

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 422

H. P. 303

House of Representatives, February 7, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Silsby of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

An Act Relating to Certain Agreements in Construction Contracts.

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

14 MRSA § 166, is enacted to read:

§ 166. Indemnification for sole negligence against public policy

1. **Covenant void.** 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, except when the indemnitor is negligent.

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

STATEMENT OF FACT

The purpose of this bill is to invalidate, as against public policy, the practice in the construction industry of causing contractors to assume liability for the negligence of others by contract when the contractor himself is not negligent.

There so-called "Hold Harmless" agreements are usually incorporated into contracts for construction projects on a take-it-or-leave-it basis, (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 when 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 requiring the contractor to obtain unusually high-cost insurance, if, in fact, the insurance can be obtained for the risk involved.

This bill does not seek 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.