



February 27, 2018

ENGROSSED HOUSE BILL No. 1015

DIGEST OF HB 1015 (Updated February 26, 2018 12:04 pm - DI 128)

Citations Affected: IC 26-2; noncode.

Synopsis: Unlawful indemnity agreements. Provides that the law concerning indemnity agreements in construction or design contracts applies to certain design-build contracts. Specifies that "sole negligence" for purposes of liability under a construction or design contract does not include: (1) vicarious liability; (2) imputed negligence; or (3) assumption of a nondelegable duty. Urges the legislative council to assign to the appropriate study committee the issue of whether a provision in a professional services contract that requires indemnification or defense of a promisee for certain liability is against public policy.

Effective: Upon passage; July 1, 2018.

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(SENATE SPONSORS — BRAY, TALLIAN, GLICK)

January 3, 2018, read first time and referred to Committee on Judiciary.
January 22, 2018, amended, reported — Do Pass.
January 25, 2018, read second time, ordered engrossed. Engrossed.
January 29, 2018, read third time, passed. Yeas 86, nays 11.

SENATE ACTION

February 1, 2018, read first time and referred to Committee on Civil Law.
February 26, 2018, amended, reported favorably — Do Pass.

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February 27, 2018

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1015

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 26-2-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2018]: Sec. 1. **(a) As used in this section,**
3 **"construction or design contract" includes a design-build contract**
4 **under which all of the following for the same project are included:**
5 **(1) Architectural, engineering, and related design services.**
6 **(2) Labor, materials, and other construction services.**
7 **(b)** All provisions, clauses, covenants, or agreements contained in,
8 collateral to, or affecting any construction or design contract except
9 those pertaining to highway contracts, which purport to indemnify the
10 promisee against liability for:
11 (1) death or bodily injury to persons;
12 (2) injury to property;
13 (3) design defects; or
14 (4) any other loss, damage, or expense arising under either
15 **subdivision (1), (2), or (3);**
16 from ~~the~~ sole negligence or willful misconduct of the promisee ~~or the~~
17 ~~promisee's agents, servants, or independent contractors who are directly~~

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1 responsible to the promisee, are against public policy and are void and
 2 unenforceable. Sole negligence does not include vicarious liability,
 3 imputed negligence, or assumption of a nondelegable duty.

4 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this
 5 SECTION, "legislative council" refers to the legislative council
 6 created by IC 2-5-1.1-1.

7 (b) As used in this SECTION, "study committee" means an
 8 interim study committee.

9 (c) The legislative council is urged to assign to the appropriate
 10 study committee, during the 2018 interim, the task of studying:

11 (1) whether a provision in a contract for the professional
 12 services of a:

13 (A) design professional;

14 (B) architect;

15 (C) landscape architect;

16 (D) surveyor;

17 (E) engineer;

18 (F) geologist;

19 (G) geotechnical consultant; or

20 (H) environmental consultant;

21 that requires the indemnification or defense of a promisee
 22 against a professional liability claim is against public policy;

23 (2) whether a provision described in subdivision (1) is proper
 24 to the extent that insurance coverage is available to cover the
 25 obligation to indemnify or defend the promisee; and

26 (3) other related issues considered appropriate by the study
 27 committee.

28 (d) If an appropriate study committee is assigned the topic
 29 described in subsection (c), the study committee shall issue to the
 30 legislative council a final report containing the study committee's
 31 findings and recommendations, including any recommended
 32 legislation concerning the topic, in an electronic format under
 33 IC 5-14-6, not later than November 1, 2018.

34 (e) This SECTION expires December 31, 2018.

35 SECTION 3. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1015, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 16, after "from" strike "the".

Page 1, line 16, reset in roman "sole".

Page 1, line 16, strike "or the".

Page 1, strike line 17.

Page 2, line 1, strike "responsible to the promisee,".

Page 2, line 2, after "unenforceable." insert "**Sole negligence does not include vicarious liability, imputed negligence, or assumption of a nondelegable duty.**".

Page 2, line 5, after "4." insert "**(a) This section applies to contracts entered into on or after July 1, 2018.**

(b)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1015 as introduced.)

STEUERWALD

Committee Vote: yeas 8, nays 2.

COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1015, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 2. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "legislative council" refers to the legislative council created by IC 2-5-1.1-1.**

(b) As used in this SECTION, "study committee" means an interim study committee.

(c) The legislative council is urged to assign to the appropriate study committee, during the 2018 interim, the task of studying:

(1) whether a provision in a contract for the professional

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services of a:

- (A) design professional;
- (B) architect;
- (C) landscape architect;
- (D) surveyor;
- (E) engineer;
- (F) geologist;
- (G) geotechnical consultant; or
- (H) environmental consultant;

that requires the indemnification or defense of a promisee against a professional liability claim is against public policy;

(2) whether a provision described in subdivision (1) is proper to the extent that insurance coverage is available to cover the obligation to indemnify or defend the promisee; and

(3) other related issues considered appropriate by the study committee.

(d) If an appropriate study committee is assigned the topic described in subsection (c), the study committee shall issue to the legislative council a final report containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6, not later than November 1, 2018.

(e) This SECTION expires December 31, 2018.

SECTION 3. An emergency is declared for this act."

Page 2, delete lines 4 through 19.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1015 as printed January 23, 2018.)

HEAD, Chairperson

Committee Vote: Yeas 6, Nays 1.

