

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 871

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 \_\_\_\_\_, 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:

2  
3  
4  
5  
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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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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- 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.”;
- 4
- 5   and on page 2, line 4, by deleting "October" and substituting "August".

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

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