

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1227

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DATE	D-PG	OFFICIAL STATUS
03/11/2013	768	Introduction and first reading Referred to Judiciary

A bill for an act  
relating to commerce; regulating indemnification agreements and agreements  
to insure in building and construction contracts; amending Minnesota Statutes  
2012, sections 337.02; 337.04; 337.05, subdivisions 2, 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 337.02, is amended to read:

**337.02 UNENFORCEABILITY OF CERTAIN AGREEMENTS.**

An indemnification agreement contained in, or executed in connection with, a  
building and construction contract is unenforceable except to the extent that: (1) the  
underlying injury or damage is attributable to the negligent or otherwise wrongful act or  
omission, including breach of a specific contractual duty, of the promisor or the promisor's  
independent contractors, agents, employees, or delegates; or (2) an owner, a responsible  
party, or a governmental entity agrees to indemnify a contractor directly or through another  
contractor with respect to strict liability under environmental laws; provided, however,  
that if an indemnification agreement requires that a promisor indemnify or hold harmless a  
promisee from the promisee's negligence, then the indemnification agreement covering  
the promisee's negligence is valid to the extent the promisor promises to obtain the  
specifically identified insurance types and limits specified by the promisee in a building  
and construction contract between the promisor and promisee pursuant to section 337.05.

Sec. 2. Minnesota Statutes 2012, section 337.04, is amended to read:

**337.04 VALIDITY OF OTHER AGREEMENTS.**

Sections 337.01 to 337.05 do not affect the validity of any insurance contract  
including, without limitation, general liability insurance policies, professional liability

2.1 insurance policies, builders risk policies, property policies, workers' compensation  
2.2 policies, owner or contractor controlled insurance programs or policies, workers'  
2.3 compensation agreement agreements or insurance policies, construction bond bonds, or  
2.4 other agreement lawfully issued by an insurer or bonding company relating to or regarding  
2.5 a building and construction contract.

2.6 Sec. 3. Minnesota Statutes 2012, section 337.05, subdivision 2, is amended to read:

2.7 Subd. 2. **Indemnification for breach of agreement.** If:

2.8 (a) a promisor agrees in a building and construction contract to provide ~~specifie~~ the  
2.9 types and limits of insurance specified in the building and construction contract between  
2.10 the promisor and the promisee; and

2.11 (b) a claim arises within the scope of the specified insurance; and

2.12 (c) the promisor did not obtain and keep in force the specified insurance;

2.13 then, as to that claim and regardless of section 337.02, the promisee shall have  
2.14 ~~indemnification from~~ recourse against the promisor to the same extent as the specified  
2.15 insurance, and indemnification from the promisor to the extent coverage would be  
2.16 provided by the specifically identified types and limits of insurance specified by the  
2.17 promisee in its building and construction contract with the promisor.

2.18 For purposes of this subdivision, if the promisor claims that it obtained and kept in  
2.19 force the specified insurance, but the insurance did not provide coverage for the claim  
2.20 at issue, the promisor has the burden to show that the claim was not within the scope of  
2.21 the specified insurance.

2.22 Sec. 4. Minnesota Statutes 2012, section 337.05, subdivision 3, is amended to read:

2.23 Subd. 3. **When indemnification not available.** The indemnification stated in  
2.24 subdivision 2 is not available if:

2.25 (a) the specified insurance was not reasonably available in the market; and

2.26 (b) the promisor so informed the other party to the agreement to insure in a written  
2.27 notice before signing the agreement and did not withdraw the written notice in the  
2.28 indemnity agreement, or signed the agreement subject to a written exception as to the  
2.29 nonavailable insurance.