
SUBSTITUTE HOUSE BILL 1559

State of Washington

62nd Legislature

2012 Regular Session

By House Judiciary (originally sponsored by Representatives Haigh, Dammeier, and Goodman)

READ FIRST TIME 01/25/12.

1 AN ACT Relating to indemnification agreements involving design
2 professionals; and amending RCW 4.24.115.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.24.115 and 2011 c 336 s 95 are each amended to read
5 as follows:

6 (1) A covenant, promise, agreement, or understanding in, or in
7 connection with or collateral to, a contract or agreement relative to
8 the construction, alteration, repair, addition to, subtraction from,
9 improvement to, or maintenance of, any building, highway, road,
10 railroad, excavation, or other structure, project, development, or
11 improvement attached to real estate, including moving and demolition in
12 connection therewith, or a motor carrier transportation contract,
13 purporting to indemnify, including the duty and cost to defend, against
14 liability for damages arising out of bodily injury to persons or damage
15 to property:

16 (a) Caused by or resulting from the sole negligence of the
17 indemnitee, his or her agents or employees is against public policy and
18 is void and unenforceable;

1 (b) Caused by or resulting from the concurrent negligence of (i)
2 the indemnitee or the indemnitee's agents or employees, and (ii) the
3 indemnitor or the indemnitor's agents or employees, is valid and
4 enforceable only to the extent of the indemnitor's negligence and only
5 if the agreement specifically and expressly provides therefor, and may
6 waive the indemnitor's immunity under industrial insurance, Title 51
7 RCW, only if the agreement specifically and expressly provides therefor
8 and the waiver was mutually negotiated by the parties. This subsection
9 applies to agreements entered into after June 11, 1986.

10 (2) A covenant, promise, agreement, or understanding in, or in
11 connection with or collateral to, a contract or agreement with an
12 agency under chapter 39.80 RCW for architectural, landscape
13 architectural, engineering, or land surveying services, purporting to
14 indemnify, including the duty and cost to defend, the agency by the
15 architect, landscape architect, engineer, or land surveyor, against
16 liability for claims against the agency, is enforceable only to the
17 extent of the negligence, recklessness, or willful misconduct of the
18 architect, landscape architect, engineer, or land surveyor, or those
19 for whom they are legally responsible. This subsection does not limit
20 the liability of the architect, landscape architect, engineer, or land
21 surveyor, for patent or copyright claims that arise from the
22 performance of professional services under the contract or agreement.

23 (3) Except as provided in subsection (1)(b) of this section, this
24 section may not be waived or modified by contractual agreement, act, or
25 omission of the parties.

26 (4) As used in this section, a "motor carrier transportation
27 contract" means a contract, agreement, or understanding covering: (a)
28 The transportation of property for compensation or hire by the motor
29 carrier; (b) entrance on property by the motor carrier for the purpose
30 of loading, unloading, or transporting property for compensation or
31 hire; or (c) a service incidental to activity described in (a) or (b)
32 of this subsection, including, but not limited to, storage of property,
33 moving equipment or trailers, loading or unloading, or monitoring
34 loading or unloading. "Motor carrier transportation contract" shall
35 not include agreements providing for the interchange, use, or
36 possession of intermodal chassis, containers, or other intermodal

1 equipment.

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