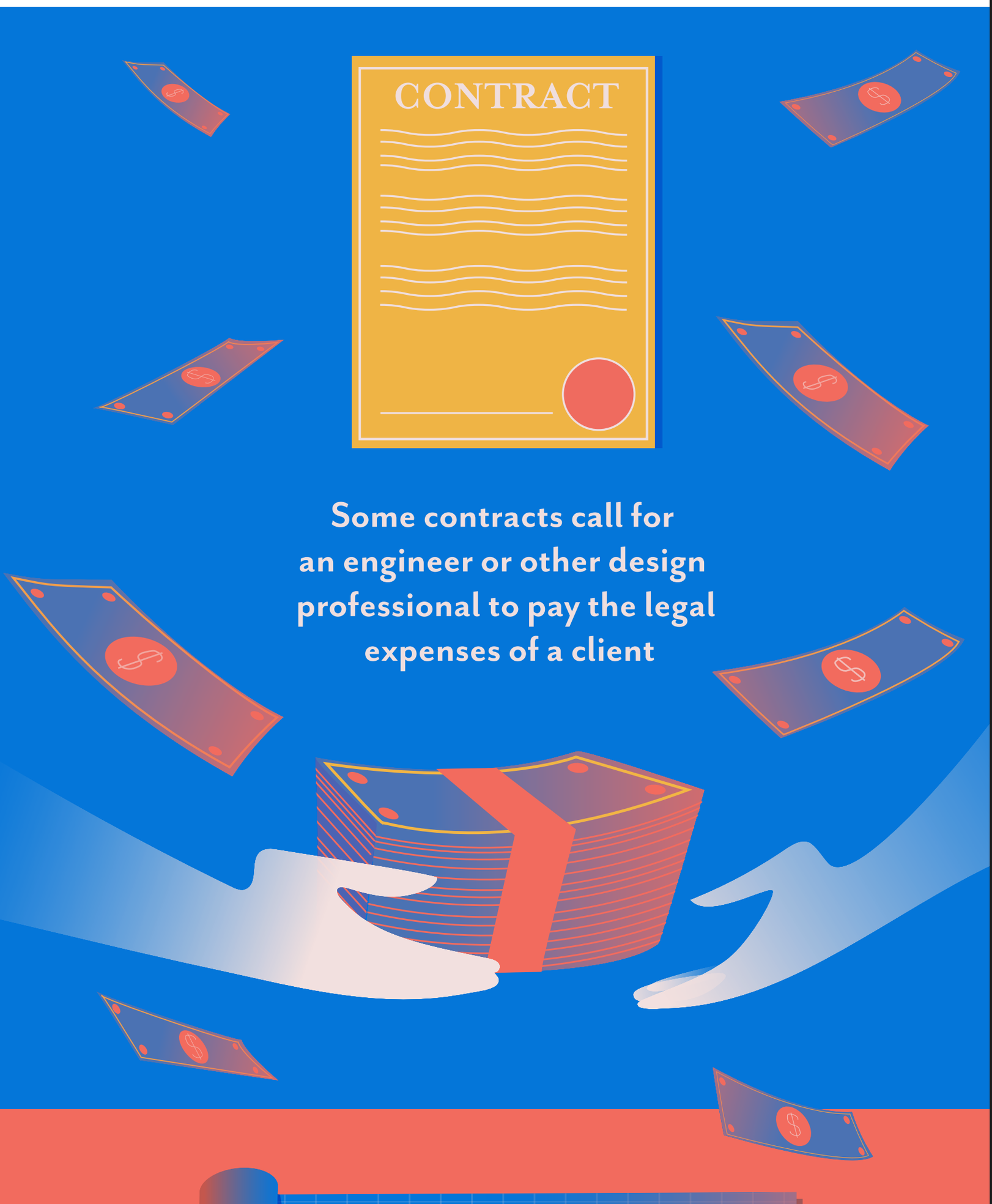
ACEC

American Council of Engineering Companies



Some contracts call for an engineer or other design professional to pay the legal expenses of a client

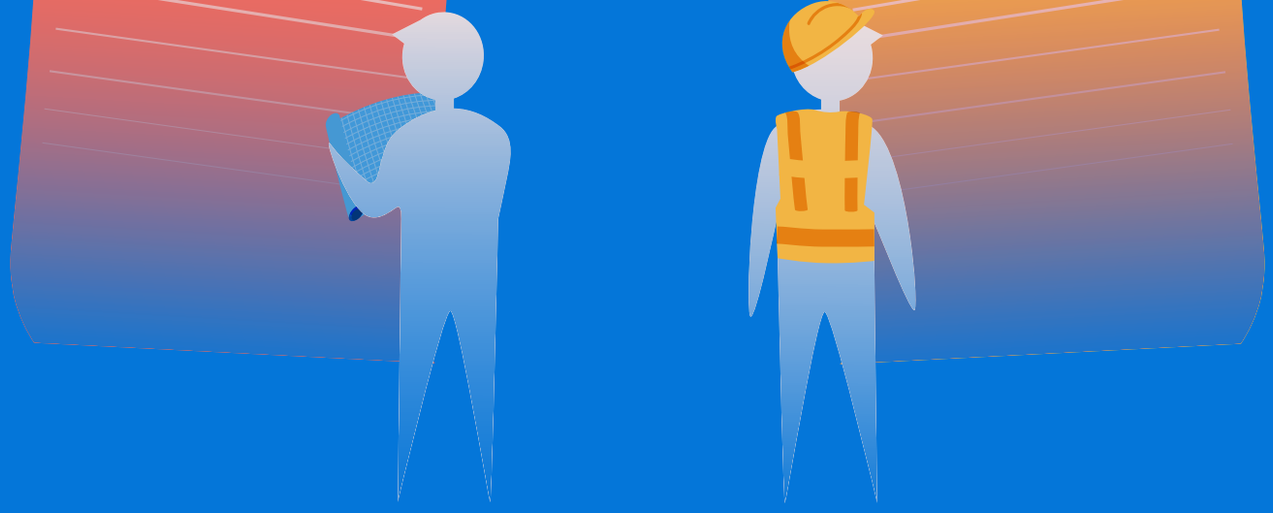
EVEN IF THE ENGINEER DIDN'T DO ANYTHING WRONG.

This "duty to defend" clause is FUNDAMENTALLY UNFAIR.

If a client is sued by a third party the "duty to defend"could mean that an engineer would have to pay the client's legal fees in addition to its own

WITHOUT ANY FINDING THAT THE ENGINEER WAS AT FAULT.

This obligation could
bankrupt the engineering firm.
ENGINEER INSURANCE POLICY
CONTRACTOR INSURANCE POLICY



Engineers and other design professionals are not contractors, and their insurance coverage is not the same.

Professional liability insurance for design professionals only covers damages to the extent caused by their own professional negligence.

Duty to defend obligations not tied to a finding of negligence are unlikely to be covered.

This could prove

FINANCIALLY DISASTROUS

especially for small
firms on large projects.

It's important for engineers to

ALWAYS PUSH BACK HARD

on a "duty to defend" clause in their contract.

This clause is

UNACCEPTABLE

and

UNINSURABLE.

It should be

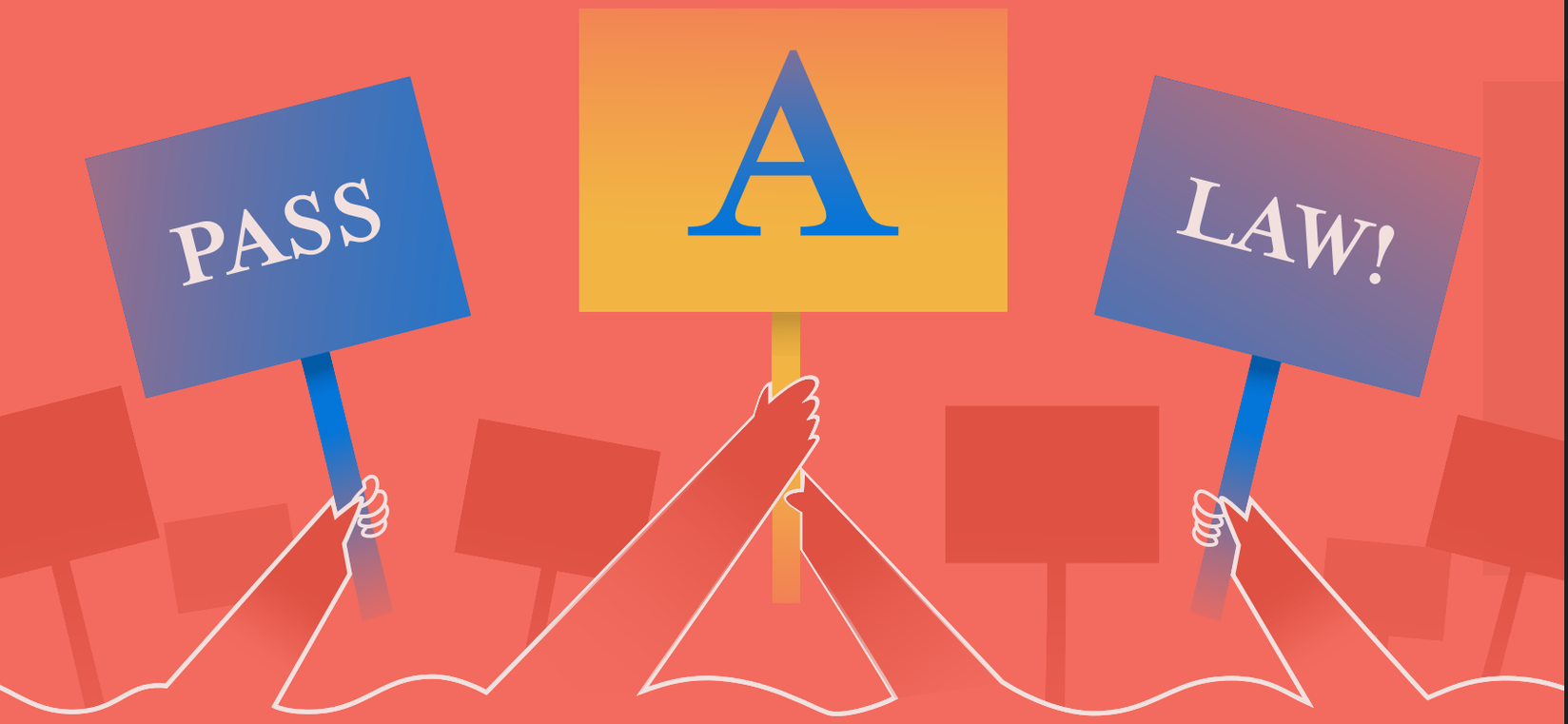
NEGOTIATED OUT

of the contract.

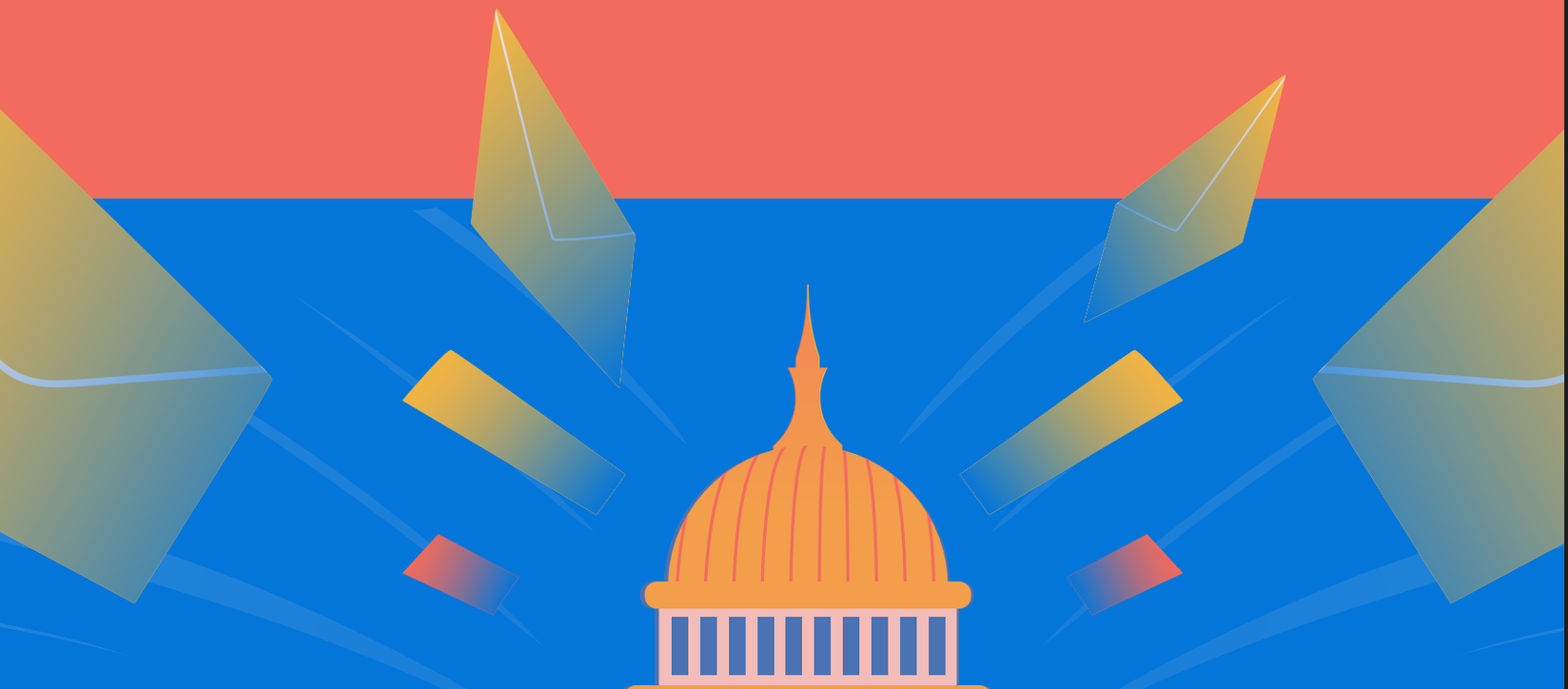
But that's not all.

The ONLY WAY

to protect all design professionals
from this financially devastating risk is to do
what a number of states have done already:



against the “duty to defend” contractual provision.



So we urge you to share this message with your state legislators and encourage them to

MAKE "DUTY TO DEFEND VOID & UNENFORCEABLE

in your state.

It's good public policy and the right thing to do.

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