

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 367

(Senator West, *et al.*)

Judicial Proceedings

Courts - Prohibited Indemnity and Defense Liability Agreements

This bill alters the scope of the prohibition in § 5-401 of the Courts and Judicial Proceedings Article against certain agreements in construction or construction-related contracts applicable to indemnity for liability for damages by (1) adding agreements that indemnify the promisee against liability for damages arising out of economic loss due to negligence on the part of the promisee or indemnitee to the prohibition and (2) establishing that the prohibition applies if the damages are the result of the negligence of the promisee or indemnitee (rather than the existing “sole negligence” requirement).

The bill makes similar alterations to the prohibition in § 5-401 against similar agreements requiring a promisor or indemnitor to defend, or pay the cost of defending, corresponding lawsuits for damages.

Fiscal Summary

State Effect: Any increase in District Court workload as a result of the bill can be handled with existing budgeted State resources. Revenues are not affected.

Local Effect: Any increase in circuit court workloads as a result of the bill can be handled with existing budgeted State resources. Local revenues are not affected.

Small Business Effect: Potential meaningful.

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.

Also, with respect to these same types of contracts or agreements, an agreement to defend or pay the costs of defending 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, is void and unenforceable as a matter of public policy under State law.

However, these prohibitions do 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.

Small Business Effect: The bill may have a meaningful impact on small businesses that have entered into these types of agreements and that, as a result of the bill (1) no longer have to indemnify, legally defend, or pay the costs of a legal defense for a promisee/indemnitee or (2) no longer are indemnified or have their legal defense provided/funded by a promisor/indemnitor.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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