

HB0279S01 compared with HB0279

~~deleted text~~ shows text that was in HB0279 but was deleted in HB0279S01.

Inserted text shows text that was not in HB0279 but was inserted into HB0279S01.

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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: _____

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

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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

Utah Code Sections Affected:

ENACTS:

13-8-7, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-8-7** is enacted to read:

13-8-7. Contract for design professional services -- Agreements to indemnify.

(1) As used in this section:

(a) "Design professional" means:

(i) an individual licensed under:

(A) Title 58, Chapter 3a, Architects Licensing Act;

(B) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors

Licensing Act; or

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

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

described in Subsection (1)(a)(i).

(b) "Design professional services" means:

(i) professional services within the scope of the practice of architecture as defined in

Section 58-3a-102;

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

58-22-102; or

(iii) professional services within the scope of the practice of landscape architecture as defined in Section 58-53-102.

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(c) "Design professional services contract" means a contract under which a design professional agrees to provide design professional services ~~{ }~~ ;

(i) to a governmental entity; or

(ii) for an improvement owned or to be owned by a governmental entity.

(d) "Indemnification provision" means a covenant, promise, agreement, or understanding in, in connection with, or collateral to, a design professional services contract that requires the design professional to:

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

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

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

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

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

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

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

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

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

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

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

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

(2) An indemnification provision is void ~~{ and unenforceable }~~ .

(3) (a) A design professional shall perform design professional services under a design

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professional services contract consistent with the professional skill and care ordinarily provided by other design professionals:

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

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

(A) in the same or similar locality;

(B) at the same or similar time; and

(C) under the same or similar circumstances.

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†