

HB

105

## UNIFORM HOLD HARMLESS ACT

A Hold Harmless Agreement is a contractual arrangement whereby one party agrees to indemnify and hold harmless another party for negligent acts. Hold harmless agreements are classified as limited form, intermediate form or broad form depending on the degree of liability assumed for the negligent acts of others.

Under a limited form hold harmless agreement, the indemnifying party assumes liability for only its own negligence. The liability assumed under a limited form hold harmless agreement is no more than that imposed by common law.

Under an intermediate form hold harmless agreement, the indemnifying party assumes liability for its own negligence and the contributing negligence of the party being indemnified. In other words, the indemnifying party waives contributory negligence on the part of the party being indemnified and assumes responsibility as if the indemnifying party, alone, were responsible.

Under a broad form hold harmless agreement, the indemnifying party assumes liability for negligent acts without regard to which party is negligent, including acts for which a party other than the indemnifying party may be solely negligent. The scope of a broad form hold harmless agreement is limited only by the imagination of the legal counsel of the party being indemnified and the knowledge and bargaining position of the indemnifying party.

It is apparent, and experience has demonstrated, that hold harmless agreements tend to thwart the free working of the common law. Also, hold harmless agree-

ments create legal conflicts between public policy and the right of parties to freely contract with each other, and they often result in inequitable contractual relationships.

The Uniform Hold Harmless Act would prohibit hold harmless agreements whereby one party indemnifies another party against liability claims for bodily injury or property damage. The Act would permit the free working of the common law in an area where the common law has served the public well. It would promote the public policy that a wronged party should have a remedy at law for injuries suffered as a result of another party's negligence. It would outlaw a party negating its responsibility for its own negligence by contractual agreement.

The Uniform Hold Harmless Act would also clarify the law concerning the enforceability of hold harmless agreements. The courts have had difficulty with hold harmless agreements, finding them in conflict with, on the one hand, the common law concept that a party must be responsible for its own acts and, on the other hand, the right of a party to lawfully commit and bind itself under contract. Understandably, the courts have been inclined to protect the unwary and the uninformed and to interpret hold harmless agreements in their narrowest terms. The courts, in a number of cases, have held that hold harmless agreements were in violation of public policy. The Uniform Hold Harmless Act would resolve these legal conflicts in Alaska by declaring hold harmless agreements to be contrary to public policy and, as such, void and unenforceable.

The Hold Harmless Act would also promote more equitable contractual relationships between parties. A relatively small business firm is often at a disadvantage when negotiating a contract with a larger firm. The larger firm will often pre-

sent the smaller firm with a printed or standard contract containing an intermediate form or broad form hold harmless agreement. The smaller firm will often accept the hold harmless agreement as presented either because it does not understand the obligation which it is assuming or because its bargaining position is such that it is unable to negotiate a change.

An indemnifying party should arrange to insure the obligation which it has assumed, and this creates additional insurance cost. More serious is the situation where an indemnifying party does not insure the obligation which it has assumed either because the indemnifying party does not understand the obligation assumed or because the obligation assumed, for any number of reasons, is not insurable.

It is significant that at least nineteen states have now passed legislation limiting, restricting or prohibiting various types of hold harmless agreements.

The Uniform Hold Harmless Act would require that all persons and business entities in the State of Alaska stand as equals before the common law in the assessment of liability for their negligent acts.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K - STATE CAPITOL  
JUNEAU 99801

March 21, 1975

Representative Bob Bradley  
Chairman  
House Commerce Committee  
Alaska State Legislature  
Pouch V, State Capitol  
Juneau, Alaska 99811

RE: HB 105.

Dear Representative Bradley:

You have asked us for a memorandum on the constitutionality of HB 105. This measure purports to adopt "the Uniform Hold Harmless Act" but it is not based upon any bill drafted by the National Conference of Commissioners on Uniform State Laws. We are writing to the Contracts Section of the American Bar Association to ascertain if it has done any studies on suggested legislation of this nature.

Our preliminary view, however, is that there is an obvious constitutional infirmity in that clause of proposed AS 45.47.020(b) which provides: ✓ "This chapter applies to all contracts executed or performed in the state including. . . all contracts executed or performed before enactment of this chapter."

Article I, Section 10 of the U.S. Constitution provides: "No state shall. . . pass any. . . law impairing the obligation of contracts," and Article I, Section 15 of the Constitution of the State of Alaska provides: "No law impairing the obligation of contracts. . . shall be passed." These prohibitions apply to contracts which are already in existence. The Supreme Court of the United States has said of the federal proscription: "The contract clause of the Constitution of the United States has reference only to a statute of a state enacted after the making of the contract whose obligation is alleged to have been impaired. Oshkosh Waterworks Co. v. Oshkosh, 47L ed 249, 253 (1903), 187 US 437.

There is no impairment where a contract is against public policy but HB 105 in proposed AS 45.47.010(4) declares the intention to promote a public policy which is not now recognized by the Alaska statutes so the impairment by AS 45.47.020(b) would not be

Representative Bradley

March 21, 1975

-2-

mitigated. At least three states which prohibit "hold harmless" agreements in building contracts as against public policy -- Hawaii, Idaho and Utah -- have express provisions in the statutes preventing them from being applied to contracts in force at the effective dates of the acts.

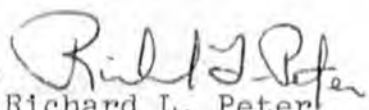
As to the application of HB 105 to agreements entered into after enactment, there is a constitutionally guaranteed freedom to contract which must be considered. The liberty and property rights secured by both the federal and state constitutions are interpreted to include freedom of contract. But this freedom is not absolute and limitations may be imposed prospectively as an exercise of police power to promote the general welfare "if they both relate to the claimed objective and employ means which are both reasonable and reasonably appropriate to secure such objective". Department of Financial Institutions v. Holt, 108 N.E. 2d 629, 635 (Indiana 1952).

Whether the Alaska courts would consider that HB 105 meets such a standard in prohibiting "hold harmless" agreements in future contracts, is a matter for conjecture. But we would conclude that this measure is obviously unconstitutional only in its application to contracts in force at its effective date.

We will advise you if we receive any pertinent information from the American Bar Association. If we can be of further assistance, please let us know.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Richard L. Peter  
Assistant Attorney General

RLP:jw



LaBOW, HAYNES OF ALASKA, INC.

A ROLLINS BURDICK HUNTER Company

Multinational Insurance Brokers / 840 K Street, Anchorage, Alaska 99501 (907) 279-2422

March 31, 1975

The Hon. Bob Bradley, Chairman  
Commerce Committee  
Alaska House of Representatives  
Juneau, Alaska 99801

Re: Uniform Hold Harmless Act


Dear Mr. Bradley:

Enclosed are ten copies of a statement I have prepared to be read into the record of the joint Senate and House Commerce Committee hearing to be held April 7 on the Uniform Hold Harmless Act.

I will be pleased to answer questions from you or members of your committee.

Sincerely,

LABOW, HAYNES OF ALASKA, INC.

  
George S. Suddock, President

GSS:tm  
enclosures

HB 105

Tape #

Date

436

4/28

36

4/30

1/30/75

# COMMITTEE REPORT

## HOUSE

Mr. Speaker:

Date \_\_\_\_\_

The Committee on Commerce has had HB 105

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT

CS FOR \_\_\_\_\_ DO PASS

"and" recommends it BE REFERRED TO THE Library

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ Chairman

A M E N D M E N T

Offered in the HOUSE

By Commerce Committee

To: \_\_\_\_\_ HOUSE BILL NO. 109

\_\_\_\_\_ SENATE BILL NO. \_\_\_\_\_

AMENDMENT: Page \_\_\_\_\_ Line 6

Line 6

Attest and certify that the above is a true and correct copy.