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3 SENATE JUDICIARY SUBSTITUTE FOR SB261  
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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 of 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, or 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 the skill and care required under subdivision

1 (1), the standard of care provided in subdivision (1) shall  
2 apply.

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

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

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

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

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