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3 SENATE JUDY COMMITTEE SUBSTITUTE FOR SB126

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8 SYNOPSIS: This bill would provide certain
9 prohibitions, authorizations, and requirements for
10 contracts for the professional services of a design
11 professional.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 Relating to professions and businesses; to provide
18 certain prohibitions, authorizations, and requirements for
19 contracts for the professional services of a design
20 professional.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. (a) As used in this section, the term
23 design professional means a person or entity who is licensed
24 or authorized in this state to practice architecture,
25 landscape architecture, surveying, engineering, or geology.

26 (b) A provision of a contract for the professional
27 services of a design professional entered into after the

1 effective date of this act is void and unenforceable if it
2 does any of the following:

3 (1) Requires the design professional to indemnify or
4 hold harmless a contracting party, an indemnitee, or a third
5 party against liability for damage other than liability for
6 damage to the extent caused by, or in proportion to the extent
7 the design professional participates in resolution of a claim
8 based on, an act of negligence, recklessness, intentional
9 tort, intellectual property infringement, or failure to pay a
10 subconsultant or supplier that is committed by the design
11 professional or the design professional's agent, consultant
12 under contract, or other entity for which the design
13 professional is legally liable.

14 (2) Requires the design professional to defend a
15 contracting party, an indemnitee, or a third party against a
16 claim arising out of the rendering or failure to render
17 professional services by the design professional or its agents
18 that is not otherwise covered by the design professional's
19 policy of professional liability insurance.

20 (3) Requires the design professional to list a party
21 or any other person or entity as an additional insured on the
22 design professional's policy of professional liability
23 insurance.

24 (4) Subjects the design professional to a standard
25 of care different than that provided under subsection (d).

26 (c) Nothing in this act voids a provision of a
27 contract for the professional services of a design

1 professional to the extent that it includes any or all of the
2 following:

3 (1) A requirement that the design professional lists
4 an additional insured on the design professional's general
5 liability insurance policy, automobile liability insurance
6 policy, or both, and provide coverage and any defense provided
7 by those policies.

8 (2) A provision for the reimbursement of a
9 contracting party's or an indemnitee's reasonable attorney
10 fees, damages, losses, injuries, and other litigation costs in
11 proportion to the design professional's liability, or in
12 proportion to the extent the design professional participates
13 in resolution of a claim also made against the contracting
14 party or indemnitee.

15 (3) A provision or requirement not otherwise in
16 conflict with subsection (b).

17 (d) (1) A contract for the professional services of a
18 design professional shall require the design professional to
19 perform the services with the professional skill and care
20 ordinarily provided by a competent design professional
21 practicing under the same or similar circumstances and
22 professional licenses as expeditiously as is prudent
23 considering the ordinary professional skill and care of a
24 competent design professional.

25 (2) If a standard of care provision in a contract
26 differs from subdivision (1), the standard of care provided in
27 subdivision (1) shall apply.

1 (e) (1) Nothing in this section prohibits parties to
2 a contract for professional services of a design professional
3 from including and enforcing conditions that relate to the
4 scope, fees, and schedule of a project that is subject to the
5 contract, so long as the conditions are subject to the
6 requirements of subsection (d).

7 (2) To the extent not otherwise prohibited by law,
8 nothing in this act shall be interpreted to make a public
9 awarding authority responsible for, or to authorize a design
10 professional to include in a contract any provision making the
11 public awarding authority responsible for, the design
12 professional's proportionate liability for negligence in
13 rendering professional services or liability arising out of
14 the design professional's non-professional actions in
15 connection with its performance for or on behalf of the public
16 awarding authority.

17 (f) This section does not affect the validity of any
18 existing insurance contract, workers' compensation, or any
19 agreement or coverage document issued by an insurer.

20 (g) Any provision of law to the contrary
21 notwithstanding, this section may not be interpreted to alter
22 or affect state joint and several liability law or workers'
23 compensation law.

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.