

1 **DESIGN PROFESSIONALS LIABILITY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay J. Christofferson**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions related to design professional liability.

10 **Highlighted Provisions:**

11 This bill:

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

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

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

31

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) a nongovernmental entity engaged in the business of providing services that require

43 a license 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) (i) "Design professional services contract" means a contract under which a design

52 professional agrees to provide design professional services:

53 (A) to a governmental entity; or

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

55 (ii) "Design professional services contract" does not include a construction contract, as

56 defined in Section 13-8-1.

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

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

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

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

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

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

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

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

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

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

76 (e) "Governmental entity" means the same as that term is defined in Section
77 [63G-7-102](#).

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

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

82 (2) An indemnification provision is void.

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

- 86 (i) with the same or similar professional license; and
- 87 (ii) providing the same or similar design professional service:
 - 88 (A) in the same or similar locality;
 - 89 (B) at the same or similar time; and
 - 90 (C) under the same or similar circumstances.

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

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

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

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