

1 SB261
2 210723-3
3 By Senator Chambliss
4 RFD: Judiciary
5 First Read: 23-FEB-21

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to professions and businesses; to provide
12 certain prohibitions, authorizations, and requirements for
13 contracts for the professional services of a design
14 professional.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. (a) As used in this section, the term
17 "design professional" means a person or entity who is licensed
18 or authorized in this state to practice architecture,
19 landscape architecture, surveying, engineering, interior
20 design, or geology.

21 (b) A provision of a contract for the professional
22 services of a design professional entered into after the
23 effective date of this act is void and unenforceable if it
24 does any of the following:

25 (1) Requires the design professional to indemnify or
26 hold harmless a contracting party, an indemnitee, or a third
27 party against liability for damage other than liability for

1 damage to the extent caused by, or in proportion to the extent
2 the design professional participates in resolution of a claim
3 based on, an act of negligence, recklessness, intentional
4 tort, intellectual property infringement, or failure to pay a
5 subconsultant or supplier that is committed by the design
6 professional or the design professional's agent, consultant
7 under contract, or other entity for which the design
8 professional is legally liable.

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

15 (3) Requires the design professional to list a party
16 or any other person or entity as an additional insured on the
17 design professional's policy of professional liability
18 insurance.

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

21 (c) Nothing in this act voids a provision of a
22 contract for the professional services of a design
23 professional to the extent that it includes any or all of the
24 following:

25 (1) A requirement that the design professional lists
26 an additional insured on the design professional's general
27 liability insurance policy, automobile liability insurance

1 policy, or both, and provide coverage and any defense provided
2 by those policies.

3 (2) A provision for the reimbursement of a
4 contracting party's or an indemnitee's reasonable attorney
5 fees, damages, losses, injuries, or other litigation costs in
6 proportion to the design professional's liability, or in
7 proportion to the extent the design professional participates
8 in resolution of a claim also made against the contracting
9 party or indemnitee.

10 (3) A provision or requirement not otherwise in
11 conflict with subsection (b).

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

20 (2) If a standard of care provision in a contract
21 differs from the skill and care required under subdivision
22 (1), the standard of care provided in subdivision (1) shall
23 apply.

24 (e) (1) Nothing in this section prohibits parties to
25 a contract for professional services of a design professional
26 from including and enforcing conditions that relate to the
27 scope, fees, and schedule of a project that is subject to the

1 contract, so long as the conditions are subject to the
2 requirements of subsection (d).

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

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

16 (g) Any provision of law to the contrary
17 notwithstanding, this section may not be interpreted to alter
18 or affect state joint and several liability law or workers'
19 compensation law.

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 23-FEB-21

Read for the second time and placed on the calen-
dar with 1 substitute and..... 24-FEB-21

Read for the third time and passed as amended 06-APR-21

Yeas 28
Nays 0

Patrick Harris,
Secretary.