

1 SB261
2 203876-3
3 By Senator Chambliss
4 RFD: Judiciary
5 First Read: 23-FEB-21

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

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(b) Except as provided in subsection (c), a provision of a contract for the professional services of a

1 design professional entered into after the effective date of
2 this act is void and unenforceable if it does any of the
3 following:

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

13 (2) Requires the design professional to defend an
14 indemnitee or a party, including a third party, against a
15 professional liability claim.

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

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

22 (c) A contract for the professional services of a
23 design professional may do either or both of the following:

24 (1) Require the design professional to name an
25 additional insured on the design professional's general
26 liability insurance policy and automobile liability insurance
27 policy and provide any defense provided by those policies.

1 (2) Provide for the reimbursement of an indemnitee's
2 reasonable attorney fees in proportion to the design
3 professional's liability.

4 (d) (1) A contract for the professional services of a
5 design professional shall require the design professional to
6 perform the services with the professional skill and care
7 ordinarily provided by a competent design professional
8 practicing under the same or similar circumstances and
9 professional licenses as expeditiously as is prudent
10 considering the ordinary professional skill and care of a
11 competent design professional.

12 (2) If a standard of care provision in a contract
13 differs from subdivision (1), the standard of care provided in
14 subdivision (1) shall apply.

15 (e) Nothing in this section prohibits parties to a
16 contract for professional services of a design professional
17 from including and enforcing conditions that relate to the
18 scope, fees, and schedule of a project that is subject to the
19 contract, so long as the conditions are subject to the
20 requirements of subsection (d).

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

24 (g) Any provision of law to the contrary
25 notwithstanding, this section may not be interpreted to alter
26 or affect state joint and several liability law or workers'
27 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.