

D R A F T

SUMMARY

Extends provision relating to indemnification provisions in construction agreements to all types of damages.

Provides that extent of obligation of person providing certain services to defend, indemnify or hold harmless another may be determined only after person's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by mutual agreement.

A BILL FOR AN ACT

Relating to construction agreements; creating new provisions; and amending ORS 30.140.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 30.140 is amended to read:

30.140. (1) Except to the extent provided under subsection (2) of this section, any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for [*damage arising out of death or bodily injury to persons or damage to property*] **damages** caused in whole or in part by the negligence of the indemnitee is void.

(2) This section does not affect any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for [*damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises*] **damages to the extent that the damages arise** out of the fault of the indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

1 **(3) The extent of the obligation of a person providing personal ser-**
2 **vices or related services, as those terms are defined in ORS 279C.100,**
3 **to defend, indemnify or hold harmless another under a construction**
4 **agreement may be determined only after the person’s liability or fault**
5 **is determined by adjudication or alternative dispute resolution or**
6 **otherwise resolved by mutual agreement between the parties.**

7 [(3)] **(4)** As used in this section, “construction agreement” means any
8 written agreement for the planning, design, construction, alteration, repair,
9 improvement or maintenance of any building, highway, road excavation or
10 other structure, project, development or improvement attached to real estate
11 including moving, demolition or tunneling in connection therewith.

12 [(4)] **(5)** This section does not apply to:

13 (a) Any real property lease or rental agreement between a landlord and
14 tenant whether or not any provision of the lease or rental agreement relates
15 to or involves planning, design, construction, alteration, repair, improvement
16 or maintenance as long as the predominant purpose of the lease or rental
17 agreement is not planning, design, construction, alteration, repair, improve-
18 ment or maintenance of real property; or

19 (b) Any personal property lease or rental agreement.

20 [(5)] **(6)** No provision of this section shall be construed to apply to a
21 “railroad” as defined in ORS 824.200.

22 **SECTION 2. The amendments to ORS 30.140 by section 1 of this 2023**
23 **Act apply to construction agreements entered into or renewed on and**
24 **after the effective date of this 2023 Act.**

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