

By: Krause

H.B. No. 2116

Substitute the following for H.B. No. 2116:

By: Smith

C.S.H.B. No. 2116

A BILL TO BE ENTITLED

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), and (e) to read as follows:

(c) Except as provided by Subsection (d) or (e), 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 if 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 attorney's fees in proportion to the

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.