

D R A F T

SUMMARY

Voids certain provisions in construction agreement requiring design professional to defend or indemnify against certain claims except to extent design professional's negligence caused indemnitee's damages.

Provides that design professional may not be held liable for attorney fees incurred to defend claims against indemnitee before design professional's fault is determined.

A BILL FOR AN ACT

1
2 Relating to design professionals; creating new provisions; and amending ORS
3 30.140.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 30.140 is amended to read:

6 30.140. (1) **As used in this section:**

7 (a) **“Construction agreement” means any written agreement for the**
8 **planning, design, construction, alteration, repair, improvement or**
9 **maintenance of any building, highway, road excavation or other**
10 **structure, project, development or improvement attached to real es-**
11 **tate including moving, demolition or tunneling in connection there-**
12 **with.**

13 (b) **“Design professional” means:**

14 (A) **A person or firm registered to practice architecture under ORS**
15 **671.010 to 671.220;**

16 (B) **A person registered to practice landscape architecture under**
17 **ORS 671.310 to 671.459;**

18 (C) **A person registered to practice engineering, land surveying or**

1 **photogrammetric mapping under ORS 672.002 to 672.325; or**

2 **(D) A person or firm providing services identified in ORS 279C.100.**

3 *[(1)]* **(2)** Except to the extent provided under subsection *[(2)]* **(3)** of this
4 section, any provision in a construction agreement that requires a person or
5 that person's surety or insurer to indemnify another against liability for
6 damage arising out of death or bodily injury to persons or damage to prop-
7 erty caused in whole or in part by the negligence of the indemnitee is void.

8 *[(2)]* **(3) Except as provided in subsection (4) of this section,** this
9 section does not affect any provision in a construction agreement that re-
10 quires a person or that person's surety or insurer to indemnify another
11 against liability for damage arising out of death or bodily injury to persons
12 or damage to property to the extent that the death or bodily injury to per-
13 sons or damage to property arises out of the fault of the indemnitor, or the
14 fault of the indemnitor's agents, representatives or subcontractors.

15 **(4)(a) Any provision in a construction agreement that requires a**
16 **design professional to defend or indemnify another against claims or**
17 **damages arising from, or alleged to arise from, negligence in the per-**
18 **formance of design professional services, or by any person or entity**
19 **for whom the design professional is responsible, is void and**
20 **unenforceable except to the extent the design professional's propor-**
21 **tionate negligence caused the indemnitee's damages as determined by**
22 **trial, arbitration, alternative dispute resolution or as otherwise agreed**
23 **by the parties.**

24 **(b) A design professional is not liable for any portion of attorney**
25 **fees or other costs reasonably incurred to defend claims against the**
26 **indemnitee before the design professional's proportionate percentage**
27 **of fault is determined by trial, arbitration, alternative dispute resol-**
28 **ution or as otherwise agreed by the parties.**

29 *[(3) As used in this section, "construction agreement" means any written*
30 *agreement for the planning, design, construction, alteration, repair, improve-*
31 *ment or maintenance of any building, highway, road excavation or other*

1 *structure, project, development or improvement attached to real estate including*
2 *moving, demolition or tunneling in connection therewith.]*

3 [(4)] **(5)** This section does not apply to:

4 (a) Any real property lease or rental agreement between a landlord and
5 tenant whether or not any provision of the lease or rental agreement relates
6 to or involves planning, design, construction, alteration, repair, improvement
7 or maintenance as long as the predominant purpose of the lease or rental
8 agreement is not planning, design, construction, alteration, repair, improve-
9 ment or maintenance of real property; or

10 (b) Any personal property lease or rental agreement.

11 [(5)] **(6)** No provision of this section shall be construed to apply to a
12 “railroad” as defined in ORS 824.200.

13 **SECTION 2. The amendments to ORS 30.140 by section 1 of this 2021**
14 **Act apply to construction agreements entered into or renewed on and**
15 **after the effective date of this 2021 Act.**

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