CHAPTER 337

BUILDING AND CONSTRUCTION CONTRACTS

337.01 BUILDING AND CONSTRUCTION CONTRACTS; INDEMNIFICATION AGREEMENTS.
337.02 UNENFORCEABILITY OF CERTAIN AGREEMENTS.
337.03 NONAPPLICATION TO CERTAIN AGREEMENTS.
337.04 VALIDITY OF OTHER AGREEMENTS.
337.05 AGREEMENTS TO INSURE.
337.06 COMMON LAW RIGHTS.
337.10 BUILDING AND CONSTRUCTION CONTRACTS; PROHIBITED PROVISIONS.

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, defend, 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; 2023 c 53 art 7 s 4*

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 delegatees; 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.

History: *1983 c 333 s 2; 1984 c 598 s 4; 1999 c 87 s 1*

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 delegatees 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.** (a) Except as otherwise provided in paragraph (b), 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.

(b) A provision that requires a party to provide insurance coverage to one or more other parties, including third parties, for the negligence or intentional acts or omissions of any of those other parties, including third parties, is against public policy and is void and unenforceable.

(c) Paragraph (b) does not affect the validity of a provision that requires a party to provide or obtain workers' compensation insurance, construction performance or payment bonds, builder's risk policies, owner or contractor-controlled insurance programs or policies, or project-specific insurance for claims arising out of the promisor's negligent acts or omissions or the negligent acts or omissions of the promisor's independent contractors, agents, employees, or delegatees.

(d) Paragraph (b) does not affect the validity of a provision that requires the promisor to provide or obtain insurance coverage for the promisee's vicarious liability, or liability imposed by warranty, arising out of the acts or omissions of the promisor.

(e) Paragraph (b) does not apply to building and construction contracts for work within 50 feet of public or private railroads, or railroads regulated by the Federal Railroad Administration.

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; 2013 c 88 s 1; 2023 c 53 art 7 s 5*

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*

337.10 BUILDING AND CONSTRUCTION CONTRACTS; PROHIBITED PROVISIONS.

Subdivision 1. **Application of laws of another state.** Provisions contained in, or executed in connection with, a building and construction contract to be performed in Minnesota making the contract subject to the laws of another state or requiring that any litigation, arbitration, or other dispute resolution process on the contract occur in another state are void and unenforceable.

Subd. 2. **Waiver of lien or claim.** Provisions contained in, or executed in connection with, a building and construction contract requiring a contractor, subcontractor, or material supplier to waive the right to a mechanics lien or to a claim against a payment bond before the person has been paid for the labor or materials or both that the person furnished are void and unenforceable. This provision shall not affect the validity of a waiver as to any third party who detrimentally relies upon the waiver.

Subd. 3. **Prompt payment to subcontractors.** A building and construction contract shall be deemed to require the prime contractor and all subcontractors to promptly pay any subcontractor or material supplier contract within ten days of receipt by the party responsible for payment of payment for undisputed services provided by the party requesting payment, including payments under subdivision 4. The contract shall be deemed to require the party responsible for payment to pay interest of 1-1/2 percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the party responsible for payment shall pay the actual penalty due to the party requesting payment. A party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment must be awarded its costs and disbursements, including attorney fees incurred in bringing the action. If an undisputed payment is not received within ten days, the prime contractor or subcontractor of any tier that

has not received the undisputed payment may suspend work under the building and construction contract until the undisputed payment is received.

Subd. 4. **Progress payments and retainages.** (a) Unless the building and construction contract provides otherwise, the owner or other persons making payments under the contract must make progress payments monthly as the work progresses. Payments shall be based upon estimates of work completed as approved by the owner or the owner's agent. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

(b) Retainage on a building and construction contract may not exceed five percent. An owner or owner's agent may reduce the amount of retainage and may eliminate retainage on any monthly contract payment if, in the owner's opinion, the work is progressing satisfactorily. If the owner reduces the amount of retainage, the contractor must reduce retainage for any subcontractors at the same rate. Nothing in this subdivision is intended to require that retainage be withheld in any building or construction contract.

(c) The owner or the owner's agent must release all retainage no later than 60 days after substantial completion subject to the terms of this subdivision. For purposes of this subdivision, "substantial completion" shall be determined as provided in section 541.051, subdivision 1, paragraph (a).

(d) A contractor must pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage, unless there is a dispute about the work under a subcontract, in which case the contractor must pay out retainage to any party whose work is not involved in the dispute. If there is a dispute about the work under a subcontract, the contractor must pay out retainage to any subcontractor whose work is not involved in the dispute, and must provide a written statement detailing the amount and reason for the withholding to the affected subcontractor.

(e) After substantial completion, an owner or owner's agent may withhold no more than:

(1) 250 percent of the cost to correct or complete work known at the time of substantial completion; and

(2) one percent of the value of the contract or $500, whichever is greater, pending completion and submission of all final paperwork by the contractor or subcontractor. For purposes of this subdivision, "final paperwork" means documents required to fulfill contractual obligations, including, but not limited to, operation manuals, payroll documents for projects subject to prevailing wage requirements, and the withholding exemption certificate required by section 270C.66.

If the owner or the owner's agent withholds payment under this paragraph, the owner or the owner's agent must promptly provide a written statement detailing the amount and basis of withholding to the contractor. The owner or the owner's agent and the contractor must provide a copy of this statement to any subcontractor that requests it. Any amounts withheld under clause (1) must be paid within 60 days after completion of the work. Any amounts withheld under clause (2) must be paid within 60 days after submission of all final paperwork.

(f) Withholding retainage for warranty work is prohibited. This provision does not waive any rights for warranty claims.

(g) This subdivision does not apply to a public agency as defined in section 15.71, subdivision 3.

(h) This subdivision does not apply to contracts for professional services as defined in sections 326.02 to 326.15.

(i) Nothing in this section requires payment for a portion of a contract that is not complete or for which an invoice has not been submitted.

Subd. 5. **Definition.** For the purpose of this section, "building and construction contract" has the meaning given the term in section 337.01.

History: *1997 c 127 s 1; 1998 c 289 s 1,2; 1999 c 116 s 2; 2007 c 140 art 8 s 30; art 13 s 4; 2009 c 66 s 1,2; 2016 c 133 s 1,2; 1Sp2019 c 7 art 9 s 13*