

**DESIGN PROFESSIONALS LIABILITY AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay J. Christofferson**

Senate Sponsor: \_\_\_\_\_

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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

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 [13-8-7](#), Utah Code Annotated 1953



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 Surveyors

40 Licensing Act; or

41 (C) Title 58, Chapter 53, Landscape Architects Licensing Act; or

42 (ii) an entity engaged in the business of providing services that require a license

43 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 in

46 Section [58-3a-102](#);

47 (ii) professional engineering or professional land surveying as defined in Section

48 [58-22-102](#); or

49 (iii) professional services within the scope of the practice of landscape architecture as

50 defined in Section [58-53-102](#).

51 (c) "Design professional services contract" means a contract under which a design

52 professional agrees to provide design professional services.

53 (d) "Indemnification provision" means a covenant, promise, agreement, or

54 understanding in, in connection with, or collateral to, a design professional services contract

55 that requires the design professional to:

56 (i) indemnify or hold harmless any person from or against liability for damages other

57 than liability for damages to the extent caused by or resulting from:

58 (A) the design professional's breach of contract, negligence, recklessness, or intentional

59 misconduct; or

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

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

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

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

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

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

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

72 (e) "Subconsultant" means a person with whom a design professional contracts to  
73 provide a service related to or part of the design professional services that the design  
74 professional agrees to perform under a design professional services contract.

75 (2) An indemnification provision is void and unenforceable.

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

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

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

81 (A) in the same or similar locality;

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

83 (C) under the same or similar circumstances.

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

87 (ii) A design professional services contract may require a design professional to  
88 perform design professional services consistent with a specialized design expertise if the nature  
89 of the project that is the subject to the design professional services contract reasonably requires

90 the specialized design expertise.

91 (c) A design professional services contract that violates Subsection (3)(b) is void and  
92 unenforceable.

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**