**A** **BILL**

TO AMEND SECTION 32‑2‑10 OF THE 1976 CODE, RELATING TO HOLD HARMLESS CLAUSES IN CONSTRUCTION CONTRACTS, TO PROVIDE THAT CERTAIN INDEMNIFICATION PROVISIONS IN CONSTRUCTION AGREEMENTS AND DESIGN PROFESSIONAL AGREEMENTS ARE AGAINST PUBLIC POLICY AND UNENFORCEABLE IN SOUTH CAROLINA, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 32‑2‑10 of the 1976 Code is amended to read:

“Section 32‑2‑10. (A) For the purposes of this section:

(1) ‘Construction agreement’ means a promise, agreement, or contract concerning the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavation. A construction agreement may be a public or private agreement.

(2) ‘Defend’ means to pay for or furnish counsel at a promisor’s expense to shield a promisee or promisee’s derivative parties from claims brought against the promisee or the promisee’s derivative parties by a third party in a court or tribunal, including forms of alternative dispute resolution required by law or contract, before a final determination of fault is reached.

(3) ‘Derivative parties’ means a party’s subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory duty, tort, or contractual duty.

(4) ‘Design professional’ means a person licensed or registered pursuant to the provisions of Title 40 as an architect, a landscape architect, an engineer, or a surveyor.

(5) ‘Design professional agreement’ means any promise, agreement, or contract with a design professional or firm for design professional services.

(6) ‘Design professional services’ means work or a service performed by a design professional licensed or registered pursuant to the provisions of Title 40.

(7) ‘Fault’ means:

(a) a breach of contract;

(b) a negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or

(c) a violation of applicable statutes or regulations.

(8) ‘Firm’ means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, limited liability company, joint venture, or other legally constituted organization that offers or provides design services. For the purposes of this section, this term includes, but is not limited to, a firm through which the practice of providing design services requires a certificate of authorization.

(9) ‘Subcontractor’ means a person or entity providing labor or material through a promisor for use on a project at issue in a construction agreement or design professional agreement.

(B) Notwithstanding any other provision of law, ~~a promise or agreement~~ provisions in, or in connection with, ~~the~~ a construction agreement or design professional agreement~~, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating,~~ purporting to indemnify the promisee~~, its independent contractors, agents, employees, or indemnitees~~ or the promisee’s derivative parties against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence of the promisee~~, its independent contractors, agents, employees, or indemnitees~~ or the promisee’s derivative parties is against public policy and unenforceable. Nothing contained in this ~~section~~ subsection shall ~~affect~~ prohibit a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee or the promisee’s ~~independent contractors, agents, employees or indemnitees~~ derivative parties against liability for damages resulting from the sole negligence~~, in whole or in part,~~ of the promisor, its agents, or its employees. ~~The provisions of this section shall not affect any insurance contract or workers’ compensation agreements; nor shall it apply to any electric utility, electric cooperative, common carriers by rail and their corporate affiliates or the South Carolina Public Service Authority.~~

(C) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless a promisee, the promisee’s derivative parties, or any other person against losses, damages, or expenses are against public policy and unenforceable unless the fault of the promisor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(D) Provisions in, or in connection with, a construction agreement that include design professional services or a design professional agreement purporting to require a design professional to defend a promisee, the promisee’s derivative parties, or any other person or entity against liability, claims for damages, or expenses, including attorney fees, proximately caused or allegedly caused by the professional negligence of the promisor, the promisee, or their derivative parties, are against public policy and unenforceable, whether the claim is alleged or brought in tort or contract.

(E) Nothing in this section shall be interpreted to exclude from any indemnity or hold harmless provision that is enforceable under subsections (B) or (C) of this section attorney fees, litigation or arbitration expenses, or court costs actually incurred by the promisee when guarding against third‑party claims alleged in a court, tribunal, or alternative dispute resolution procedure required of the promisee by law or by contract, if the fault of the promisor or its derivative parties is a proximate cause of the attorney fees, litigation or arbitration expenses, or court costs to be indemnified.

(F) This section shall not apply to:

(1) an insurance agreement or a workers’ compensation agreement;

(2) an electric utility, an electric cooperative, common carriers by rail and their corporate affiliates, or the South Carolina Public Service Authority; or

(3) claims relating to liens or bonds.”

SECTION 2. This act takes effect upon approval by the Governor.

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