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ENGROSSED HOUSE BILL 1559

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Haigh, Dammeier, and Goodman

Read first time 01/25/11. Referred to Committee on Judiciary.

1 AN ACT Relating to indemnification agreements involving design  
2 professionals; and amending RCW 4.24.115.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.24.115 and 2010 c 120 s 1 are each amended to read  
5 as follows:

6 (1) A covenant, promise, agreement or understanding in, or in  
7 connection with or collateral to, a contract or agreement relative to  
8 the construction, alteration, repair, addition to, subtraction from,  
9 improvement to, or maintenance of, any building, highway, road,  
10 railroad, excavation, or other structure, project, development, or  
11 improvement attached to real estate, including moving and demolition in  
12 connection therewith, or a motor carrier transportation contract,  
13 purporting to indemnify, including the duty and cost to defend, against  
14 liability for damages arising out of bodily injury to persons or damage  
15 to property:

16 (a) Caused by or resulting from the sole negligence of the  
17 indemnitee, his or her agents or employees is against public policy and  
18 is void and unenforceable;

1 (b) Caused by or resulting from the concurrent negligence of (i)  
2 the indemnitee or the indemnitee's agents or employees, and (ii) the  
3 indemnitor or the indemnitor's agents or employees, is valid and  
4 enforceable only to the extent of the indemnitor's negligence and only  
5 if the agreement specifically and expressly provides therefor, and may  
6 waive the indemnitor's immunity under industrial insurance, Title 51  
7 RCW, only if the agreement specifically and expressly provides therefor  
8 and the waiver was mutually negotiated by the parties. This subsection  
9 applies to agreements entered into after June 11, 1986.

10 (2) A covenant, promise, agreement or understanding in, or in  
11 connection with or collateral to, a contract or agreement with an  
12 agency, as defined in RCW 39.80.020, for architectural, landscape  
13 architectural, engineering, or land surveying services, purporting to  
14 indemnify, including the duty and cost to defend, the public agency by  
15 the architect, landscape architect, engineer, or land surveyor against  
16 liability for claims against the public agency, is enforceable only to  
17 the extent of the negligence, recklessness, or willful misconduct of  
18 the architect, landscape architect, engineer, or land surveyor.

19 (3) Except as provided in subsection (1)(b) of this section, this  
20 section may not be waived or modified by contractual agreement, act, or  
21 omission of the parties.

22 (4) As used in this section, a "motor carrier transportation  
23 contract" means a contract, agreement, or understanding covering: (a)  
24 The transportation of property for compensation or hire by the motor  
25 carrier; (b) entrance on property by the motor carrier for the purpose  
26 of loading, unloading, or transporting property for compensation or  
27 hire; or (c) a service incidental to activity described in (a) or (b)  
28 of this subsection, including, but not limited to, storage of property,  
29 moving equipment or trailers, loading or unloading, or monitoring  
30 loading or unloading. "Motor carrier transportation contract" shall  
31 not include agreements providing for the interchange, use, or  
32 possession of intermodal chassis, containers, or other intermodal  
33 equipment.

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