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SENATE BILL NO. 658

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 29, 2020)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 11-4.4 of the Code of Virginia, relating to contracts with design professionals; provisions requiring a duty to defend void.

Be it enacted by the General Assembly of Virginia:

1. That § 11-4.4 of the Code of Virginia is amended and reenacted as follows:

§ 11-4.4. Certain indemnification and duty to defend provisions in contracts with design professionals declared void.

Any provision contained in any contract relating to the planning or design of a building, structure or appurtenance thereto, including moving, demolition or excavation connected therewith, or any provision contained in any contract relating to the planning or design of construction projects other than buildings by which the architect or professional engineer performing such work purports to indemnify or hold harmless another party to the contract against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of the performance of the contract, caused by or resulting solely from the negligence of such other party, his agents or employees, is against public policy and is void and unenforceable.

This section shall apply to such contracts between an architect or professional engineer and any public body as defined in § 2.2-4301. Every provision contained in a contract between an architect or professional engineer and a public body relating to the planning or design of a building, structure or appurtenance thereto, including moving, demolition or excavation connected therewith, or relating to the planning or design of construction projects other than buildings by which the architect or professional engineer performing such work purports to indemnify or hold harmless the public body against liability is against public policy and is void and unenforceable. This section shall not be construed to alter or affect any provision in such a contract that purports to indemnify or hold harmless the public body against liability for damage arising out of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the architect or professional engineer in performance of the contract.

Any provision contained in any contract relating to the planning or design of a building, structure, or appurtenance thereto, including moving, demolition, or excavation connected therewith, or any provision contained in any contract relating to the planning or design of construction projects other than buildings by which any party purports to impose a duty to defend on any other party to the contract, is against public policy and is void and unenforceable.

This section shall not affect the validity of any insurance contract, workers' compensation, or any agreement issued by an admitted insurer.