

**House Bill 2116**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 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 an improvement to real property may require in the contract that the engineer or architect name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the

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(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 1. Same as House version.

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 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 an improvement to real property may require in the contract that the engineer or architect name the owner as an additional insured under any of the engineer's or architect's insurance coverage to the extent additional insureds are allowed under

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owner provided by the policy to a named insured.

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

SECTION 3. Chapter 130, Civil Practice and Remedies Code, is amended by adding Section 130.0021 to read as follows:  
Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE. (a) A construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part must require that the architectural or engineering services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.  
(b) If a contract described by Subsection (a) contains a provision establishing a different standard of care than the standard described by Subsection (a):  
(1) the provision is void and unenforceable; and  
(2) the standard of care described by Subsection (a) applies to the performance of the architectural or engineering services.  
(c) Section 130.004 does not limit the applicability of this section.

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(Unless otherwise indicated, all SECTIONS below are from FA1)

the policy and provide any defense to the owner provided by the policy to a named insured.

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

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

SECTION 3. Same as House version.

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

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

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

- (1) indemnify or hold harmless an owner of an interest in real property and persons employed solely by that owner; or
- (2) allocate, release, liquidate, limit, or exclude liability in connection with a construction contract between an owner or other person for whom a construction contract is being performed and a registered architect or licensed engineer.

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

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

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

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(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 6. Same as House version.

CONFERENCE