

AN ACT

relating to certain agreements by architects and engineers in or in connection with certain construction contracts.

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

SECTION 1. The heading to Chapter 130, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 130. LIABILITY PROVISIONS [~~INDEMNIFICATION~~] IN CERTAIN CONSTRUCTION CONTRACTS

SECTION 2. Section 130.002, Civil Practice and Remedies Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Except as provided by Subsection (d), (e), or (f), a covenant or promise in, in connection with, or collateral to a construction contract for engineering or architectural services related to an improvement to real property is void and unenforceable to the extent the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the owner, the owner's agent, the owner's employee, or another entity over which the owner exercises control. A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property may provide for the reimbursement of an owner's reasonable

1 attorney's fees in proportion to the engineer's or architect's
2 liability.

3 (d) Notwithstanding Subsection (c), an owner that is a party
4 to a contract for engineering or architectural services related to
5 an improvement to real property may require in the contract that the
6 engineer or architect name the owner as an additional insured under
7 any of the engineer's or architect's insurance coverage to the
8 extent additional insureds are allowed under the policy and provide
9 any defense to the owner provided by the policy to a named insured.

10 (e) Subsection (c) does not apply to a contract for services
11 in which an owner contracts with an entity to provide both design
12 and construction services.

13 (f) Subsection (c) does not apply to a covenant to defend a
14 party, including a third party, for a claim of negligent hiring of
15 the architect or engineer.

16 SECTION 3. Chapter 130, Civil Practice and Remedies Code,
17 is amended by adding Section 130.0021 to read as follows:

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

19 (a) A construction contract for architectural or engineering
20 services or a contract related to the construction or repair of an
21 improvement to real property that contains architectural or
22 engineering services as a component part must require that the
23 architectural or engineering services be performed with the
24 professional skill and care ordinarily provided by competent
25 architects or engineers practicing under the same or similar
26 circumstances and professional license.

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

1 provision establishing a different standard of care than the
2 standard described by Subsection (a):

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

4 (2) the standard of care described by Subsection (a)
5 applies to the performance of the architectural or engineering
6 services.

7 (c) Section 130.004 does not limit the applicability of this
8 section.

9 SECTION 4. Section 130.004, Civil Practice and Remedies
10 Code, is amended to read as follows:

11 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)
12 Except as provided by Section 130.002(b) or (c) or Section
13 130.0021, this chapter does not apply to an owner of an interest in
14 real property or persons employed solely by that owner.

15 (b) Except as provided by Section 130.002(b) or (c) or
16 Section 130.0021, this chapter does not prohibit or make void or
17 unenforceable a covenant or promise to:

18 (1) indemnify or hold harmless an owner of an interest
19 in real property and persons employed solely by that owner; or

20 (2) allocate, release, liquidate, limit, or exclude
21 liability in connection with a construction contract between an
22 owner or other person for whom a construction contract is being
23 performed and a registered architect or licensed engineer.

24 SECTION 5. (a) Section 130.002(c), Civil Practice and
25 Remedies Code, as added by this Act, applies only to a covenant or
26 promise in, in connection with, or collateral to a contract entered
27 into on or after the effective date of this Act.

1 (b) Sections 130.002(d) and 130.0021, Civil Practice and
2 Remedies Code, as added by this Act, apply only to a contract
3 entered into on or after the effective date of this Act.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2116 was passed by the House on April 21, 2021, by the following vote: Yeas 126, Nays 21, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2116 on May 28, 2021, by the following vote: Yeas 136, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2116 was passed by the Senate, with amendments, on May 24, 2021, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor