

SHB 1559 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED 02/28/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 4.24.115 and 2011 c 336 s 95 are each amended to read
4 as follows:

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

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

20 (b) Caused by or resulting from the concurrent negligence of (i)
21 the indemnitee or the indemnitee's agents or employees, and (ii) the
22 indemnitor or the indemnitor's agents or employees, is valid and
23 enforceable only to the extent of the indemnitor's negligence and only
24 if the agreement specifically and expressly provides therefor, and may
25 waive the indemnitor's immunity under industrial insurance, Title 51
26 RCW, only if the agreement specifically and expressly provides therefor
27 and the waiver was mutually negotiated by the parties. This subsection
28 applies to agreements entered into after June 11, 1986.

29 (2) As used in this section, a "motor carrier transportation
30 contract" means a contract, agreement, or understanding covering: (a)

1 The transportation of property for compensation or hire by the motor
2 carrier; (b) entrance on property by the motor carrier for the purpose
3 of loading, unloading, or transporting property for compensation or
4 hire; or (c) a service incidental to activity described in (a) or (b)
5 of this subsection, including, but not limited to, storage of property,
6 moving equipment or trailers, loading or unloading, or monitoring
7 loading or unloading. "Motor carrier transportation contract" shall
8 not include agreements providing for the interchange, use, or
9 possession of intermodal chassis, containers, or other intermodal
10 equipment."

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11 On page 1, line 2 of the title, after "professionals;" strike the
12 remainder of the title and insert "and amending RCW 4.24.115."

EFFECT: Instead of creating new indemnity agreement enforceability language for design professionals, the amendment adds design professionals to existing statutory language restricting the use of indemnity agreements. The main effects of this change are: 1) applies the indemnity agreement restriction to all contracts for design professional services instead of contracts with a state or local agency for such services; 2) the SHB language states that an indemnity provision is enforceable only to the extent of the design professional's negligence, the striking amendment would provide that an indemnity provision purporting to indemnify against damages caused by the sole negligence of the indemnitee is unenforceable and in a situation where the indemnitee and indemnitor share negligence the indemnity provision is enforceable only to the extent of the indemnitor's negligence.

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