

By: Senator(s) Wiggins

To: Business and Financial
Institutions; Accountability,
Efficiency, Transparency

SENATE BILL NO. 2133

1 AN ACT TO ENACT THE MISSISSIPPI DESIGN PROFESSIONALS ACT; TO
2 MAKE CONTRACT TERMS THAT REQUIRE DESIGN PROFESSIONALS TO INDEMNIFY
3 OR HOLD HARMLESS PERSONS OR ENTITIES FOR ANY DAMAGES OTHER THAN
4 DAMAGES THEY ACTUALLY CAUSED THROUGH NEGLIGENT OR INTENTIONAL
5 ACTIONS, REQUIRES DESIGN PROFESSIONALS TO DEFEND ANOTHER PERSON OR
6 ENTITY AGAINST CLAIMS ARISING FROM ISSUES RELATED TO RENDERED OR
7 NOT RENDERED PROFESSIONAL SERVICES, REQUIRES DESIGN PROFESSIONALS
8 TO NAME ANOTHER PERSON OR ENTITY AS AN ADDITIONAL INSURED PARTY ON
9 THEIR PROFESSIONAL LIABILITY INSURANCE POLICY, OR SUBJECTS DESIGN
10 PROFESSIONALS TO A STANDARD OF CARE DIFFERENT THAN THE
11 PROFESSIONAL STANDARD, TO ALL BE VOID AND UNENFORCEABLE; AND FOR
12 RELATED PURPOSES.

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

14 **SECTION 1.** This act shall be known and may be cited as "The
15 Mississippi Design Professionals Act."

16 **SECTION 2.** (1) As used in this section, the term "design
17 professional" is defined as any person or legal entity who is
18 licensed or authorized in this state to practice architecture,
19 engineering, surveying, or geology.

20 (2) Any covenant or promise, in connection with, or
21 collateral to, a contract for professional services of a design
22 professional is void and unenforceable if the covenant or promise:



23 (a) Requires the design professional to indemnify or
24 hold harmless another person or entity, including a third party,
25 against liability for any damage other than liability for damage
26 to the extent that the damage is caused by or results from an act
27 of negligence, intentional tort, intellectual property
28 infringement, or failure to pay a subconsultant or supplier,
29 committed by the design professional or another person or entity
30 for whom the design professional is legally liable; or

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

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

43 (d) Subjects the design professional to a standard of
44 care different than that provided under subsection (3) hereof.

45 (3) A contract for professional services of a design
46 professional must require a design professional to perform
47 services consistent with the professional skill and care



48 ordinarily provided by design professionals practicing in the same
49 or similar locality under the same or similar circumstances, and
50 as expeditiously as is consistent with such professional skill and
51 care of a design professional. If the Standard of Care provision
52 in a contract differs from the skill and care required under
53 subsection (3) of this section, the standard of care provided in
54 subsection (3) of this section shall apply.

55 (4) Notwithstanding subsection (2)(b) of this section,
56 nothing herein shall be construed to prohibit a party from
57 requiring in a contract for professional services with a design
58 professional that the design professional name the party an
59 additional insured on the design professional's general liability
60 insurance policy and/or automobile liability insurance policy and
61 provide any defense provided by said policies.

62 (5) Nothing in this section prohibits parties to a contract
63 for professional services of design professionals from including
64 and enforcing conditions that relate to the scope, fees, and
65 schedule of a project that is subject to the contract; however,
66 such conditions shall be subject to the standard of care described
67 in subsection (3) of this section.

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

71 (7) The provisions of this section are not intended to
72 alter, amend, or affect Section 31-5-41, Mississippi Code of 1972.



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

88 **SECTION 3.** This act shall take effect and be in force from
89 and after July 1, 2024.

