

1-1 By: Krause, et al. (Senate Sponsor - Powell) H.B. No. 2116
 1-2 (In the Senate - Received from the House April 21, 2021;
 1-3 May 6, 2021, read first time and referred to Committee on State
 1-4 Affairs; May 21, 2021, reported favorably by the following vote:
 1-5 Yeas 8, Nays 1; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10		X		
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain agreements by architects and engineers in or in
 1-20 connection with certain construction contracts.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. The heading to Chapter 130, Civil Practice and
 1-23 Remedies Code, is amended to read as follows:

1-24 CHAPTER 130. LIABILITY PROVISIONS [INDEMNIFICATION] IN CERTAIN
 1-25 CONSTRUCTION CONTRACTS

1-26 SECTION 2. Section 130.002, Civil Practice and Remedies
 1-27 Code, is amended by adding Subsections (c), (d), and (e) to read as
 1-28 follows:

1-29 (c) Except as provided by Subsection (d) or (e), a covenant
 1-30 or promise in, in connection with, or collateral to a construction
 1-31 contract for engineering or architectural services related to an
 1-32 improvement to real property is void and unenforceable if the
 1-33 covenant or promise provides that a licensed engineer or registered
 1-34 architect must defend a party, including a third party, against a
 1-35 claim based wholly or partly on the negligence of, fault of, or
 1-36 breach of contract by the owner, the owner's agent, the owner's
 1-37 employee, or another entity over which the owner exercises control.
 1-38 A covenant or promise in, in connection with, or collateral to a
 1-39 contract for engineering or architectural services related to an
 1-40 improvement to real property may provide for the reimbursement of
 1-41 an owner's reasonable attorney's fees in proportion to the
 1-42 engineer's or architect's liability.

1-43 (d) Notwithstanding Subsection (c), an owner that is a party
 1-44 to a contract for engineering or architectural services related to
 1-45 an improvement to real property may require in the contract that the
 1-46 engineer or architect name the owner as an additional insured under
 1-47 the engineer's or architect's commercial general liability
 1-48 insurance policy and provide any defense to the owner provided by
 1-49 the policy to a named insured.

1-50 (e) Subsection (c) does not apply to a contract for
 1-51 design-build services in which an owner contracts with a single
 1-52 entity to provide both design and construction services.

1-53 SECTION 3. Chapter 130, Civil Practice and Remedies Code,
 1-54 is amended by adding Section 130.0021 to read as follows:

1-55 Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

1-56 (a) A construction contract for architectural or engineering
 1-57 services or a contract related to the construction or repair of an
 1-58 improvement to real property that contains architectural or
 1-59 engineering services as a component part must require that the
 1-60 architectural or engineering services be performed with the
 1-61 professional skill and care ordinarily provided by competent

2-1 architects or engineers practicing under the same or similar
2-2 circumstances and professional license.

2-3 (b) If a contract described by Subsection (a) contains a
2-4 provision establishing a different standard of care than the
2-5 standard described by Subsection (a):

2-6 (1) the provision is void and unenforceable; and
2-7 (2) the standard of care described by Subsection (a)
2-8 applies to the performance of the architectural or engineering
2-9 services.

2-10 (c) Section 130.004 does not limit the applicability of this
2-11 section.

2-12 SECTION 4. Section 130.004, Civil Practice and Remedies
2-13 Code, is amended to read as follows:

2-14 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)
2-15 Except as provided by Section 130.002(b) or (c) or Section
2-16 130.0021, this chapter does not apply to an owner of an interest in
2-17 real property or persons employed solely by that owner.

2-18 (b) Except as provided by Section 130.002(b) or (c) or
2-19 Section 130.0021, this chapter does not prohibit or make void or
2-20 unenforceable a covenant or promise to:

2-21 (1) indemnify or hold harmless an owner of an interest
2-22 in real property and persons employed solely by that owner; or

2-23 (2) allocate, release, liquidate, limit, or exclude
2-24 liability in connection with a construction contract between an
2-25 owner or other person for whom a construction contract is being
2-26 performed and a registered architect or licensed engineer.

2-27 SECTION 5. (a) Section 130.002(c), Civil Practice and
2-28 Remedies Code, as added by this Act, applies only to a covenant or
2-29 promise in, in connection with, or collateral to a contract entered
2-30 into on or after the effective date of this Act.

2-31 (b) Sections 130.002(d) and 130.0021, Civil Practice and
2-32 Remedies Code, as added by this Act, apply only to a contract
2-33 entered into on or after the effective date of this Act.

2-34 SECTION 6. This Act takes effect September 1, 2021.

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