

By: Representative Yancey

To: Judiciary A

HOUSE BILL NO. 1073

1 AN ACT TO DECLARE CERTAIN HOLD HARMLESS CLAUSES AND OTHER
 2 PROVISIONS RELATING TO INDEMNIFICATION, ADDITIONAL INSURED PARTIES
 3 AND STANDARDS OF CARE IN CONTRACTS FOR THE PROFESSIONAL SERVICES
 4 OF A DESIGN PROFESSIONAL VOID AND UNENFORCEABLE; TO DEFINE THE
 5 TERM "DESIGN PROFESSIONAL" AS A PERSON REGISTERED TO PRACTICE
 6 ARCHITECTURE, ENGINEERING, SURVEYING OR GEOLOGY IN MISSISSIPPI; TO
 7 REQUIRE AN ATTORNEY REPRESENTING A PARTY SUING A DESIGN
 8 PROFESSIONAL TO CERTIFY, WHEN FILING THE COMPLAINT, THAT THE
 9 ATTORNEY HAS CONSULTED WITH ANOTHER DESIGN PROFESSIONAL TO
 10 DETERMINE THE VALIDITY OF THE PARTY'S CLAIM; AND FOR RELATED
 11 PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** (1) As used in this section, the term "design
 14 professional" means a person or legal entity licensed or
 15 authorized to practice architecture, engineering, surveying or
 16 geology in this state.

17 (2) A covenant or promise in, in connection with, or
 18 collateral to a contract for the professional services of a design
 19 professional is void and unenforceable if the covenant or promise:

20 (a) Requires the design professional to indemnify or
 21 hold harmless another person or entity, including a third party,
 22 against liability for damage other than liability for damage to



23 the extent that the damage is caused by or results from an act,
24 committed by the design professional or another person or entity
25 for whom the design professional is legally liable, of negligence,
26 intentional tort, intellectual property infringement, or failure
27 to pay a subconsultant or supplier;

28 (b) Requires the design professional to defend another
29 person or entity, including a third party, against a claim arising
30 from the rendering of or failure to render professional services
31 by the design professional which is not otherwise covered by the
32 design professional's professional liability insurance policy. A
33 covenant or promise may provide for the reimbursement of an
34 indemnitee's reasonable attorneys' fees in proportion to the
35 design professional's liability, as finally adjudicated by the
36 finder of fact;

37 (c) Requires the design professional to name another
38 person or entity as an additional insured on the design
39 professional's professional liability insurance policy; or

40 (d) Subjects the design professional to a standard of
41 care different than that provided under subsection (3) of this
42 section.

43 (3) (a) A contract for the professional services of a
44 design professional must require a design professional to perform
45 services consistent with the professional skill and care
46 ordinarily provided by design professionals practicing in the same
47 or similar locality, under the same or similar circumstances, and



48 as expeditiously as is consistent with the professional skill and
49 care of a design professional.

50 (b) If the standard of care provision in a contract
51 differs from the skill and care required under paragraph (a) of
52 this subsection, the standard of care provided in paragraph (a)
53 applies.

54 (4) Notwithstanding subsection (2)(b), this section may not
55 be construed to prohibit a party from requiring, in a contract for
56 professional services with a design professional, that the design
57 professional name the party an additional insured on the design
58 professional's general liability insurance policy or automobile
59 liability insurance policy, or both, and provide any defense
60 provided by those policies.

61 (5) This section does not prohibit parties to a contract for
62 the professional services of a design professional from including
63 and enforcing conditions that relate to the scope, fees and
64 schedule of a project that is subject to the contract. However,
65 such conditions must be subject to the standard of care described
66 in subsection (3).

67 (6) This section does not affect the validity of any
68 insurance contract, workers' compensation or agreement issued by
69 an insurer.

70 (7) This section may not be construed to alter, amend or
71 affect the enforceability of Section 31-5-41.



72 (8) In an action brought against a design professional for
73 damages arising from the rendering of or failure to render
74 professional services by the design professional where expert
75 testimony is required to establish a violation of the design
76 professional's standard of care, the complaint in the action must
77 be accompanied by a certificate executed by the attorney for the
78 party alleging a cause of action declaring that the attorney has
79 reviewed the facts of the case and has consulted with at least one
80 (1) licensed professional practicing in the same area of practice
81 as the defendant who is competent and qualified to give expert
82 testimony as to the standard of care, and that based on such
83 review and consultation, the attorney has concluded that there is
84 a reasonable basis for commencement of the action.

85 **SECTION 2.** This act shall take effect and be in force from
86 and after July 1, 2023.

