

Design Professionals to Benefit from Changes to Construction Indemnity Statute

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Washington Governor Christine Gregoire has signed into law SHB 1559, which clarifies the scope of the so-called “anti-indemnity statute” (RCW 4.24.115) and now specifically includes design professionals within its coverage. The anti-indemnity statute voids any indemnity provision in a construction contract that requires one party to indemnify another for the other’s negligence. Numerous associations representing the design professional community raised three major points of concern regarding the previous version of the statute, which the Legislature now has addressed with the revised statute signed by the Governor.

- The previous statute applied to “construction” contracts, but was unclear regarding whether that included contracts with design professionals. The revised statute now expressly applies to contracts for “architectural, landscape architectural, engineering and land surveying services.”
- The statute had been silent on the issue of the duty to defend, which is regularly incorporated into contractual indemnity agreements. Absent any limitations, design professionals often were required to provide or pay for the legal defense related to any claim arising out of the services provided regardless of whether the entity receiving the defense was negligent. The revised statute expressly limits the duty to defend and voids indemnity provisions that require design professionals to defend a service user for claims arising out of the entity’s negligence.
- The statute had limited its application to liability for damages arising out of bodily injury or property damage only, but indemnity provisions often encompass a broader scope of damages. The revised statute now expands the scope to include any damages arising out of the services provided.

The revised statute expressly provides design professionals with the same protections previously enjoyed by other contracting parties within the construction industry. The revised statute should minimize the number of uninsurable risks created by indemnity provisions in professional services agreements, thereby allowing the design professionals and their clients to better allocate risk.

Lane Powell served as chief outside counsel for drafting the bill.

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