

**Representative Kay J. Christofferson** proposes the following substitute bill:

**DESIGN PROFESSIONALS LIABILITY AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay J. Christofferson**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to design professional liability.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits a provision in a design professional services contract that requires a design professional to indemnify, hold harmless, or reimburse a person for attorney fees or other costs, except in the case of:
  - the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
  - the design professional's subconsultant's negligence;
- ▶ prohibits a provision in a design professional services contract that requires a design professional to defend a person against a claim alleging liability for damages;
- ▶ establishes a standard of care for design professionals; and
- ▶ prohibits a person from establishing a different standard of care for a design professional in a design professional services contract.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

30 [13-8-7](#), Utah Code Annotated 195331 

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32 *Be it enacted by the Legislature of the state of Utah:*33 Section 1. Section [13-8-7](#) is enacted to read:34 **[13-8-7. Contract for design professional services -- Agreements to indemnify.](#)**35 (1) As used in this section:36 (a) "Design professional" means:37 (i) an individual licensed under:38 (A) Title 58, Chapter 3a, Architects Licensing Act;39 (B) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors40 Licensing Act; or41 (C) Title 58, Chapter 53, Landscape Architects Licensing Act; or42 (ii) ~~§~~ **a nongovernmental** ~~§~~ entity engaged in the business of providing services  
42a that require a license43 described in Subsection (1)(a)(i).44 (b) "Design professional services" means:45 (i) professional services within the scope of the practice of architecture as defined in46 Section [58-3a-102](#);47 (ii) professional engineering or professional land surveying as defined in Section48 [58-22-102](#); or49 (iii) professional services within the scope of the practice of landscape architecture as50 defined in Section [58-53-102](#).51 (c) ~~§~~ **(i)** ~~§~~ "Design professional services contract" means a contract under which a  
51a design52 professional agrees to provide design professional services:53 ~~§~~ **(i)** ~~§~~ (A) ~~§~~ to a governmental entity; or54 ~~§~~ **(ii)** ~~§~~ (B) ~~§~~ for an improvement owned or to be owned by a governmental entity.54a ~~§~~ **(ii) "Design professional service contract" does not include a construction contract, as**  
54b **defined in Section [13-8-1](#).** ~~§~~55 (d) "Indemnification provision" means a covenant, promise, agreement, or56 understanding in, in connection with, or collateral to, a design professional services contract

57 that requires the design professional to:

58 (i) indemnify or hold harmless any person from or against liability for damages other  
59 than liability for damages to the extent caused by or resulting from:

60 (A) the design professional's breach of contract, negligence, recklessness, or intentional  
61 misconduct; or

62 (B) the design professional's subconsultant's negligence;

63 (ii) defend any person from or against a claim alleging liability for damages, including  
64 a claim alleging:

65 (A) the design professional's breach of contract, negligence, recklessness, or intentional  
66 misconduct; or

67 (B) the design professional's subconsultant's negligence; or

68 (iii) reimburse any person for attorney fees or other costs incurred by the person in  
69 defending against a claim alleging liability for damages, except to the extent the attorney fees  
70 or costs were incurred due to:

71 (A) the design professional's breach of contract, negligence, recklessness, or intentional  
72 misconduct; or

73 (B) the design professional's subconsultant's negligence.

74 (e) "Governmental entity" means the same as that term is defined in Section  
75 [63G-7-102](#).

76 (f) "Improvement" means the same as that term is defined in Section [78B-2-225](#).

77 (g) "Subconsultant" means a person with whom a design professional contracts to  
78 provide a service related to or part of the design professional services that the design  
79 professional agrees to perform under a design professional services contract.

80 (2) An indemnification provision is void.

81 (3) (a) A design professional shall perform design professional services under a design  
82 professional services contract consistent with the professional skill and care ordinarily provided  
83 by other design professionals:

84 (i) with the same or similar professional license; and

85 (ii) providing the same or similar design professional service:

86 (A) in the same or similar locality;

87 (B) at the same or similar time; and

88 (C) under the same or similar circumstances.

89 (b) (i) Except as provided in Subsection (3)(b)(ii), a design professional services  
90 contract may not establish a standard of care different from the standard of care described in  
91 Subsection (3)(a).

92 (ii) A design professional services contract may require a design professional to  
93 perform design professional services consistent with a specialized design expertise if the nature  
94 of the project that is the subject to the design professional services contract reasonably requires  
95 the specialized design expertise.

96 (c) A provision in a design professional services contract that purports to waive or  
97 conflicts with a provision of Subsection (3)(b) is void.

98 (4) The provisions of this section apply to a design professional services contract  
99 executed on or after May 8, 2018.