

California State Senate

SENATOR
LOIS WOLK

MAJORITY WHIP
THIRD SENATE DISTRICT



Senate Bill 885 Duty to Defend Reform *By Senator Lois Wolk*

Bill Summary

Senate Bill 885 prohibits contracts that require state licensed design professionals, including engineers, land surveyors, architects, and landscape architects, to defend claims made against other persons or entities involved in construction projects.

Bill Details

- Maintains the current requirement that design professionals have the duty to defend claims that are the result of their misconduct.
- Specifies that design professionals do not have an immediate and uninsurable duty to defend claims against other persons or entities with whom they contract.
- Requires that design professionals reimburse reasonable defense costs incurred by other persons or entities with whom they contract, tied directly to the design professional's degree of fault.

Background

The purpose of SB 885 is to address uninsurable risk shifting in indemnity agreements, in the context of construction contracts.

A design professional's Errors & Omissions professional liability insurance does not provide coverage for the defense of claims against other persons and entities involved in construction projects. It only covers claims related to the negligent acts of the design professional. A first-dollar expense obligation essentially converts the design professional's firm into the functional equivalent of an unlicensed insurance company.

It is in the public's best interest for all persons and entities in projects to defend themselves against claims of negligence or error. Design professionals will pay their proportional share of defense costs. However, when insurance coverage is not available, it is unfair to obligate them to defend lawsuits against other persons or entities.

Support

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Staff contact

Michael Erke, (916) 651-4003