

House Bill 943 (AS PASSED HOUSE AND SENATE)

By: Representatives Rogers of the 29<sup>th</sup>, Pak of the 108<sup>th</sup>, and Wilkinson of the 52<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal  
2 and void contracts generally, so as to provide for additional limitations on indemnification  
3 and duty to defend clauses which are void and unenforceable in contracts for engineering or  
4 architectural services; to provide for exceptions; to provide for related matters; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal and void  
9 contracts generally, is amended by revising Code Section 13-8-2, relating to contracts  
10 contravening public policy generally, as follows:

11 "13-8-2.

12 (a) A contract that is against the policy of the law cannot be enforced. Contracts deemed  
13 contrary to public policy include but are not limited to:

14 (1) Contracts tending to corrupt legislation or the judiciary;

15 (2) Contracts in general restraint of trade, as distinguished from contracts which restrict  
16 certain competitive activities, as provided in Article 4 of this chapter;

17 (3) Contracts to evade or oppose the revenue laws of another country;

18 (4) Wagering contracts; or

19 (5) Contracts of maintenance or champerty.

20 (b) A covenant, promise, agreement, or understanding in or in connection with or collateral  
21 to a contract or agreement relative to the construction, alteration, repair, or maintenance of  
22 a building structure, appurtenances, and appliances, including moving, demolition, and  
23 excavating connected therewith, purporting to require that one party to such contract or  
24 agreement shall indemnify, hold harmless, insure, or defend the other party to the contract  
25 or other named indemnitee, including its, his, or her officers, agents, or employees, against  
26 liability or claims for damages, losses, or expenses, including attorney fees, arising out of

27 bodily injury to persons, death, or damage to property caused by or resulting from the sole  
28 negligence of the indemnitee, or its, his, or her officers, agents, or employees, is against  
29 public policy and void and unenforceable. This subsection shall not affect any obligation  
30 under workers' compensation or coverage or insurance specifically relating to workers'  
31 compensation, nor shall this subsection apply to any requirement that one party to the  
32 contract purchase a project specific insurance policy, including an owner's or contractor's  
33 protective insurance, builder's risk insurance, installation coverage, project management  
34 protective liability insurance, an owner controlled insurance policy, or a contractor  
35 controlled insurance policy.

36 (c) A covenant, promise, agreement, or understanding in or in connection with or collateral  
37 to a contract or agreement for engineering, architectural, or land surveying services  
38 purporting to require that one party to such contract or agreement shall indemnify, hold  
39 harmless, insure, or defend the other party to the contract or other named indemnitee,  
40 including its, his, or her officers, agents, or employees, against liability or claims for  
41 damages, losses, or expenses, including attorney fees, is against public policy and void and  
42 unenforceable, except for indemnification for damages, losses, or expenses to the extent  
43 caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct  
44 of the indemnitor or other persons employed or utilized by the indemnitor in the  
45 performance of the contract. This subsection shall not affect any obligation under workers'  
46 compensation or coverage or insurance specifically relating to workers' compensation, nor  
47 shall this subsection apply to any requirement that one party to the contract purchase a  
48 project specific insurance policy or project specific policy endorsement."

49 **SECTION 2.**

50 All laws and parts of laws in conflict with this Act are repealed.