CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 130. LIABILITY PROVISIONS IN CERTAIN CONSTRUCTION CONTRACTS

Sec. 130.001. DEFINITION. In this chapter "construction contract" means a contract or agreement made and entered into by an owner, contractor, subcontractor, registered architect, licensed engineer, or supplier concerning the design, construction, alteration, repair, or maintenance of a building, structure, appurtenance, road, highway, bridge, dam, levee, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 3.14(a), eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 351, Sec. 2, eff. Sept. 1, 2001.

Sec. 130.002. COVENANT OR PROMISE VOID AND UNENFORCEABLE. (a) A covenant or promise in, in connection with, or collateral to a construction contract is void and unenforceable if the covenant or promise provides for a contractor who is to perform the work that is the subject of the construction contract to indemnify or hold harmless a registered architect, licensed engineer or an agent, servant, or employee of a registered architect or licensed engineer from liability for damage that:

(1) is caused by or results from:

(A) defects in plans, designs, or specifications prepared, approved, or used by the architect or engineer; or

(B) negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other expense that arises from personal injury, death, or property injury.

(b) A covenant or promise in, in connection with, or collateral to a construction contract other than a contract for a single family or multifamily residence is void and unenforceable if the covenant or promise provides for a registered architect or licensed engineer whose engineering or architectural design services are the subject of the construction contract to indemnify or hold harmless an owner or owner's agent or employee from liability for damage that is caused by or results from the negligence of an owner or an owner's agent or employee.

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

(d) Notwithstanding Subsection (c), an owner that is a party to a contract for engineering or architectural services related to an improvement to real property may require in the contract that the engineer or architect name the owner as an additional insured under any of the engineer's or architect's insurance coverage to the extent additional insureds are allowed under the policy and provide any defense to the owner provided by the policy to a named insured.

(e) Subsection (c) does not apply to a contract for services in which an owner contracts with an entity to provide both design and construction services.

(f) Subsection (c) does not apply to a covenant to defend a party, including a third party, for a claim of negligent hiring of the architect or engineer.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 3.14(a), eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 351, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 686 (H.B. 2116), Sec. 2, eff. September 1, 2021.

Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE. (a) A construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part must require that the architectural or engineering services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

(b) If a contract described by Subsection (a) contains a provision establishing a different standard of care than the standard described by Subsection (a):

(1) the provision is void and unenforceable; and

(2) the standard of care described by Subsection (a) applies to the performance of the architectural or engineering services.

(c) Section 130.004 does not limit the applicability of this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 686 (H.B. 2116), Sec. 3, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 3, eff. September 1, 2021.

Sec. 130.003. INSURANCE CONTRACT; WORKERS' COMPENSATION. This chapter does not apply to:

(1) an insurance contract; or

(2) a workers' compensation agreement.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 3.14(a), eff. Sept. 1, 1987.

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

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

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

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

Added by Acts 1987, 70th Leg., ch. 167, Sec. 3.14(a), eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 351, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 686 (H.B. 2116), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 838 (S.B. 219), Sec. 4, eff. September 1, 2021.

Sec. 130.005. APPLICATION OF CHAPTER. This chapter does not apply to a contract or agreement in which an architect or engineer or an agent, servant, or employee of an architect or engineer is indemnified from liability for:

(1) negligent acts other than those described by this chapter; or

(2) negligent acts of the contractor, any subcontractor, any person directly or indirectly employed by the contractor or a subcontractor, or any person for whose acts the contractor or a subcontractor may be liable.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 3.14(a), eff. Sept. 1, 1987.