

13-8-1 Construction industry -- Agreements to indemnify.

(1) For purposes of this section:

(a) "Construction contract" means a contract or agreement relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvement to real property, including moving, demolition, or excavating, connected to the construction contract between:

- (i) a construction manager;
- (ii) a general contractor;
- (iii) a subcontractor;
- (iv) a sub-subcontractor;
- (v) a supplier; or
- (vi) any combination of persons listed in Subsections (1)(a)(i) through (v).

(b) "Indemnification provision" means a covenant, promise, agreement or understanding in, in connection with, or collateral to a construction contract requiring the promisor to insure, hold harmless, indemnify, or defend the promisee or others against liability if:

- (i) the damages arise out of:
 - (A) bodily injury to a person;
 - (B) damage to property; or
 - (C) economic loss; and
- (ii) the damages are caused by or resulting from the fault of the promisee, indemnitee, others, or their agents or employees.

(2) Except as provided in Subsection (3), an indemnification provision in a construction contract is against public policy and is void and unenforceable.

(3) When an indemnification provision is included in a contract related to a construction project between an owner and party listed in Subsection (1)(a), in any action for damages described in Subsection (1)(b)(i), the fault of the owner shall be apportioned among the parties listed in Subsection (1)(a) pro rata based on the proportional share of fault of each of the parties listed in Subsection (1)(a), if:

- (a) the damages are caused in part by the owner; and
- (b) the cause of the damages defined in Subsection (1)(b)(i) did not arise at the time and during the phase of the project when the owner was operating as a party defined in Subsection (1)(a).

(4) This section may not be construed to affect or impair the obligations of contracts or agreements, that are in existence at the time this section or any amendment to this section becomes effective.

Amended by Chapter 113, 1997 General Session