



American Council of Engineering Companies
Maryland

SB 368 Courts – Prohibited Indemnity and Defense Liability Agreements

SUPPORT

ACEC/MD is a nonprofit association headquartered in Baltimore with over 90 multi-sized consulting engineering firms located throughout the state serving the public as well as private sectors. Forty five percent of ACEC/MD's members are certified minority or women-owned firms or small businesses. Member firms employ approximately 7000 employees and are responsible for the design of most of the area's infrastructure, environmental and building construction.

ABOUT THE BILL: After a claim is adjudicated, the insurance policy of the responsible party is normally expected to pay for the indemnity and defense costs. If there are multiple responsible parties, the insurers representing each party will normally negotiate an equitable distribution of the claim costs.

The members of ACEC/MD do not believe that expecting an a design professional (engineering firm) to pay the indemnity and the defense costs on claims, where they bear no responsibility for the proximate cause of the injury or loss, is a normal insurance practice.

Contracts for design professionals often include provisions that require the design professionals to assume the liability for the indemnity and the defense costs that would normally be attributed to the promisee (owner). The design professionals who refuse to accept these provisions are excluded from bidding on these contracts.

Attached is an exhibit that explains why insurance underwriters are unwilling to pay for claims and legal expenses that are not attributed to some fault on the part of policy holder. If an design professional agrees to a contract with the provision in question they are exposed to significant uninsured liability. Such payments can adversely affect the ability of the design professional profitability and eventual solvency.

You may ask why do design professionals and many others sign such contracts? In most instances, they have no alternative (*an unfortunate reality that exists where large entities contract with powerless providers*). Should the state allow the of use of inequitable contracting practices to coerce private business into accepting unknown, possibly incapacitating risk so the state can lower its insurance premiums?

The members of ACEC/MD believe the amendments in SB 368 are not unreasonable changes in public policy for Maryland.

These changes are limited to determining which insurance carrier(s) should be responsible to pay the indemnity and defense costs. As written the amendments do not inhibit the filing of claims, or limit the reasonable liability of those responsible, nor reduce the awards payable to any claimant.

Design professionals are willing to assume any liability that can be attributed to their performance and that of their derivative parties, which is the proximate cause of the loss, damage or expense indemnified.

Likewise, once fault is attributed, the design professional will assume the responsibility to reimburse the owner for legal fees and defense costs.

A favorable vote on SB 368 would be most appreciated