

SENATE AMENDMENTS

2nd Printing

By: Krause, Darby, Oliverson, Martinez

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.

ADOPTED
✓✓

MAY 24 2021

Lacey Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Beverly Powell*

1 Amend H.B. No. 2116 (senate committee report) by striking all
2 below the enacting clause and substituting the following:

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

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

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

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

25 (d) Notwithstanding Subsection (c), an owner that is a party
26 to a contract for engineering or architectural services related to
27 an improvement to real property may require in the contract that the
28 engineer or architect name the owner as an additional insured under
29 any of the engineer's or architect's insurance coverage to the

1 extent additional insureds are allowed under the policy and provide
2 any defense to the owner provided by the policy to a named insured.

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

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

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. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

12 (a) A construction contract for architectural or engineering
13 services or a contract related to the construction or repair of an
14 improvement to real property that contains architectural or
15 engineering services as a component part must require that the
16 architectural or engineering services be performed with the
17 professional skill and care ordinarily provided by competent
18 architects or engineers practicing under the same or similar
19 circumstances and professional license.

20 (b) If a contract described by Subsection (a) contains a
21 provision establishing a different standard of care than the
22 standard described by Subsection (a):

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

24 (2) the standard of care described by Subsection (a)
25 applies to the performance of the architectural or engineering
26 services.

27 (c) Section 130.004 does not limit the applicability of this
28 section.

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

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

1 Except as provided by Section 130.002(b) or (c) or Section
2 130.0021, this chapter does not apply to an owner of an interest in
3 real property or persons employed solely by that owner.

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

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

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

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

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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 25, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2116 by Krause (Relating to certain agreements by architects and engineers in or in connection with certain construction contracts.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Based on information provided by the Texas Board of Professional Engineers & Land Surveyors, this analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 460 Bd of Prof Engr & Land Surveyors

LBB Staff: JMc, LBO, MB, MPUK, SMAT, SLE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 15, 2021

TO: Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2116 by Krause (Relating to certain agreements by architects and engineers in or in connection with certain construction contracts.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Based on information provided by the Texas Board of Professional Engineers & Land Surveyors, this analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 460 Bd of Prof Engr & Land Surveyors

LBB Staff: JMc, SMAT, SLE, MB, MPUK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 6, 2021

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB2116** by Krause (relating to certain agreements by architects and engineers in or in connection with certain construction contracts.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Based on information provided by the Texas Board of Professional Engineers & Land Surveyors, this analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 460 Bd of Prof Engr & Land Surveyors

LBB Staff: JMc, SLE, MB, MPUK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 23, 2021

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2116 by Krause (Relating to certain agreements by architects and engineers in or in connection with certain construction contracts.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code relating to certain agreements by architects and engineers in or in connection with certain construction contracts. Based on information provided by the Texas Board of Professional Engineers & Land Surveyors, this analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 460 Bd of Prof Engr & Land Surveyors

LBB Staff: JMc, SLE, MB, MPUK