

## CHAPTER 337

## BUILDING AND CONSTRUCTION CONTRACTS

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**337.01 BUILDING AND CONSTRUCTION CONTRACTS; INDEMNIFICATION AGREEMENTS.**

Subdivision 1. **Definition.** As used in sections 337.01 to 337.05 the following terms have the meanings assigned to them.

Subd. 2. **Building and construction contract.** "Building and construction contract" means a contract for the design, construction, alteration, improvement, repair or maintenance of real property, highways, roads or bridges. The term does not include contracts for the maintenance or repair of machinery, equipment or other such devices used as part of a manufacturing, converting or other production process, including electric, gas, steam, and telephone utility equipment used for production, transmission, or distribution purposes.

Subd. 3. **Indemnification agreement.** "Indemnification agreement" means an agreement by the promisor to indemnify or hold harmless the promisee against liability or claims of liability for damages arising out of bodily injury to persons or out of physical damage to tangible or real property.

Subd. 4. **Promisee.** "Promisee" includes that party's independent contractors, agents, employees or indemnitees.

**History:** 1983 c 333 s 1; 1984 c 598 s 1-3

**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 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.

**History:** 1983 c 333 s 2; 1984 c 598 s 4

**337.03 NONAPPLICATION TO CERTAIN AGREEMENTS.**

Sections 337.01 to 337.05 do not apply to an agreement by which a promisor that is a party to a building and construction contract indemnifies a person, firm, corporation, or public agency for whose account the construction is not being performed, but who, as an accommodation, permits the promisor or the promisor's independent contractors, agents, employees, or delegates to enter upon or adjacent to its property for the purpose of performing the building and construction contract. Sections 337.01 to 337.05 do not apply to an indemnification agreement that is an integral part of an offer to compromise or settlement of a disputed claim, if:

- (a) the settlement is based on consideration;
- (b) the dispute relates to an alleged event that is related to a construction contract and that occurred before the settlement is made; and
- (c) the indemnification relates only to claims that have arisen or may arise from the past event.

**History:** 1983 c 333 s 3; 1984 c 598 s 5

**337.04 VALIDITY OF OTHER AGREEMENTS.**

Sections 337.01 to 337.05 do not affect the validity of any insurance contract, workers' compensation agreement, construction bond, or other agreement lawfully issued by an insurer or bonding company.

**History:** 1983 c 333 s 4

**337.05 AGREEMENTS TO INSURE.**

Subdivision 1. **Agreements valid.** Sections 337.01 to 337.05 do not affect the validity of agreements whereby a promisor agrees to provide specific insurance coverage for the benefit of others.

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

- (a) a promisor agrees to provide specific types and limits of insurance; and
- (b) a claim arises within the scope of the specified insurance; and
- (c) the promisor did not obtain and keep in force the specified insurance;

then, as to that claim and regardless of section 337.02, the promisee shall have indemnification from the promisor to the same extent as the specified insurance.

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

- (a) the specified insurance was not reasonably available in the market; and
- (b) the promisor so informed the other party to the agreement to insure before signing the agreement, or signed the agreement subject to a written exception as to the nonavailable insurance.

Subd. 4. **Indemnification regarding deductible amounts.** If:

- (1) a promisor agrees to provide specific types and limits of insurance; and
- (2) a claim arises within the scope of the specified insurance; and
- (3) the insurance provided by the promisor includes a self-insured retention or a deductible amount;

then, as to that claim and regardless of section 337.02, the promisee shall have indemnification from the promisor to the full extent of the deductible amount or self-insured retention.

Subd. 5. **No waiver by certificates.** A promisor's obligation to provide specified insurance is not waived by either or both of the following:

- (1) a promisee's failure to require or insist upon certificates or other evidence of insurance;
- (2) a promisee's acceptance of a certificate or other evidence of insurance that shows a variance from the specified coverage.

**History:** 1983 c 333 s 5; 1984 c 598 s 6-8

**337.06 COMMON LAW RIGHTS.**

Subject to section 337.02, sections 337.01 to 337.06 do not in any way restrict rights to indemnification that the common law may provide.

**History:** 1984 c 598 s 9