

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 234

(Senator Hough)

Judicial Proceedings

Judiciary

Agreements to Defend or Pay the Cost of Defense - Void

This bill renders void and unenforceable as a matter of public policy under State law, certain agreements to defend or pay the costs of defending specified promisees or indemnitees against liability for damages arising out of bodily injury to any person or damage to property caused by or resulting from the sole negligence of the promisee or the indemnitee, or their agents or employees. The agreements relate to architectural, engineering, inspecting, or surveying services or the construction, alteration, repair, or maintenance of property.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: Any increase in District Court workload as a result of the bill can be handled with existing budgeted State resources.

Local Effect: Any increase in circuit court workloads as a result of the bill can be handled with existing budgeted local resources.

Small Business Effect: Potential meaningful. Small businesses that have entered into the types of agreements affected by the bill may face increased liability in cases involving bodily injury to any person or damage to property caused by or resulting from the sole negligence of the business or its agents or employees.

Analysis

Current Law: At common law, a contract can be unenforceable if it has an illegal purpose, is contrary to public policy, or is unconscionable, among other reasons. In general, contracts or agreements relating to architectural, engineering, inspecting, or surveying services or the construction, alteration, repair, or maintenance of property that indemnify the promisee against property damage or bodily injury caused by or resulting from the sole negligence of the promisee or indemnitee (or their agents or employees) are against public policy and are void and unenforceable. The prohibition also applies to promises, agreements, or understandings connected to these contracts or agreements. Moving, demolition, and excavation services are among the service contracts to which the prohibition applies.

However, the prohibition does not apply to an insurance contract, a general indemnity agreement required for a surety bond, worker's compensation, or any other agreement issued by an insurer.

Additional Information

Prior Introductions: SB 387 of 2015 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 455, passed the House and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1302 of 2014 passed the House and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2016
kb/kdm

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