

HOUSE BILL 158

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(PRE-FILED)

4r1144
CF SB 31

By: **Delegates Cardin, Kaufman, Pasteur, and Taylor**

Requested: October 24, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judiciary

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 relating to architectural,
4 engineering, inspecting, or surveying services that requires the party providing the
5 services to defend certain parties against liability or certain claims; and generally
6 relating to indemnity and defense liability agreements.

7 BY repealing and reenacting, with amendments,

8 Article – Courts and Judicial Proceedings

9 Section 5–401(a)

10 Annotated Code of Maryland

11 (2020 Replacement Volume and 2023 Supplement)

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

14 **Article – Courts and Judicial Proceedings**

15 5–401.

16 (a) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
17 MEANINGS INDICATED.

18 (II) “DEFEND” MEANS TO PAY FOR DEFENSE COSTS OR TO
19 FURNISH COUNSEL AT THE EXPENSE OF THE PROMISOR FOR THE PURPOSE OF
20 DEFENDING A PROMISEE OR THE PROMISEE’S INDEPENDENT CONTRACTORS,
21 AGENTS, EMPLOYEES, OR INDEMNITEES AGAINST CLAIMS ALLEGED OR BROUGHT
22 AGAINST THE PROMISEE OR THE PROMISEE’S INDEPENDENT CONTRACTORS,
23 AGENTS, EMPLOYEES, OR INDEMNITEES BY A THIRD PARTY IN ANY COURT OR OTHER

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 TRIBUNAL, INCLUDING FORMS OF ALTERNATIVE DISPUTE RESOLUTION REQUIRED
2 BY LAW OR CONTRACT, BEFORE THE COURT OR TRIBUNAL HAS REACHED A FINAL
3 DETERMINATION OF FAULT.

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

9 (IV) "FAULT" MEANS:

10 1. A BREACH OF CONTRACT;

11 2. A NEGLIGENT, RECKLESS, OR INTENTIONAL ACT OR
12 OMISSION CONSTITUTING A TORT; OR

13 3. A VIOLATION OF AN APPLICABLE STATUTE OR
14 REGULATION.

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

24 [(2)] (3) A covenant, a promise, an agreement, or an understanding in, or
25 in connection with or collateral to, a contract or an agreement relating to architectural,
26 engineering, inspecting, or surveying services, or the construction, alteration, repair, or
27 maintenance of a building, a structure, an appurtenance, or an appliance, including
28 moving, demolition, and excavating connected with those services or that work, purporting
29 to require the promisor or indemnitor to defend or pay the costs of defending the promisee
30 or indemnitee against liability for damages arising out of bodily injury to any person or
31 damage to property caused by or resulting from the sole negligence of the promisee or
32 indemnitee, or the agents or employees of the promisee or indemnitee, is against public
33 policy and is void and unenforceable.

34 (4) A COVENANT, A PROMISE, AN AGREEMENT, OR AN
35 UNDERSTANDING IN, OR IN CONNECTION WITH OR COLLATERAL TO, A CONTRACT OR
36 AGREEMENT RELATING TO ARCHITECTURAL, ENGINEERING, INSPECTING, OR
37 SURVEYING SERVICES PURPORTING TO REQUIRE THE PARTY PROVIDING THE

1 SERVICES TO ASSUME A DUTY TO DEFEND THE PROMISEE AGAINST CLAIMS
2 BROUGHT BY A THIRD PARTY, IS AGAINST PUBLIC POLICY AND IS VOID AND
3 UNENFORCEABLE.

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

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2024.