

REFERENCE TITLE: **contracts; construction; architect-engineer; proportional liability**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2607

Introduced by
Representative Reagan, Senator Verschoor: Representatives Groe,
Konopnicki, Lopes, Meza, Robson, Weiers J, Senators Blendu, Gray C

AN ACT

AMENDING SECTION 32-1159, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1159, Arizona Revised Statutes, is amended to
3 read:

4 32-1159. Indemnity agreements in construction and
5 architect-engineer contracts void; definitions

6 A. A covenant, clause or understanding in, collateral to or affecting
7 a construction contract or architect-engineer professional service contract
8 that purports to **INSURE, TO** indemnify, to hold harmless or to defend the
9 promisee from or against liability for loss or damage resulting from the **sole**
10 negligence of the promisee or the promisee's agents, employees or **indemnatee**
11 **INDEMNITEES** is against the public policy of this state and is void.

12 B. Notwithstanding subsection A **OF THIS SECTION**, a contractor who is
13 responsible for the performance of a construction contract may fully
14 indemnify a person for whose account the construction contract is not being
15 performed and who, as an accommodation, enters into an agreement with the
16 contractor that permits the contractor to enter on or adjacent to its
17 property to perform the construction contract for others.

18 C. This section applies to all **CONSTRUCTION** contracts **AND**
19 **ARCHITECT-ENGINEER PROFESSIONAL SERVICE CONTRACTS** entered into between
20 private parties. This section does not apply to:

21 1. Agreements to which this state or a political subdivision of this
22 state is a party, including intergovernmental agreements and agreements
23 governed by sections 34-226 and 41-2586.

24 2. Agreements entered into by agricultural improvement districts under
25 title 48, chapter 17.

26 3. **AGREEMENTS FOR INDEMNIFICATION OF A SURETY ON A PAYMENT OR**
27 **PERFORMANCE BOND BY ITS PRINCIPAL OR INDEMNITORS.**

28 4. **AGREEMENTS BETWEEN AN INSURER UNDER AN INSURANCE POLICY OR CONTRACT**
29 **AND ITS NAMED INSUREDS.**

30 5. **AGREEMENTS BETWEEN AN INSURER UNDER AN INSURANCE POLICY OR CONTRACT**
31 **AND ITS ADDITIONAL INSUREDS, EXCEPT THAT THE AGREEMENTS SHALL BE SUBJECT TO**
32 **THE LIMITATIONS OF SUBSECTIONS A AND B OF THIS SECTION.**

33 6. **AGREEMENTS BETWEEN AN INSURER AND ITS INSUREDS UNDER AN INSURANCE**
34 **POLICY OR CONTRACT FOR A DEFINED PROJECT OR WORKPLACE, EXCEPT THAT SUCH**
35 **AGREEMENTS SHALL NOT REQUIRE OR PERMIT ONE OR MORE INSUREDS UNDER THOSE**
36 **AGREEMENTS TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND ANY OTHER INSURED**
37 **UNDER THOSE AGREEMENTS BEYOND THE LIMITATIONS OF SUBSECTIONS A AND B OF THIS**
38 **SECTION AND THE INSURER SHALL NOT BE EXCUSED FROM ITS DUTY UNDER THOSE**
39 **AGREEMENTS TO DEFEND, INDEMNIFY AND PAY ON BEHALF OF ITS INSUREDS.**

40 D. ~~It~~ **FOR THE PURPOSES OF** this section:

41 1. "Architect-engineer professional service contract" means a written
42 or oral agreement relating to the **SURVEY**, design, design-build, construction
43 administration, study, evaluation or other professional services furnished in
44 connection with any actual or proposed construction, alteration, repair,

1 maintenance, moving, demolition or excavation of any structure, street or
2 roadway, appurtenance or other development or improvement to land.

3 2. "Construction contract" means a written or oral agreement relating
4 to the ACTUAL OR PROPOSED construction, alteration, repair, maintenance,
5 moving, demolition or excavation OF ANY STRUCTURE, STREET OR ROADWAY,
6 APPURTENANCE or other development or improvement to land BUT DOES NOT INCLUDE
7 A CONTRACT, SUBCONTRACT OR AGREEMENT THAT CONCERNS OR AFFECTS PROPERTY OWNED
8 OR OPERATED BY A RAILROAD.

9 Sec. 2. Applicability

10 This act applies to construction contracts or architect-engineer
11 professional service contracts that are entered into from and after December
12 31, 2007.