

ACT 169

H. B. NO. 1925-70

A Bill for an Act Declaring the Invalidity of Certain Indemnity Agreements in the Construction Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to invalidate, as against public policy, the prevalent practice in the construction industry of causing contractors to assume liability for the negligence of others by contract. Such so-called "hold harmless" agreements are usually incorporated into contracts for construction projects on a "take-it-or-leave-it" basis; (i.e., to take out the necessary insurance or leave the bidding to someone else), and frequently require the contractor, engineer or architect, for example, to undertake assumption of liability for personal injury or property damage even where the same results from the "sole negligence" of persons over whom the indemnitor has no control or right of control. This practice is, and precipitates further, a form of economic coercion by placing contractors in the inequitable position of paying prohibitive insurance premiums, which, if a small contractor cannot afford, precludes him from performing upon a project for which he is otherwise qualified, thereby effectively disenfranchising him under a system of free enterprise. In an economy in which the construction industry contributes so significantly, this practice can only be considered as contrary to the public interest.

This Act does not serve to relieve a contractor from liability when he is negligent; but when he is not, it places the responsibility for injury or damage where it properly belongs, any promise of indemnification notwithstanding.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 431- . Construction industry; indemnity agreements invalid. Any covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance or appliance, including moving, demolition or excavation connected therewith, purporting to indemnify the promisee against liability for bodily injury to persons or damage to property caused by or resulting from the sole negligence or wilful misconduct of the promisee, his agents or employees, or indemnitee, is invalid as against public policy, and is void and unenforceable; provided, however, that this section shall not affect any valid workmen’s compensation claim under chapter 386 or any other insurance contract or agreement issued by an admitted insurer upon any insurable interest under this chapter.”

SECTION 3. This Act shall take effect with respect to covenants, promises, agreements or understandings which are the subject hereof made or executed from and after the effective date of this Act.

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 29, 1970.)

* Edited accordingly