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HOUSE BILL 2087

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Dellwo, Paris, Broback, R. Johnson and Zellinsky.

Read first time February 22, 1991. Referred to Committee on Financial Institutions & Insurance.

1            AN ACT Relating to allowable provisions in construction contracts;  
2 and amending RCW 4.24.115.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 4.24.115 and 1986 c 305 s 601 are each amended to read  
5 as follows:

6            A covenant, promise, agreement or understanding in, or in  
7 connection with or collateral to, a contract or agreement relative to  
8 the construction, alteration, repair, addition to, subtraction from,  
9 improvement to, or maintenance of, any building, highway, road,  
10 railroad, excavation, or other structure, project, development, or  
11 improvement attached to real estate, including moving and demolition in  
12 connection therewith((~~7~~)):

13            (1) Purporting to indemnify against liability for damages arising  
14 out of bodily injury to persons or damage to property:

1       (~~(1)~~) (a) Caused by or resulting from the sole negligence of the  
2 indemnitee, his agents or employees is against public policy and is  
3 void and unenforceable;

4       (~~(2)~~) (b) Caused by or resulting from the concurrent negligence  
5 of (~~(a)~~) (i) the indemnitee or the indemnitee's agents or employees,  
6 and (~~(b)~~) (ii) the indemnitor or the indemnitor's agents or  
7 employees, is valid and enforceable only to the extent of the  
8 indemnitor's negligence and only if the agreement specifically and  
9 expressly provides therefor, and may waive the indemnitor's immunity  
10 under industrial insurance, Title 51 RCW, only if the agreement  
11 specifically and expressly provides therefor and the waiver was  
12 mutually negotiated by the parties. This subsection applies to  
13 agreements entered into after June 11, 1986.

14       (2) Purporting to require a general contractor, subcontractor, or  
15 specialty contractor to name an owner or an agent of an owner, another  
16 general contractor, subcontractor or other specialty contractor, or  
17 other person or entity as an additional or name insured on a liability  
18 insurance policy covering liability for damages arising out of bodily  
19 injury to persons or damage to property, procured by such general  
20 contractor, subcontractor, or specialty contractor, is against public  
21 policy and is void and unenforceable. However, nothing contained  
22 herein shall make void and unenforceable any additional insured  
23 endorsement to the extent such injury or damage (a) arose out of the  
24 fault of the procuring general contractor, subcontractor, or specialty  
25 contractor, or (b) if fault is not a requirement for liability, where  
26 such injury or damage is caused by the procuring general contractor,  
27 subcontractor, or specialty contractor. Nothing contained herein shall  
28 prohibit an owner from procuring insurance which covers liability for  
29 damage arising out of bodily injury to persons or damage to property  
30 for a general contractor, subcontractor, specialty contractor, or other

1 person or entity. This section does not apply to surety insurers who  
2 are liable for performance of contractual obligations on contracts  
3 covered by insurance policies.