

# SENATE BILL 56

D3  
SB 161/22 – JPR

(PRE-FILED)

3lr0616  
CF HB 256

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By: **Senator West**

Requested: October 26, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2023

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Courts – Prohibited Indemnity and Defense Liability Agreements**

3 FOR the purpose of ~~prohibiting a provision in a contract with a design professional for~~  
4 ~~professional services that requires the design professional to indemnify or hold~~  
5 ~~harmless certain parties unless the design professional is at fault for causing the~~  
6 ~~loss, damage, or expense indemnified;~~ prohibiting a provision in a contract with a  
7 design professional for professional services that requires the design professional to  
8 defend certain parties against liability or certain claims; and generally relating to  
9 indemnity and defense liability agreements.

10 BY repealing and reenacting, with amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 5–401(a)  
13 Annotated Code of Maryland  
14 (2020 Replacement Volume and 2022 Supplement)

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

### 17 **Article – Courts and Judicial Proceedings**

18 5–401.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3                       (II)   “DEFEND” MEANS TO PAY FOR DEFENSE COSTS OR TO  
4 FURNISH COUNSEL AT THE EXPENSE OF THE PROMISOR FOR THE PURPOSE OF  
5 DEFENDING A PROMISEE OR THE PROMISEE’S INDEPENDENT CONTRACTORS,  
6 AGENTS, EMPLOYEES, OR INDEMNITEES AGAINST CLAIMS ALLEGED OR BROUGHT  
7 AGAINST THE PROMISEE OR THE PROMISEE’S INDEPENDENT CONTRACTORS,  
8 AGENTS, EMPLOYEES, OR INDEMNITEES BY A THIRD PARTY IN ANY COURT OR OTHER  
9 TRIBUNAL, INCLUDING FORMS OF ALTERNATIVE DISPUTE RESOLUTION REQUIRED  
10 BY LAW OR CONTRACT, BEFORE THE COURT OR TRIBUNAL HAS REACHED A FINAL  
11 DETERMINATION OF FAULT.

12                      (III)   “DEFENSE COSTS” MEANS REASONABLE FEES OF  
13 ATTORNEYS AND EXPERT WITNESSES, COURT COSTS, AND RELATED EXPENSES  
14 ACTUALLY INCURRED BY A PARTY IN THE DEFENSE OF A CLAIM OR AN ALLEGATION  
15 OF LIABILITY IN CONNECTION WITH LITIGATION, ARBITRATION, OR ALTERNATIVE  
16 DISPUTE RESOLUTION PROCEEDINGS.

17                      (IV)   “DERIVATIVE PARTIES” MEANS A PARTY’S  
18 SUBCONTRACTORS, AGENTS, EMPLOYEES, OR OTHER PERSONS FOR WHICH THE  
19 PARTY MAY BE LIABLE OR RESPONSIBLE AS A RESULT OF ANY STATUTORY, TORT, OR  
20 CONTRACTUAL DUTY.

21                      (V)   “DESIGN PROFESSIONAL” MEANS:

22                               1.   A LICENSED ARCHITECT, AS DEFINED IN § 3–101 OF  
23 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

24                               2.   A CERTIFIED INTERIOR DESIGNER, AS DEFINED IN §  
25 8–101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

26                               3.   A LICENSED LANDSCAPE ARCHITECT, AS DEFINED IN  
27 § 9–101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

28                               4.   A PROFESSIONAL ENGINEER, AS DEFINED IN § 14–101  
29 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR

30                               5.   A PROFESSIONAL LAND SURVEYOR, AS DEFINED IN §  
31 15–101 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

32                      (VI)   “FAULT” MEANS:

33                               1.   A BREACH OF CONTRACT;

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

3                   3.     A VIOLATION OF APPLICABLE STATUTES OR  
4 REGULATIONS.

5                   (VII) "PROFESSIONAL SERVICES" MEANS SERVICES OR WORK  
6 THAT CONSTITUTES THE PRACTICE OF A PROFESSION REGULATED BY, OR FOR  
7 WHICH LICENSURE IS REQUIRED UNDER, TITLE 3, TITLE 8, TITLE 9, TITLE 14, OR  
8 TITLE 15 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

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

18                  (2) (3)    A PROVISION, A covenant, a promise, an agreement, or an  
19 understanding in, or in connection with or collateral to, a contract or an agreement relating  
20 to architectural, engineering, inspecting, or surveying services, or the construction,  
21 alteration, repair, or maintenance of a building, a structure, A HIGHWAY, A ROAD, an  
22 appurtenance, or an appliance, including moving, demolition, and excavating connected  
23 with those services or that work, purporting to require the promisor or indemnitor to defend  
24 or pay the costs of defending the promisee or indemnitee against liability for damages  
25 arising out of bodily injury to any person or damage to property caused by or resulting from  
26 the sole negligence of the promisee or indemnitee, or the agents or employees of the  
27 promisee or indemnitee, is against public policy and is void and unenforceable.

28                  (4)    ~~A PROVISION IN, OR IN CONNECTION WITH A CONTRACT OR AN~~  
29 ~~AGREEMENT WITH A DESIGN PROFESSIONAL FOR PROFESSIONAL SERVICES~~  
30 ~~PURPORTING TO REQUIRE THE DESIGN PROFESSIONAL TO INDEMNIFY OR HOLD~~  
31 ~~HARMLESS THE PROMISEE, THE PROMISEE'S INDEPENDENT CONTRACTORS,~~  
32 ~~AGENTS, EMPLOYEES, OR INDEMNITEES, OR ANY OTHER PERSON AGAINST LOSS,~~  
33 ~~DAMAGES, OR EXPENSES IS VOID AND UNENFORCEABLE UNLESS THE FAULT OF THE~~  
34 ~~DESIGN PROFESSIONAL OR ITS DERIVATIVE PARTIES IS A PROXIMATE CAUSE OF THE~~  
35 ~~LOSS, DAMAGE, OR EXPENSE INDEMNIFIED.~~

36                  (5) (4)    A PROVISION IN, OR IN CONNECTION WITH A CONTRACT OR  
37 AN AGREEMENT WITH A DESIGN PROFESSIONAL FOR PROFESSIONAL SERVICES  
38 PURPORTING TO REQUIRE THE DESIGN PROFESSIONAL TO DEFEND A PROMISEE,

1 THE PROMISEE’S INDEPENDENT CONTRACTORS, AGENTS, EMPLOYEES, OR  
2 INDEMNITEES, OR ANY OTHER PERSON AGAINST LIABILITY OR CLAIMS FOR  
3 DAMAGES OR EXPENSES, INCLUDING ATTORNEY’S FEES, ALLEGED TO BE CAUSED, IN  
4 WHOLE OR IN PART, BY THE PROFESSIONAL NEGLIGENCE OF THE DESIGN  
5 PROFESSIONAL OR ITS DERIVATIVE PARTIES, WHETHER THE CLAIM IS ALLEGED OR  
6 BROUGHT IN TORT OR CONTRACT, IS AGAINST PUBLIC POLICY AND IS VOID AND  
7 UNENFORCEABLE.

8 (5) THIS SUBSECTION MAY NOT BE CONSTRUED TO PREVENT  
9 ENFORCEMENT OF A PROVISION IN A CONTRACT OR AGREEMENT THAT PURPORTS  
10 TO REQUIRE A DESIGN PROFESSIONAL TO INDEMNIFY A PROMISEE OR INDEMNITEE  
11 FOR DEFENSE COSTS INCURRED IN CONNECTION WITH THIRD-PARTY CLAIMS FOR  
12 LOSS OR DAMAGES CAUSED BY OR RESULTING FROM THE FAULT OF THE DESIGN  
13 PROFESSIONAL OR ITS DERIVATIVE PARTIES, EXCEPT TO THE EXTENT THE  
14 PROVISION IS AGAINST PUBLIC POLICY AND IS VOID AND UNENFORCEABLE UNDER  
15 PARAGRAPH (2), (3), OR (4) OF THIS SUBSECTION.

16 [(3)] (6) This subsection does not affect the validity of any insurance  
17 contract, workers’ compensation, any general indemnity agreement required by a surety as  
18 a condition of execution of a bond for a construction or other contract, or any other  
19 agreement issued by an insurer.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2023.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.