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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 865

01/25/2023 Authored by Hollins, O'Neill, Huot, Vang and Mekeland The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy

1.1 A bill for an act
1.2 relating to contracts; modifying and clarifying requirements relating to building
1.3 and construction contracts; amending Minnesota Statutes 2022, sections 15.71, by
1.4 adding subdivisions; 15.72, by adding a subdivision; 337.01, subdivision 3; 337.05,
1.5 subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2022, section 15.71, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 1a. Indemnification agreement. Indemnification agreement means an agreement
1.10 by the promisor to indemnify, defend, or hold harmless the promisee against liability or
1.11 claims of liability for damages arising out of bodily injury to persons or out of physical
1.12 damage to tangible or real property.

1.13 Sec. 2. Minnesota Statutes 2022, section 15.71, is amended by adding a subdivision to
1.14 read:

1.15 Subd. 1b. Promisee. Promisee includes that party's independent contractors, agents,
1.16 employees, or indemnitees.

1.17 Sec. 3. Minnesota Statutes 2022, section 15.72, is amended by adding a subdivision to
1.18 read:

1.19 Subd. 3. Unenforceability of certain agreements. (a) An indemnification agreement
1.20 contained in, or executed in connection with, a contract for a public improvement is
1.21 unenforceable except to the extent that:

2.1 (1) the underlying injury or damage is attributable to the negligent or otherwise wrongful  
 2.2 act or omission, including breach of a specific contractual duty, of the promisor or the  
 2.3 promisor's independent contractors, agents, employees, or delegates; or

2.4 (2) an owner, a responsible party, or a governmental entity agrees to indemnify a  
 2.5 contractor directly or through another contractor with respect to strict liability under  
 2.6 environmental laws.

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

2.11 (c) Paragraph (b) does not affect the validity of a provision that requires a party to provide  
 2.12 or obtain workers' compensation insurance, construction performance or payment bonds,  
 2.13 builder's risk policies, or owner or contractor-controlled insurance programs or policies.

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

2.17 (e) Paragraph (b) does not apply to building and construction contracts for work within  
 2.18 50 feet of public or private railroads, or railroads regulated by the Federal Railroad  
 2.19 Administration.

2.20 Sec. 4. Minnesota Statutes 2022, section 337.01, subdivision 3, is amended to read:

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

2.25 Sec. 5. Minnesota Statutes 2022, section 337.05, subdivision 1, is amended to read:

2.26 Subdivision 1. **Agreements valid.** (a) Except as otherwise provided in paragraph (b),  
 2.27 sections 337.01 to 337.05 do not affect the validity of agreements whereby a promisor agrees  
 2.28 to provide specific insurance coverage for the benefit of others.

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

3.1 (c) Paragraph (b) does not affect the validity of a provision that requires a party to provide  
3.2 or obtain workers' compensation insurance, construction performance or payment bonds,  
3.3 ~~or project-specific insurance, including, without limitation,~~ builder's risk policies, or owner  
3.4 or contractor-controlled insurance programs or policies.

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

3.8 (e) Paragraph (b) does not apply to building and construction contracts for work within  
3.9 50 feet of public or private railroads, or railroads regulated by the Federal Railroad  
3.10 Administration.

3.11 Sec. 6. **EFFECTIVE DATE.**

3.12 Sections 1 to 5 are effective the day following final enactment and apply to agreements  
3.13 entered into on or after that date.