCE IN ORDER TO MEET THEIR RESPONSIBILITIES;

(VI) THE INTENT OF THIS SUBSECTION (6) IS TO CREATE AN ECONOMIC CLIMATE THAT WILL PROMOTE SAFETY IN CONSTRUCTION, FOSTER THE AVAILABILITY AND AFFORDABILITY OF INSURANCE, AND ENSURE FAIRNESS AMONG BUSINESSES;

(VII) IF ALL BUSINESSES, LARGE AND SMALL, ARE RESPONSIBLE FOR THEIR OWN ACTIONS, THEN CONSTRUCTION COMPANIES WILL BE ABLE TO OBTAIN ADEQUATE INSURANCE, THE QUALITY OF CONSTRUCTION WILL BE IMPROVED, AND WORKPLACE SAFETY WILL BE ENHANCED.

(b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (6), ANY PROVISION IN A CONSTRUCTION AGREEMENT THAT REQUIRES A PERSON TO INDEMNIFY, INSURE, OR DEFEND IN LITIGATION ANOTHER PERSON AGAINST LIABILITY FOR DAMAGE ARISING OUT OF DEATH OR BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY THE NEGLIGENCE OR FAULT OF THE INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE IS VOID AS AGAINST PUBLIC POLICY AND UNENFORCEABLE.

(c) THE PROVISIONS OF THIS SUBSECTION (6) SHALL NOT AFFECT ANY PROVISION IN A CONSTRUCTION AGREEMENT THAT REQUIRES A PERSON TO INDEMNIFY AND INSURE ANOTHER PERSON AGAINST LIABILITY FOR DAMAGE, INCLUDING BUT NOT LIMITED TO THE REIMBURSEMENT OF ATTORNEY FEES AND COSTS, IF PROVIDED FOR BY CONTRACT OR STATUTE, ARISING OUT OF DEATH OR BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY, BUT NOT FOR ANY AMOUNTS THAT ARE GREATER THAN THAT REPRESENTED BY THE DEGREE OR PERCENTAGE OF NEGLIGENCE OR FAULT ATTRIBUTABLE TO THE INDEMNITOR OR THE INDEMNITOR'S AGENTS, REPRESENTATIVES, SUBCONTRACTORS, OR SUPPLIERS.

(d) (I) THIS SUBSECTION (6) DOES NOT APPLY TO CONTRACT CLAUSES THAT REQUIRE THE INDEMNITOR TO PURCHASE, MAINTAIN, AND CARRY INSURANCE COVERING THE ACTS OR OMISSIONS OF THE INDEMNITOR, NOR SHALL IT APPLY TO CONTRACT PROVISIONS THAT REQUIRE THE INDEMNITOR TO NAME THE INDEMNITEE AS AN ADDITIONAL INSURED ON THE INDEMNITOR'S POLICY OF INSURANCE, BUT ONLY TO THE EXTENT THAT SUCH ADDITIONAL INSURED COVERAGE PROVIDES COVERAGE TO THE INDEMNITEE FOR LIABILITY DUE TO THE ACTS OR OMISSIONS OF THE INDEMNITOR. ANY PROVISION IN A CONSTRUCTION AGREEMENT THAT REQUIRES THE PURCHASE OF ADDITIONAL INSURED COVERAGE FOR DAMAGE ARISING OUT OF DEATH OR BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY FROM ANY ACTS OR OMISSIONS THAT ARE NOT CAUSED BY THE NEGLIGENCE OR FAULT OF THE PARTY PROVIDING SUCH ADDITIONAL INSURED COVERAGE IS VOID AS AGAINST PUBLIC POLICY.

(II) THIS SUBSECTION (6) ALSO DOES NOT APPLY TO BUILDER'S RISK INSURANCE.

(e) (I) AS USED IN THIS SUBSECTION (6) AND EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (e), "CONSTRUCTION AGREEMENT" MEANS A CONTRACT, SUBCONTRACT, OR AGREEMENT FOR MATERIALS OR LABOR FOR THE CONSTRUCTION, ALTERATION, RENOVATION, REPAIR, MAINTENANCE, DESIGN, PLANNING, SUPERVISION, INSPECTION, TESTING, OR OBSERVATION OF ANY BUILDING,

BUILDING SITE, STRUCTURE, HIGHWAY, STREET, ROADWAY BRIDGE, VIADUCT, WATER OR SEWER SYSTEM, GAS OR OTHER DISTRIBUTION SYSTEM, OR OTHER WORK DEALING WITH CONSTRUCTION, OR FOR ANY MOVING, DEMOLITION, OR EXCAVATION CONNECTED WITH SUCH CONSTRUCTION.

(II) "CONSTRUCTION AGREEMENT" DOES NOT INCLUDE:

(A) A CONTRACT, SUBCONTRACT, OR AGREEMENT THAT CONCERNS OR AFFECTS PROPERTY OWNED OR OPERATED BY A RAILROAD, A SANITATION DISTRICT, AS DEFINED IN SECTION 32-1-103 (18), C.R.S., A WATER DISTRICT, AS DEFINED IN SECTION 32-1-103 (25), C.R.S., A WATER AND SANITATION DISTRICT, AS DEFINED IN SECTION 32-1-103 (24), C.R.S., A MUNICIPAL WATER ENTERPRISE, A WATER CONSERVANCY DISTRICT, A WATER CONSERVATION DISTRICT, OR A METROPOLITAN SEWAGE DISPOSAL DISTRICT, AS DEFINED IN SECTION 32-4-502 (18), C.R.S.; OR

(B) ANY REAL PROPERTY LEASE OR RENTAL AGREEMENT BETWEEN A LANDLORD AND TENANT REGARDLESS OF WHETHER ANY PROVISION OF THE LEASE OR RENTAL AGREEMENT CONCERNS CONSTRUCTION, ALTERATION, REPAIR, IMPROVEMENT, OR MAINTENANCE OF REAL PROPERTY.

(f) NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO:

(I) ABROGATE OR AFFECT THE DOCTRINE OF RESPONDEAT SUPERIOR, VICARIOUS LIABILITY, OR OTHER NONDELEGABLE DUTIES AT COMMON LAW;

(II) AFFECT THE LIABILITY FOR THE NEGLIGENCE OF AN AT-FAULT PARTY; OR

(III) ABROGATE OR AFFECT THE EXCLUSIVE REMEDY AVAILABLE UNDER THE WORKERS' COMPENSATION LAWS OR THE IMMUNITY PROVIDED TO GENERAL CONTRACTORS AND OWNERS UNDER THE WORKERS' COMPENSATION LAWS.

(g) **Choice of law.** NOTWITHSTANDING ANY CONTRACTUAL PROVISION TO THE CONTRARY, THE LAWS OF THE STATE OF COLORADO SHALL APPLY TO EVERY CONSTRUCTION AGREEMENT AFFECTING IMPROVEMENTS TO REAL PROPERTY WITHIN THE STATE OF COLORADO.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2007, and shall apply to construction agreements entered into on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 11, 2007