

# ACEC

American Council of Engineering Companies  
Maryland

# 2019 | LEGISLATIVE BUSINESS AGENDA

## WHO ARE WE?

An organization of 90 engineering and professional service firms in the State of Maryland

## WHO DO WE REPRESENT?

Over 7,000 employees including:

Engineers	Scientists
Architects	Technical Specialists
Land Surveyors	Planners

## CONTACT INFORMATION

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## UNINSURABLE CONTRACT PROVISIONS - INDEMNITY - DUTY TO DEFEND REQUIREMENT

### WHAT IS THE ISSUE?

With passage of SB 234 and HB 871 in 2016, engineering and design firms obtained some relief from onerous "Duty to Defend" clauses in A/E contracts. There are still additional modifications required to ensure the obligation to indemnify and pay defense costs for claims arising out of the negligence of others, including an indemnified party's own negligence, are not passed on to design firms.

### Legislative Action Required

Amend Section 5-401(a) of the Annotated Code of MD to delete the "sole" negligence requirement to fairly assign liability to the responsible party and add "economic loss" to the types of damages to which the statute applies.

### WHY IS IT IMPORTANT?

- The Duty to Defend clause is an unfair allocation of risk.
- The Duty to Defend clause is uninsurable.
- This requirement contractually draws engineering firms into litigation when they have no negligence.
- Small businesses could go bankrupt over expenses to defend when not at fault.
- Engineering firms could be indemnifying another party's negligence in a matter where they have zero or minimal responsibility for any injury or damages.
- There are statutes in other states including VA that relieve professional service firms from the uninsurable "Duty to Defend" clauses.
- Business environment is better for companies in states that do not allow "Duty to Defend" clauses in contracts.

