A BILL TO BE ENTITLED

1   AN ACT

2 relating to certain agreements by architects and engineers in or in

3 connection with certain construction contracts.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1. The heading to Chapter 130, Civil Practice and

6 Remedies Code, is amended to read as follows:

7   CHAPTER 130. LIABILITY PROVISIONS [INDEMNIFICATION] IN CERTAIN

8   CONSTRUCTION CONTRACTS

9   SECTION 2. Section 130.002, Civil Practice and Remedies

10 Code, is amended by adding Subsections (c), (d), and (e) to read as

11 follows:

12   (c) Except as provided by Subsection (d) or (e), a covenant

13 or promise in, in connection with, or collateral to a construction

14 contract for engineering or architectural services related to an

15 improvement to real property is void and unenforceable if the

16 covenant or promise provides that a licensed engineer or registered

17 architect must defend a party, including a third party, against a

18 claim based wholly or partly on the negligence of, fault of, or

19 breach of contract by the owner, the owner's agent, the owner's

20 employee, or another entity over which the owner exercises control.

21 A covenant or promise in, in connection with, or collateral to a

22 contract for engineering or architectural services related to an

23 improvement to real property may provide for the reimbursement of

24 an owner's reasonable attorney's fees in proportion to the

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1 engineer's or architect's liability.

2   (d) Notwithstanding Subsection (c), an owner that is a party

3 to a contract for engineering or architectural services related to

4 an improvement to real property may require in the contract that the

5 engineer or architect name the owner as an additional insured under

6 the engineer's or architect's commercial general liability

7 insurance policy and provide any defense to the owner provided by

8 the policy to a named insured.

9   (e) Subsection (c) does not apply to a contract for

10 design-build services in which an owner contracts with a single

11 entity to provide both design and construction services.

12   SECTION 3. Chapter 130, Civil Practice and Remedies Code,

13 is amended by adding Section 130.0021 to read as follows:

14   Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

15 (a) A construction contract for architectural or engineering

16 services or a contract related to the construction or repair of an

17 improvement to real property that contains architectural or

18 engineering services as a component part must require that the

19 architectural or engineering services be performed with the

20 professional skill and care ordinarily provided by competent

21 architects or engineers practicing under the same or similar

22 circumstances and professional license.

23   (b) If a contract described by Subsection (a) contains a

24 provision establishing a different standard of care than the

25 standard described by Subsection (a):

26   (1) the provision is void and unenforceable; and

27   (2) the standard of care described by Subsection (a)

1 applies to the performance of the architectural or engineering

2 services.

3   (c) Section 130.004 does not limit the applicability of this

4 section.

5   SECTION 4. Section 130.004, Civil Practice and Remedies

6 Code, is amended to read as follows:

7   Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)

8 Except as provided by Section 130.002(b) or (c) or Section

9 130.0021, this chapter does not apply to an owner of an interest in

10 real property or persons employed solely by that owner.

11   (b) Except as provided by Section 130.002(b) or (c) or

12 Section 130.0021, this chapter does not prohibit or make void or

13 unenforceable a covenant or promise to:

14   (1) indemnify or hold harmless an owner of an interest

15 in real property and persons employed solely by that owner; or

16   (2) allocate, release, liquidate, limit, or exclude

17 liability in connection with a construction contract between an

18 owner or other person for whom a construction contract is being

19 performed and a registered architect or licensed engineer.

20   SECTION 5. (a) Section 130.002(c), Civil Practice and

21 Remedies Code, as added by this Act, applies only to a covenant or

22 promise in, in connection with, or collateral to a contract entered

23 into on or after the effective date of this Act.

24   (b) Sections 130.002(d) and 130.0021, Civil Practice and

25 Remedies Code, as added by this Act, apply only to a contract

26 entered into on or after the effective date of this Act.

27   SECTION 6. This Act takes effect September 1, 2021.