

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 888

INTRODUCER: Senator Martin

SUBJECT: Professional Services Contracts

DATE: January 26, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 888 provides that a contract for professional services by a design professional (an architect, landscape architect, surveyor, or engineer) may not require the design professional to assume liability for anything other than the negligence of the design professional or of a person employed by or used by the design professional. This limit on contractual indemnity clauses is in current law but it applies only to contracts between a design professional and a public agency. An indemnity clause that does not conform to the limits in the bill is void.

The bill also provides that a contract with a design professional must require that services be performed with the level of skill and care ordinarily provided by a competent design professional. Additionally, a contract may not require the design professional to list a contracting party or other party as an additional insured.

The bill is effective July 1, 2026.

II. Present Situation:

Design Professionals

A “design professional” is an individual or entity licensed by the state who holds a current certificate of registration or is qualified to practice architecture, landscape architecture, land surveying and mapping, or engineering.¹

A design professional is generally like any other professional or indeed any other business entity in that the design professional is generally liable in tort for any negligent act that he or she commits. They are also like most businesses in their freedom to enter into most contract terms

¹ Section 725.08, F.S. Architecture and landscape architecture are regulated by ch. 481, F.S. land surveying and mapping are regulated by ch. 472, F.S., and engineering is regulated by ch. 471, F.S.

and conditions, and their freedom to decline work and reject contracts that they feel are not profitable enough or entail too much risk. Correspondingly, those who employ design professionals are mostly free to hire who they want, negotiate prices, negotiate contract terms, and seek a different design professional if they wish.²

One contract clause that is commonly found in contracts is an indemnification clause. Such clauses often use the terminology of “indemnify and hold harmless.” The term indemnification “refers to the broad concept of one party compensating another for losses, damages, or liabilities, usually due to third-party claims. It’s an agreement that safeguards one party against the financial impacts of specific actions or events.”³

There are limits to the generally broad freedom to contract. Current law provides that a contract between a design professional and a public agency may contain an indemnification clause, but that clause may only require the design professional to assume liability for negligence, recklessness or intentionally wrongful conduct of the design professional and other people employed or utilized by the design professional.⁴

Professional Liability – In General

The professional liability standard that applies to a design professional is similar to the liability standard of any other professional. The jury instruction is informative:

Negligence is the failure to use reasonable care. Reasonable care on the part of a (identify professional) is the care that a reasonably careful (identify professional) would use under like circumstances. Negligence is doing something that a reasonably careful (identify professional) would not do under like circumstances or failing to do something that a reasonably careful (identify professional) would do under like circumstances.⁵

History

Section 725.08, F.S., was enacted in 2000. In the initial version of the statute the statute limited the terms of an indemnity clause in any contract with a design professional. This limitation provided that an indemnification clause may require a design professional to assume liability only for the negligence of the design professional or another person employed or utilized by the design professional.⁶ In 2001, the statute was amended to the current form that applies the limitation only to a contract between a design professional and a public agency.⁷

² FLA. CONST. art. I s. 2.

³ Thomson Reuters, *Reduce the Risk of Claims with Indemnification Clauses in Contracts* (Oct. 20, 2024), <https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts>.

⁴ Section 725.08(1), F.S.

⁵ The Florida Bar, *Florida Standard Jury Instruction 402.5 Other Professional Negligence*, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2024%2F04%2F402.5.docx&wdOrigin=BROWSELINK>.

⁶ Section 1, ch. 2000-162, Laws of Florida.

⁷ Section 11, ch. 2001-211, Laws of Florida.

III. Effect of Proposed Changes:

SB 888 provides that, while a contract between a design professional (an architect, landscape architect, surveyor, or engineer) and any other person may require a design professional to indemnify and hold harmless the other contracting party, the indemnification clause is limited to the negligence, recklessness or intentionally wrongful conduct of the design professional or any other persons employed or used by the design professional. A contract provision that violates this limitation is void.

The bill adds that a professional services contract must require the design professional to perform the services with the level of professional skill and care ordinarily provided by a competent design professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent. This standard of care appears to reflect the ordinary standard of care that would apply to a claim against a design professional absent any modification made by a contract. The bill further provides that a professional services contract may not subject a design professional to a different standard of care, and that a contract mandating a different standard of care must be interpreted as if the lawful standard of care applies.

The bill also adds that a professional services contract may not require a design professional to list a contracting party or any other person or entity as an additional insured on the design professional's policy of professional liability insurance.

The bill applies to any contract entered into on or after July 1, 2026, which is the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may allow for lower general liability or professional liability insurance costs paid by design professionals. Those costs, however, may increase for persons who contract for the services of a design professional.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 725.08 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.