

Assembly Bill No. 573

CHAPTER 455

An act to add Section 2782.8 to the Civil Code, relating to indemnity.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 573, Wolk. Design professionals: indemnity.

Existing law provides that agreements contained in or affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified. Existing law also provides that provisions, clauses, covenants, or agreements relating to construction contracts with a public agency that purport to impose on the contractor, or relieve the public agency from liability for the active negligence of the public agency, are void and unenforceable.

This bill would provide, for all contracts, and amendments thereto, entered into on or after January 1, 2007, with a public agency for design professional services, that all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

The people of the State of California do enact as follows:

SECTION 1. Section 2782.8 is added to the Civil Code, to read:

2782.8. (a) For all contracts, and amendments thereto, entered into on or after January 1, 2007, with a public agency for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design

professional. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties.

(b) For purposes of this section, the following definitions apply:

(1) "Public agency" includes any county, city, city and county, district, school district, public authority, municipal corporation, or other political subdivision, joint powers authority, or public corporation in the state. Public agency does not include the State of California.

(2) "Design professional" includes all of the following:

(A) An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.

(B) An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.

(C) An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.

(D) An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

(c) This section shall only apply to a professional service contract, or any amendment thereto, entered into on or after January 1, 2007.