Chapter 22B.

Contracts Against Public Policy.

Article 1.

Invalid Agreements.

§ 22B-1. Certain indemnity and defend agreements invalid.

(a) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the promisee, its independent contractors, agents, employees, or indemnitees, is against public policy, void and unenforceable. Nothing contained in this subsection shall prevent or prohibit a contract, promise or agreement whereby a promisor shall indemnify or hold harmless any promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the sole negligence of the promisor, its agents or employees.

(b) Provisions in, or in connection with, a construction agreement or design professional agreement purporting to require a promisor to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, indemnitees, or any other person or entity against losses, damages, or expenses are against public policy, void, and unenforceable unless the the fault of the promisor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(c) Provisions in, or in connection with, a construction agreement that includes design professional services or a design professional agreement purporting to require a design professional to defend a promisee, the promisee's independent contractors, agents, or employees, the promisee's indemnitees, or any other person or entity against liability or claims for damages or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the promisor, the promisee, or their derivative parties, whether the claim is alleged or brought in tort or contract, is against public policy, void, and unenforceable.

(d) Nothing in this section shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subsections (a) and (b) of this section attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the promisee to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the promisee by law or by contract, if the fault of the promisor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

(e) This section shall not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer. This section shall not apply to lien or bond claims asserted under Chapter 44A of the General Statutes.

(f) For purposes of this section, the following definitions shall apply:

(1) Construction agreement. – Any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

(2) Defend. – Any obligation to pay for or furnish counsel at the expense of the promisor to defend a promisee, the promisee's independent contractors, agents,

employees, or indemnitees against claims alleged or brought against the promisee, the promisee's independent contractors, agents, employees, or indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

(3) Derivative parties. – With respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

(4) Design professional. – A person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.

(5) Design professional agreement. – Any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

(6) Design professional services. – A service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.

(7) Fault. – A breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

(8) Subcontractor. – Any person or entity, of any tier, providing labor or material through the promisor for use on the project at issue in the applicable construction agreement or design professional agreement. (1979, c. 597, s. 1; 1991, c. 636, s. 3; 1993, c. 553, s. 12; 2019-92, s. 1.)

§ 22B-2. Contracts to improve real property.

A provision in any contract, subcontract, or purchase order for the improvement of real property in this State, or the providing of materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process is located in another state. (1993, c. 294, s. 2.)

§ 22B-3. Contracts with forum selection provisions.

Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises. (1993, c. 436, s. 2; 1995, c. 100, s. 1.)

§ 22B-4. Prohibition on contract provisions restricting whistle-blowing related to State Health Plan.

A provision in any contract is void and against public policy if it prohibits an employee's or contractor's ability to report wrongdoing under G.S. 135-48.15 related to the State Health Plan. (2012-192, s. 2.)

§ 22B-5. Waiver of liens or claims as a condition of progress payment invalid.

(a) Provisions in lien waivers, releases, construction agreements as defined in G.S. 22B-1(f)(1), or design professional agreements as defined in G.S. 22B-1(f)(5) purporting to require a promisor to submit a waiver or release of liens or claims as a condition of receiving interim or progress payments due from a promisee under a construction agreement or design professional agreement are void and unenforceable unless limited to the specific interim or progress payment actually received by the promisor in exchange for the lien waiver.

(b) This section does not apply to the following:

(1) Lien waivers or releases for final payments.

(2) Agreements to settle and compromise disputed claims after the claim has been identified by the claimant in writing regardless of whether the promisor has initiated a civil action or arbitration proceeding. (2022-1, s. 3(a).)

§ 22B-6. Reserved for future codification purposes.

§ 22B-7. Reserved for future codification purposes.

§ 22B-8. Reserved for future codification purposes.

§ 22B-9. Reserved for future codification purposes.