

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1276

Introduced by Senator Wyland

February 23, 2012

~~An act to amend Section 3338 of the Civil Code, relating to personal property.~~ *An act to amend Section 2782.8 of the Civil Code, relating to indemnity.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1276, as amended, Wyland. ~~Personal property: liens.~~ *Indemnity: design professionals.*

Under existing law, all contracts, amendments to contracts, provisions, clauses, covenants, and agreements contained in, collateral to, or affecting contracts with a public agency for design professional services that purport to require the design professional to defend the public agency under an indemnity agreement, including the duty and the cost to defend, are unenforceable. Existing law exempts claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional from this provision.

This bill would limit a design professional's duty to defend a public agency against a negligence claim to reimbursement of defense costs incurred by the public agency that were caused by the design professional's actual negligence.

~~Existing law provides that a person having a lien on personal property cannot recover damages for its conversion from a person with a right superior to his or her right, after the lien is discharged, greater than the amount secured by the lien and the compensation allowed for loss of time and expenses.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 2782.8 of the Civil Code is amended to
2 read:

3 2782.8. (a) For all contracts, and amendments thereto, entered
4 into on or after January 1, 2007, with a public agency for design
5 professional services, all provisions, clauses, covenants, and
6 agreements contained in, collateral to, or affecting any such
7 contract, and amendments thereto, that purport to indemnify,
8 including the duty and the cost to defend, the public agency by a
9 design professional against liability for claims against the public
10 agency, are unenforceable, except for claims that arise out of,
11 pertain to, or relate to the negligence, recklessness, or willful
12 misconduct of the design professional. The duty to indemnify,
13 including the duty and the cost to defend, is limited as provided
14 in this section. This section shall not be waived or modified by
15 contractual agreement, act, or omission of the parties. Contractual
16 provisions, clauses, covenants, or agreements not expressly
17 prohibited herein are reserved to the agreement of the parties.

18 (b) All contracts and all solicitation documents, including
19 requests for proposal, invitations for bid, and other solicitation
20 documents, between a public agency and a design professional,
21 are deemed to incorporate by reference the provisions of this
22 section.

23 (c) *Unless otherwise expressly agreed to by written contract, a*
24 *design professional’s duty to defend a public agency against a*
25 *claim alleging the negligent performance of professional services*
26 *by the design professional shall include only the reimbursement*
27 *of those defense costs incurred by the public agency that were*
28 *caused by the design professional’s actual negligence.*

29 (e)

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

31 (1) “Public agency” includes any county, city, city and county,
32 district, school district, public authority, municipal corporation,
33 or other political subdivision, joint powers authority, or public

1 corporation in the state. Public agency does not include the State
2 of California.

3 (2) “Design professional” includes all of the following:

4 (A) An individual licensed as an architect pursuant to Chapter
5 3 (commencing with Section 5500) of Division 3 of the Business
6 and Professions Code, and a business entity offering architectural
7 services in accordance with that chapter.

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

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

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

21 ~~(e)~~

22 (e) This section shall only apply to a professional service
23 contract, or any amendment thereto, entered into on or after January
24 1, 2007.

25 ~~(e)~~

26 (f) The amendments made to this section by the act adding this
27 subdivision shall apply to services offered pursuant to a design
28 professional contract, or any amendment thereto, entered into on
29 or after January 1, 2011.

30 ~~(f)~~

31 (g) Nothing in this section shall abrogate the provisions of
32 Section 1104 of the Public Contract Code.

33 ~~SECTION 1. Section 3338 of the Civil Code is amended to~~
34 ~~read:~~

35 ~~3338. A person having a lien on personal property cannot~~
36 ~~recover greater damages for its conversion from a person having~~
37 ~~a right superior to his or her right, after the lien is discharged, than~~

- 1 ~~the amount secured by the lien and the compensation allowed by~~
- 2 ~~Section 3336 for loss of time and expenses.~~

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