

By: Krause

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 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. 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 engineer's or architect's liability.

(d) Notwithstanding Subsection (c), an owner that is a party to a contract for engineering or architectural services related to

1 an improvement to real property may require in the contract that the
2 engineer or architect name the owner as an additional insured under
3 the engineer's or architect's commercial general liability
4 insurance policy and provide any defense to the owner provided by
5 the policy to a named insured.

6 (e) Subsection (c) does not apply to a contract for
7 design-build services in which an owner contracts with a single
8 entity to provide both design and construction services.

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

11 Sec. 130.0021. ENGINEER'S OR ARCHITECT'S STANDARD OF CARE.
12 A contract for engineering or architectural services related to an
13 improvement to real property may not require a licensed engineer or
14 registered architect to perform professional services to a level of
15 professional skill and care beyond that which would be provided by
16 an ordinarily prudent engineer or architect with the same
17 professional license under the same or similar circumstances.

18 SECTION 4. (a) Section 130.002(c), Civil Practice and
19 Remedies Code, as added by this Act, applies only to a covenant or
20 promise in, in connection with, or collateral to a contract entered
21 into on or after the effective date of this Act.

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

25 SECTION 5. This Act takes effect September 1, 2021.