

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 113

H. P. 92

House of Representatives, January 10, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McNally of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Certain Agreements in Construction Contracts.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 14, § 165, additional. Title 14 of the Revised Statutes is amended by adding a new section 165 to read as follows:

§ 165. Indemnification from sole negligence against public policy

1. Public policy. With respect to contracts and agreements, either public or private, for the construction, alteration, repair or maintenance of a building, structure, highway, bridge or other work dealing with construction or for any moving, demolition or excavation connected therewith, every covenant, promise or agreement to indemnify or hold harmless another person from that person's own negligence is void as against public policy and wholly unenforceable.

2. Application. This section does not apply to construction bonds or insurance contracts or agreements.

STATEMENT OF FACT

The purpose of this Act is to invalidate, as against public policy, the prevalent practice in the construction industry of causing contractors to assume liability for the negligence of others by contract. Such so-called "Hold Harmless" agreements are usually incorporated into contracts for construction projects on a "take-it-or-leave-it" basis; (i. e., take out the necessary

insurance, or leave the bidding to someone else), and frequently require the contractor, architect or engineer, for example, to undertake the assumption of liability for personal injury or property damage even where the same results from the "sole negligence" of persons over whom the indemnitor has no control. This practice precipitates a form of economic coercion by placing contractors in the inequitable position of having to pay unusually high insurance premiums, if in fact, the insurance can be obtained for the risk involved.

This Act does not serve to relieve the contractor from liability when he is negligent; but when he is not, it places the responsibility for injury or damage where it properly belongs — on the negligent party.