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# State of Minnesota
# HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH SESSION**

## HOUSE FILE NO. 578

February 5, 2009
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The bill was read for the first time and referred to the Committee on Commerce and Labor

A bill for an act

relating to commerce; regulating building and construction contracts and indemnification agreements; amending Minnesota Statutes 2008, sections 337.01; 337.02; 337.05, subdivision 1; 337.10.

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

Section 1. Minnesota Statutes 2008, section 337.01, is amended to read:

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

Subdivision 1. **Definition.** As used in sections 337.01 to 337.05 and 337.10, 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. 2a. **Professional services contract.** "Professional services contract" means a contract for services that are provided by a person licensed under sections 326.02 to 326.15.

Subd. 3. **Indemnification agreement.** "Indemnification agreement" means an agreement by the promisor to indemnify ~~or,~~ hold harmless, or defend 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 or for economic loss.

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

Sec. 2. Minnesota Statutes 2008, section 337.02, is amended to read:

**337.02 UNENFORCEABILITY OF CERTAIN AGREEMENTS.**

An indemnification agreement contained in, or executed in connection with, a professional services contract or 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.

Sec. 3. Minnesota Statutes 2008, section 337.05, subdivision 1, is amended to read:

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

Sec. 4. Minnesota Statutes 2008, section 337.10, is amended to read:

**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 or a professional services 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 or a professional services 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 or a professional services 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. 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. This subdivision does not apply to construction of or improvements to residential real estate as defined in section 326B.802, subdivision 13, or to construction of or improvements to attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

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) Unless the building and construction contract provides otherwise, an owner or owner's agent may reserve as retainage from any progress payment on a building and construction contract an amount not to exceed five percent of the payment. 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.

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

(d) This subdivision does not apply to construction of or improvements to residential real estate, as defined in section 326B.802, subdivision 13, or to construction of or improvements to attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

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

Sec. 5. **EFFECTIVE DATE; APPLICATION.**

Sections 1 to 4 are effective August 1, 2009, and apply to contracts and agreements entered into on or after that date.