

**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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**Duty To Defend - Equity and Fairness**

**WHAT IS THE ISSUE?**

As a matter of public policy, Maryland law currently voids some forms of broad-based indemnification clauses in contracts relating to construction-projects. Many contracts still require A/E firms and design professionals to indemnify and to assume a duty to defend various other parties with respect to claims caused by others but which the design professional has no legal liability.

Modification to Maryland statutory language is needed to ensure that A/E firms and design professionals are not required to pay for or assume upfront duty to defend claims caused by others, through no fault of the design professional, so that such risks are fairly borne by the responsible parties.

**WHY ARE THESE CHANGES IMPORTANT?**

- Professional Liability Insurance does not provide coverage for legal fees and costs incurred to defend other parties when there's no established negligence or legal liability of the insured design professional. (In other words, it is uninsurable).
- Small businesses could be bankrupted by the current requirement.
- A design professional's responsibility for claims arising from A/E services should be consistent with established legal principles for professional liability.
- Other states have recognized that limiting such risks in the professional services context is good public policy.

*The modifications proposed in no way prevent an owner from recovering damages caused by the fault or negligence of a design professional.*

**Legislative Action Required**

Amend Section 5-401 of the Courts and Judicial Proceeding Article, Annotated Code of MD to void an upfront duty to defend and make indemnification unenforceable unless the design professional is the proximate cause of the injury/loss/damage. This would fairly assign liability to the responsible party.

