

	L.D. 1045
2	DATE: 3-22-06 (Filing No. S-514)
4	•
6	JUDICIARY
8	Reported by: Minority
10	Reproduced and distributed under the direction of the Secretary of the Senate.
12	STATE OF MAINE
14	SENATE 122ND LEGISLATURE
16	SECOND REGULAR SESSION
18	COMMITTEE AMENDMENT "A" to S.P. 362, L.D. 1045, Bill, "An
20	Act Regarding Contract Indemnification"
22	Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the
24	following:
26	'Sec.1. 10 MRSA c. 201-B is enacted to read:
28	'Sec. 1. 10 MRSA c. 201-B is enacted to read: CHAPTER 201-B
28	CHAPTER 201-B
28 30	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS §1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision,
28 30 32	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS §1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public
28 30 32 34	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS §1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in
28 30 32 34 36	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS §1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in subsection 2 arising solely from the negligence or willful misconduct of the promisee or the promisee's agents, servants or
28 30 32 34 36 38	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS \$1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in subsection 2 arising solely from the negligence or willful
28 30 32 34 36 38 40	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS §1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in subsection 2 arising solely from the negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the
28 30 32 34 36 38 40 42	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS S120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in subsection 2 arising solely from the negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee. 2. Damages. Subsection 1 prohibits indemnification for hability for damages for:
28 30 32 34 36 38 40 42 44	CHAPTER 201-B INDEMNIFICATION IN CONSTRUCTION AND TIMBER CONTRACTS \$1120-A. Indemnification agreements against public policy 1. Indemnification void and unenforceable. A provision, clause, covenant or agreement contained in, collateral to or affecting a contract described in subsection 3 is against public policy and is void and unenforceable if it purports to indemnify the promisee against liability for damages described in subsection 2 arising solely from the negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee. 2. Damages. Subsection 1 prohibits indemnification for

٠

Page 1-LR1707(2)

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 362, L.D. 1045

C. Design defects; or

2

4

16

20

24

26

<u>D. Other loss, damage or expense arising under paragraph A,</u> <u>B or C.</u>

 3. Application to certain contracts. This section applies to construction contracts and contracts involving the harvesting of timber, contracts involving maintenance of property engaged in the harvesting of timber and contracts attendant to timber or
woodworking operations of any nature.

12 4. Named insured not prohibited. This section does not prohibit an agreement or requirement in a contract under 14 subsection 3 from including the promisee as an insured or an additional insured in an insurance contract.

5. Exceptions. This section does not affect the validity 18 of an insurance contract for workers' compensation or any other insurance contract or agreement issued by a licensed insurer.

6. Application. This section applies to contracts entered 22 into or renewed on or after January 1, 2007.'

SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary. It replaces the bill but maintains the purpose of prohibiting certain indemnification agreements in construction and related contracts, but only when the agreement would indemnify the promisee against liability for certain damages arising solely from the negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors. This amendment clarifies that the parties are not prohibited from agreeing that the promisee must be included as an insured or an additional insured in an insurance contract.

Page 2-LR1707(2)

COMMITTEE AMENDMENT