

Proposed Amendment to Minn. Stat. §604.21

Minn. Stat. 604.21 covers certain prohibitions and restrictions on agreements with design professionals that attempt to shift the obligations to defend and indemnify the design professional clients from claims. The statute is critical to design professionals in Minnesota because the design professional's professional liability insurance, also referred to as errors and omissions or "E&O" insurance does not cover defense of third parties and does not cover broad indemnification obligations. Specific exclusions in the E&O insurance policies exclude such coverage.

604.21 INDEMNITY AGREEMENTS IN DESIGN PROFESSIONAL SERVICES CONTRACTS VOID.

(a) A provision contained in, or executed in connection with, a design professional services contract is void and unenforceable to the extent it attempts to require an indemnitor to indemnify, to hold harmless, or to defend an indemnitee from or against liability for loss or damage resulting from the negligence or fault of anyone other than the indemnitor or others for whom the indemnitor is legally liable.

(b) For purposes of this section, "design professional services contract" means a contract under which some portion of the work or services is to be performed or supervised by a person licensed under section [326.02](#), and is furnished in connection with any actual or proposed maintenance of or improvement to real property, highways, roads, or bridges.

(c) This section does not apply to the extent that the obligation to indemnify, to hold harmless, or to defend an indemnitee is **able to be** covered by insurance.

(d) This section does not apply to agreements referred to in section [337.03](#) or [337.04](#).

(e) A provision contained in, or executed in connection with, a design professional services contract for any actual or proposed maintenance of, or improvement to, real property, highways, roads, or bridges located in Minnesota that makes the contract subject to the laws of another state or requires that any litigation, arbitration, or other dispute resolution process on the contract occur in another state is void and unenforceable.

(f) This section supersedes any other inconsistent provision of law.

The Proposed Amendment—Remove "able to be" in section (c).

"Able to be covered" is too vague and ambiguous and could leave the statute up to subjective interpretation. "Is covered" makes the statute clear and allows for an objective interpretation. Either the matter "is" or "is not" covered by insurance. This is much more clear than "able to be". This change will create clarity that was missing in the previous language.

Design Professionals Cannot Procure Insurance for Defense and Broad Indemnity of Others

No such insurance coverage (for defense and broad indemnification) exists and there are no design professionals in Minnesota that can purchase such coverage. Professional liability insurance for design professionals only covers defense of the design professional for the design professional's errors and omissions.

Supporters Of This Proposed Amendment Include:

American Council of Engineering Companies of Minnesota
Associated General Contractors of Minnesota
American Institute of Architects Minnesota
Minnesota Nursery and Landscape Association