

SUBJECT: Barring owner indemnification by architects and engineers

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 5 ayes — Hunter, Alvarado, Moffat, Tillery, Zbranek

0 nays

4 absent — Hilbert, Culberson, Hartnett, Sadler

SENATE VOTE: On final passage, April 11 — 30-1 (Barrientos)

WITNESSES: *(On House companion bill, HB 619 by R. Lewis):*

For — Steve Stagner and William Goldston, Consulting Engineers Council of Texas

Against — None

BACKGROUND: Under Civil Practices and Remedies Code, chapter 130, a covenant or promise made in a contract that would require the other party to indemnify or hold harmless a registered architect, registered engineer or their agents or employees is unenforceable when an injury results from a defect in the plans or design or the negligence of the architect or engineer.

DIGEST: SB 341 would amend Civil Practices and Remedies Code, chapter 130, to provide that in a contract for a structure other than a single or multifamily residence, a provision requiring the architect or engineer to indemnify or hold harmless the owner, owner's agent or employee for an action resulting from the negligence of that owner, agent or employee is unenforceable.

SB 341 would allow a contract provision indemnifying or holding harmless the owner against liability for the personal injury or death of the architect, engineer or their agents or employees to be enforceable.

The bill would take immediate effect if approved by two-thirds of the membership of each house and would apply to any contract entered into after the effective date.

**SUPPORTERS
SAY:**

Currently, architects and engineers are not allowed to contract away liability for their negligence or defects in their work, but the inverse is not true. An owner or the owner's contractor can require an architect or engineer to indemnify the owner for the owner's negligence. Such contracts are not covered by most professional malpractice insurance, so they allow an owner to get at the personal assets of the engineer or architect. There is no reason hold that indemnification contracts that benefit an architect or engineer are invalid, but allow the same contracts that harm the architect or engineer for actions that they had no part of.

The bill would not allow an architect or engineer to hold such indemnification provisions unenforceable when designing residences.

In no way would this legislation protect an engineer or architect from being held liable when an action is caused by the negligence of the architect or engineer. It would only apply when an injury occurs because of the negligence of owner or owner's agent or employee.

**OPPONENTS
SAY:**

This bill could adversely affect the recovery of persons injured because often it is the architect or engineer who is in the best position to know what potential problems might exist with a construction project. While the negligence of the architect or engineer might not have directly caused the injury, they should be held to some degree of care.

NOTES:

HB 2443 by Hilbert, which would make indemnification agreements among owners, contractors and subcontractors unenforceable, passed the House on May 3 and has been referred to the Senate Economic Development Committee.