

SENATE BILL 56

D3
SB 161/22 – JPR

(PRE-FILED)

3lr0616
CF 3lr0737

By: **Senator West**

Requested: October 26, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Prohibited Indemnity and Defense Liability Agreements**

3 FOR the purpose of prohibiting a provision in a contract with a design professional for
4 professional services that requires the design professional to indemnify or hold
5 harmless certain parties unless the design professional is at fault for causing the
6 loss, damage, or expense indemnified; prohibiting a provision in a contract with a
7 design professional for professional services that requires the design professional to
8 defend certain parties against liability or certain claims; and generally relating to
9 indemnity and defense liability agreements.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 5–401(a)
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2022 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Courts and Judicial Proceedings**

18 5–401.

19 (a) (1) **(I)** IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
20 MEANINGS INDICATED.

21 **(II) “DEFEND” MEANS TO PAY FOR DEFENSE COSTS OR TO**
22 **FURNISH COUNSEL AT THE EXPENSE OF THE PROMISOR FOR THE PURPOSE OF**
23 **DEFENDING A PROMISEE OR THE PROMISEE’S INDEPENDENT CONTRACTORS,**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 AGENTS, EMPLOYEES, OR INDEMNITEES AGAINST CLAIMS ALLEGED OR BROUGHT
2 AGAINST THE PROMISEE OR THE PROMISEE'S INDEPENDENT CONTRACTORS,
3 AGENTS, EMPLOYEES, OR INDEMNITEES BY A THIRD PARTY IN ANY COURT OR OTHER
4 TRIBUNAL, INCLUDING FORMS OF ALTERNATIVE DISPUTE RESOLUTION REQUIRED
5 BY LAW OR CONTRACT, BEFORE THE COURT OR TRIBUNAL HAS REACHED A FINAL
6 DETERMINATION OF FAULT.

7 (III) "DEFENSE COSTS" MEANS REASONABLE FEES OF
8 ATTORNEYS AND EXPERT WITNESSES, COURT COSTS, AND RELATED EXPENSES
9 ACTUALLY INCURRED BY A PARTY IN THE DEFENSE OF A CLAIM OR AN ALLEGATION
10 OF LIABILITY IN CONNECTION WITH LITIGATION, ARBITRATION, OR ALTERNATIVE
11 DISPUTE RESOLUTION PROCEEDINGS.

12 (IV) "DERIVATIVE PARTIES" MEANS A PARTY'S
13 SUBCONTRACTORS, AGENTS, EMPLOYEES, OR OTHER PERSONS FOR WHICH THE
14 PARTY MAY BE LIABLE OR RESPONSIBLE AS A RESULT OF ANY STATUTORY, TORT, OR
15 CONTRACTUAL DUTY.

16 (V) "DESIGN PROFESSIONAL" MEANS:

17 1. A LICENSED ARCHITECT, AS DEFINED IN § 3-101 OF
18 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

19 2. A CERTIFIED INTERIOR DESIGNER, AS DEFINED IN §
20 8-101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

21 3. A LICENSED LANDSCAPE ARCHITECT, AS DEFINED IN
22 § 9-101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

23 4. A PROFESSIONAL ENGINEER, AS DEFINED IN § 14-101
24 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR

25 5. A PROFESSIONAL LAND SURVEYOR, AS DEFINED IN §
26 15-101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

27 (VI) "FAULT" MEANS:

28 1. A BREACH OF CONTRACT;

29 2. A NEGLIGENT, RECKLESS, OR INTENTIONAL ACT OR
30 OMISSION CONSTITUTING A TORT; OR

31 3. A VIOLATION OF APPLICABLE STATUTES OR
32 REGULATIONS.

1 **(VII) “PROFESSIONAL SERVICES” MEANS SERVICES OR WORK**
2 **THAT CONSTITUTES THE PRACTICE OF A PROFESSION REGULATED BY, OR FOR**
3 **WHICH LICENSURE IS REQUIRED UNDER, TITLE 3, TITLE 8, TITLE 9, TITLE 14, OR**
4 **TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.**

5 **(2)** A PROVISION, covenant, promise, agreement, or understanding in, or
6 in connection with or collateral to, a contract or agreement relating to architectural,
7 engineering, inspecting, or surveying services, or the construction, alteration, repair, or
8 maintenance of a building, structure, **HIGHWAY, ROAD**, appurtenance or appliance,
9 including moving, demolition, and excavating connected with those services or that work,
10 purporting to indemnify the promisee against liability for damages arising out of bodily
11 injury to any person or damage to property caused by or resulting from the sole negligence
12 of the promisee or indemnitee, or the agents or employees of the promisee or indemnitee, is
13 against public policy and is void and unenforceable.

14 **[(2)] (3)** A PROVISION, A covenant, a promise, an agreement, or an
15 understanding in, or in connection with or collateral to, a contract or an agreement relating
16 to architectural, engineering, inspecting, or surveying services, or the construction,
17 alteration, repair, or maintenance of a building, a structure, **A HIGHWAY, A ROAD**, an
18 appurtenance, or an appliance, including moving, demolition, and excavating connected
19 with those services or that work, purporting to require the promisor or indemnitor to defend
20 or pay the costs of defending the promisee or indemnitee against liability for damages
21 arising out of bodily injury to any person or damage to property caused by or resulting from
22 the sole negligence of the promisee or indemnitee, or the agents or employees of the
23 promisee or indemnitee, is against public policy and is void and unenforceable.

24 **(4)** A PROVISION IN, OR IN CONNECTION WITH A CONTRACT OR AN
25 AGREEMENT WITH A DESIGN PROFESSIONAL FOR PROFESSIONAL SERVICES
26 PURPORTING TO REQUIRE THE DESIGN PROFESSIONAL TO INDEMNIFY OR HOLD
27 HARMLESS THE PROMISEE, THE PROMISEE’S INDEPENDENT CONTRACTORS,
28 AGENTS, EMPLOYEES, OR INDEMNITEES, OR ANY OTHER PERSON AGAINST LOSS,
29 DAMAGES, OR EXPENSES IS VOID AND UNENFORCEABLE UNLESS THE FAULT OF THE
30 DESIGN PROFESSIONAL OR ITS DERIVATIVE PARTIES IS A PROXIMATE CAUSE OF THE
31 LOSS, DAMAGE, OR EXPENSE INDEMNIFIED.

32 **(5)** A PROVISION IN, OR IN CONNECTION WITH A CONTRACT OR AN
33 AGREEMENT WITH A DESIGN PROFESSIONAL FOR PROFESSIONAL SERVICES
34 PURPORTING TO REQUIRE THE DESIGN PROFESSIONAL TO DEFEND A PROMISEE,
35 THE PROMISEE’S INDEPENDENT CONTRACTORS, AGENTS, EMPLOYEES, OR
36 INDEMNITEES, OR ANY OTHER PERSON AGAINST LIABILITY OR CLAIMS FOR
37 DAMAGES OR EXPENSES, INCLUDING ATTORNEY’S FEES, ALLEGED TO BE CAUSED, IN
38 WHOLE OR IN PART, BY THE PROFESSIONAL NEGLIGENCE OF THE DESIGN
39 PROFESSIONAL OR ITS DERIVATIVE PARTIES, WHETHER THE CLAIM IS ALLEGED OR

1 BROUGHT IN TORT OR CONTRACT, IS AGAINST PUBLIC POLICY AND IS VOID AND
2 UNENFORCEABLE.

3 [(3)] (6) This subsection does not affect the validity of any insurance
4 contract, workers' compensation, any general indemnity agreement required by a surety as
5 a condition of execution of a bond for a construction or other contract, or any other
6 agreement issued by an insurer.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023.