

1 HB409  
2 216260-2  
3 By Representative Robbins  
4 RFD: Commerce and Small Business  
5 First Read: 24-FEB-22

8 SYNOPSIS: This bill would prohibit a construction  
9 contract from containing a provision requiring a  
10 party to defend or indemnify another party for  
11 damages caused by the conduct of the other party  
12 when the total costs of the undertaking is fifty  
13 thousand dollars (\$50,000) or more.

15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

19 Relating to construction contracts; to prohibit  
20 certain indemnification provisions in construction contracts  
21 under certain conditions that require a party to defend or  
22 indemnify or insure a second party for damages caused by the  
23 conduct of the second party.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. The Legislature finds that it is in the  
26 best interests of this state and its residents to ensure that  
27 any private business or individual entering into a

1 construction contract is financially responsible under the  
2 state's tort liability system for damages that the private  
3 party may cause while performing under the contract. It is the  
4 intent of this act to promote competition and safety relating  
5 to construction contracts by requiring an indemnifying party  
6 to be responsible for any and all damages, losses, or  
7 injuries, including, but not limited to, attorney's fees and  
8 other litigation costs, caused by that party and by  
9 prohibiting the shifting of that responsibility to another  
10 party.

11 Section 2. As used in this act, the following words  
12 have the following meanings:

13 (1) CONSTRUCTION CONTRACT. A contract, subcontract,  
14 sub-subcontract, purchase order, or other agreement for the  
15 planning, management, construction, supply, repair,  
16 reconstruction, replacement, rehabilitation, or improvement of  
17 any private or public construction project in the state when  
18 the total costs of the undertaking is fifty thousand dollars  
19 (\$50,000) or more.

20 (2) PARTY. An individual or private business that is  
21 a party to a contract involved in or contributing to the  
22 construction of a private or public construction project.

23 Section 3. A construction contract may not require a  
24 party to the contract to indemnify, hold harmless, or defend  
25 another party for liability, damages, losses, or costs caused  
26 by the negligence, wantonness, recklessness, or intentional  
27 misconduct of the party to be indemnified or its officers,

1 employees, or agents. Any such requirement contained in a  
2 contract entered into after the effective date of this act is  
3 void and unenforceable.

4 Section 4. A construction contract may contain a  
5 provision requiring a party to the contract to indemnify, hold  
6 harmless, or defend another party, but only to the extent that  
7 liability, damages, losses, or costs are caused by the  
8 negligence, wantonness, recklessness, or intentional conduct  
9 of the indemnifying party or the indemnifying party's  
10 officers, employees, or agents.

11 Section 5. A construction contract may not require a  
12 party to the contract to provide insurance coverage to another  
13 party as an additional insured for claims that arise out of or  
14 are caused by the second party's own negligent, reckless,  
15 wanton, or intentional conduct or that of its officers,  
16 employees, or agents. Any additional insured coverage required  
17 under a construction contract may not be broader than the  
18 scope of indemnity provided in Section 3 or Section 4.

19 Section 6. This act does not apply to the indemnity  
20 obligation of a principal to its surety on a construction bond  
21 or to the indemnity obligation of an insurer to its insured.

22 Section 7. This act only applies to indemnity or  
23 insurance obligations between parties to a construction  
24 contract and has no effect on third-party tort claims.

25 Section 8. Any provision of law to the contrary  
26 notwithstanding, this act shall not be interpreted or

1 construed to affect the state's doctrine of joint and several  
2 liability or the state workers' compensation laws.

3 Section 9. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.