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SYNOPSIS:

Under existing law, a contractor in a contract with an awarding authority to perform work on a highway, road, bridge, or street is justified in relying upon the specifications that are contained in the contract. Upon completion of the project, the contractor may not be held liable unless one of three exceptions applies.

This bill would revise and provide various definitions, including defining "latent defect," and would further provide for the exceptions to the general rule of nonliability of the contractor.

This bill would provide that in an action for injury, damages, or wrongful death against an awarding authority or its contractors arising from any negligent act or omission in the construction or maintenance of a public road, where it is established that the operator of the vehicle was driving under the influence, texting while driving, or traveling at a rate of 25 or more miles per hour over the applicable speed limit, there is a rebuttable presumption that the prohibited conduct was the proximate cause of the injury, damages, or wrongful death. The bill would provide that the presumption may be overcome by the plaintiff establishing that the prohibited conduct was not the



29 cause of injury, damages, or death.

30 This bill would also require in such an action  
31 that the plaintiff's complaint contain a detailed  
32 specification and factual description of each act and  
33 omission alleged.

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A BILL

36

TO BE ENTITLED

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AN ACT

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39 Relating to civil liability; to amend Sections 6-5-700,  
40 6-5-701, 6-5-702, 6-5-703, 6-5-704, 6-5-705, and 6-5-708, Code  
41 of Alabama 1975, to further provide for the liability of a  
42 public awarding authority and its contractors regarding the  
43 construction and maintenance of public roads; to delete an  
44 exception to the statutory protection from liability of a  
45 contractor; to create a rebuttable presumption of nonliability  
46 of the awarding authority and its contractors when certain  
47 circumstances apply; and to provide certain pleading  
48 requirements in the filing of a complaint for injury or death  
49 arising from the construction or maintenance of a public road.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. Sections 6-5-700, 6-5-701, 6-5-702, 6-5-703,

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6-5-704, 6-5-705, and 6-5-708, Code of Alabama 1975, are

53

amended to read as follows:

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"§6-5-700

55

For the purposes of this article, the following terms

56

~~shall~~ have the following meanings:



57 (1) AWARDING AUTHORITY. If the contractor enters into a  
58 contract to construct, repair, or maintain a highway, road,  
59 bridge, or street, then the awarding authority shall be any of  
60 the following, as applicable:

61 a. The Alabama Department of Transportation, ~~if the~~  
62 ~~contractor enters into a contract with the State of Alabama to~~  
63 ~~construct, repair, or maintain a highway, a road, or a street~~  
64 ~~for~~ or ~~the State of Alabama; or~~ state.

65 b. The county governing body, ~~if the contractor enters~~  
66 ~~into a contract with that county to construct, repair, or~~  
67 ~~maintain a highway, a road, or a street~~ for ~~that~~ the county  
68 where the project is bid and let to contract by the county  
69 commission; or.

70 c. The municipal governing body ~~of any other local~~  
71 ~~government, if the contractor enters into a contract with that~~  
72 ~~local government to construct, repair, or maintain a highway,~~  
73 ~~a road, or a street for that local government~~ for the  
74 municipality where the project is bid and let to contract by  
75 the municipal governing body.

76 d. Any other governmental entity, board, commission,  
77 agency, body, authority, instrumentality, department,  
78 subdivision of the state, or public two-year or four-year  
79 institution of higher education, if the contractor enters into  
80 a contract with the entity to perform a project. This term  
81 shall exclude the State Docks Department and any entity  
82 exempted from the competitive bid laws of the state by  
83 statute.

84 (2) CONCLUSION OF PROJECT. The earlier of the



85 following:

86 a. The date that the awarding authority notifies the  
87 contractor, in writing, that the awarding authority has  
88 assumed maintenance responsibilities for the ~~roadway~~ project.

89 ~~b. or 60 days after the contractor has notified, in~~  
90 ~~writing, the awarding authority that the contractor's work on~~  
91 ~~the project is completed, whichever is earlier.~~ The date  
92 following the expiration of 45 days after the contractor  
93 provides notice of presumptive conclusion of the project to  
94 the awarding authority and the awarding authority fails to  
95 respond.

96 c. The awarding authority has made the final payment  
97 due and payable to the contractor and the contractor has  
98 completed the advertising requirements of Title 39.

99 (3) CONTRACTOR. Any ~~person or entity~~ individual,  
100 corporation, limited liability company, partnership, or other  
101 legal entity, or any combination thereof, and any  
102 subcontractor, director, officer, or employee of ~~such a person~~  
103 ~~or entity~~ the individual or legal entity, that contracts with  
104 ~~the State of Alabama, a county, or other local government~~ an  
105 awarding authority to ~~construct, repair, or maintain a~~  
106 ~~highway, a road, a bridge, or a street~~ perform a project.

107 (4) DANGEROUS CONDITION. A condition that is not  
108 reasonably safe for the intended use of the roadway and is  
109 capable of causing ~~a person~~ an individual physical injury or  
110 death under the anticipated use of the roadway.

111 (5) LATENT DEFECT. A defect or omission resulting from  
112 the work conducted or materials provided by the contractor



113 under the contract which was not discoverable, visible, or  
114 apparent.

115 (6) PROJECT. The construction, repair, or maintenance  
116 by a contractor of a section of highway, road, bridge, or  
117 street together with all appurtenances, as specified in a  
118 contract with an awarding authority.

119 ~~(5)~~ (7) SPECIFICATIONS. Specifications, plans, traffic  
120 control requirements, communication requirements, drawings,  
121 bid documents, or any other written or electronically stored  
122 requirements and details the contractor agrees to perform."

123 "§6-5-701

124 A contractor is justified ordinarily in relying upon  
125 the plans and specifications that are contained in the  
126 contract with an awarding authority. No contractor shall be  
127 held civilly liable for work performed on ~~a highway, road,~~  
128 ~~bridge, or street~~ the project, including repairs,  
129 construction, or maintenance on behalf of the awarding  
130 authority, unless it is shown by a preponderance of the  
131 evidence that physical injury, property damage, or death is  
132 proximately caused by ~~any~~ either of the following:

133 (1) A failure by the contractor to follow the plans and  
134 specifications resulting in a dangerous condition.

135 ~~(2) The contractor's performance of the contract in~~  
136 ~~compliance with the plans and specifications creates a~~  
137 ~~condition that should have appeared, to a reasonably prudent~~  
138 ~~contractor, to be a dangerous condition.~~

139 ~~(3)~~ (2) A latent defect which creates a dangerous  
140 condition that is the result of the work of the contractor."



141 "§6-5-702

142 (a) In any action for injury, damages, or wrongful  
143 death, whether in contract or in tort, against an awarding  
144 authority or its contractors arising from any negligent act or  
145 omission in the construction or maintenance of a public road,  
146 when it is established by a preponderance of the evidence that  
147 the operator of the vehicle engaged in conduct that would have  
148 supported a violation of Sections 32-5A-191 or 32-5A-350, or  
149 that the vehicle was traveling at a rate of 25 or more miles  
150 per hour over the applicable speed limit, there shall be  
151 established a rebuttable presumption that the prohibited  
152 conduct was the proximate cause of the injury, damages, or  
153 wrongful death.

154 (b) The rebuttable presumption established in  
155 subsection (a) may be overcome by the plaintiff establishing,  
156 by a preponderance of the evidence, that the prohibited  
157 conduct was not the proximate cause of the injury, damages, or  
158 wrongful death.~~During the course of construction, a contractor~~  
159 ~~who constructs, maintains, or repairs a highway, road, street,~~  
160 ~~or bridge for the awarding authority is not liable to a~~  
161 ~~claimant for personal injury, property damage, or death~~  
162 ~~arising from the performance of such construction,~~  
163 ~~maintenance, or repair, if, at the time of the personal~~  
164 ~~injury, property damage, or death, the contractor was in~~  
165 ~~compliance with contract documents material to the condition,~~  
166 ~~including the traffic control plan, that was the proximate~~  
167 ~~cause of the personal injury, property damage, or death unless~~  
168 ~~following the plans and specifications would result in a~~



169 ~~dangerous condition that should have appeared to be defective~~  
170 ~~to a reasonably prudent contractor or that the contractor~~  
171 ~~should have known that following the plans and specifications~~  
172 ~~could create a dangerous condition that caused the injury or~~  
173 ~~death."~~

174 "§6-5-703

175 In any action for injury, damages, or wrongful death,  
176 whether in contract or in tort, against an awarding authority  
177 or its contractors arising from any negligent act or omission  
178 in the construction or maintenance of a public road, the  
179 plaintiff shall include in the complaint filed in the action a  
180 detailed specification and factual description of each act and  
181 omission alleged by the plaintiff, and shall include when  
182 feasible and ascertainable the date, time, and place of the  
183 act or acts. The plaintiff shall amend the complaint timely  
184 upon ascertainment of new or different acts or omissions upon  
185 which the claim is based; provided, however, that any such  
186 amendment must be made at least 90 days before trial. Any  
187 complaint that fails to include such detailed specification  
188 and factual description of each act and omission shall be  
189 subject to dismissal for failure to state a claim upon which  
190 relief may be granted. This section shall not apply to claims  
191 by the awarding authority or contractor against each other.~~If,~~  
192 ~~prior to or during the course of construction, a contractor~~  
193 ~~discovers or determines that following the plans and~~  
194 ~~specifications could result in a potentially dangerous~~  
195 ~~condition, then the contractor shall, with specificity of such~~  
196 ~~condition, expressly notify the Chief Engineer of the Alabama~~



197 ~~Department of Transportation in writing by certified mail,~~  
198 ~~return receipt requested. The Alabama Department of~~  
199 ~~Transportation, or the awarding authority, shall respond to~~  
200 ~~the specific condition raised within 14 days in writing as to~~  
201 ~~its decision as to the appropriate response to the dangerous~~  
202 ~~condition. The contractor shall not be liable for any claim~~  
203 ~~relating to any decision made by the Alabama Department of~~  
204 ~~Transportation or awarding authority as to the appropriate~~  
205 ~~response, design decisions, or engineering decision, if any,~~  
206 ~~to respond to the potentially dangerous condition identified."~~

207           "§6-5-704

208           The contractor shall bear no civil liability for any  
209 alleged property damage, personal injury, death, or other  
210 civil claims made by noncontractual third parties arising from  
211 the design decisions or professional engineering judgment,  
212 including decisions relating to the proper scope or inspection  
213 of the project, by the awarding authority. This section shall  
214 not apply to either of the following situations:

215           (1) The contractor contracts in whole or in part to  
216 design the ~~roadway or~~ project or to provide professional  
217 engineering services as to the design of the ~~roadway~~ project.

218           (2) The contractor undertakes to provide design or  
219 professional engineering services as to the ~~roadway or~~  
220 project."

221           "§6-5-705

222           The contractor shall bear no civil liability for any  
223 dangerous condition that is outside of the scope of the  
224 project or that is in excess of any requirement of the



225 governing plans and specifications provided by the awarding  
226 authority. This section shall not apply to either of the  
227 following situations:

228 (1) The contractor contracts to design in whole or in  
229 part the ~~roadway or~~ project or to provide professional  
230 engineering services as to the design of the ~~roadway~~ project.

231 (2) The contractor undertakes to provide services as to  
232 the ~~roadway or~~ project that are outside the scope of the  
233 project or that are in excess of any requirement of the  
234 governing plans and specifications."

235 "§6-5-708

236 This article shall only apply to a cause of action  
237 which accrues after April 24, 2012. The amendatory provisions  
238 of the act amending this section shall only apply to causes of  
239 action which accrue after the effective date of the act  
240 amending this section. Pursuant to this article, a cause of  
241 action accrues at the time of property damage or the  
242 occurrence of the personal injury or death that is made the  
243 basis of the civil action."

244 Section 2. This act shall become effective on the first  
245 day of the third month following its passage and approval by  
246 the Governor, or its otherwise becoming law.