CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.69] *(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] *(Part 4 enacted 1872.)*

TITLE 12. INDEMNITY [2772 - 2784.5] *(Title 12 enacted 1872.)*

2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

(Enacted 1872.)

[2773.] Section Twenty-seven Hundred and Seventy-three. An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

(Amended by Code Amendments 1873-74, Ch. 612.)

2774. An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

(Enacted 1872.)

2775. An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.

(Enacted 1872.)

2776. An agreement to indemnify several persons applies to each, unless a contrary intention appears.

(Enacted 1872.)

2777. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately, to every person injured by such act.

(Enacted 1872.)

2778. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive

evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

(Enacted 1872.)

2779. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

(Enacted 1872.)

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable; provided, however, that this section shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) (1) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into before January 1, 2013, that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(2) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into on or after January 1, 2013, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(c) (1) Except as provided in subdivision (d) and Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract entered into on or after January 1, 2013, with the owner of privately owned real property to be improved and as to which the owner is not acting as a contractor or supplier of materials or equipment to the work, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the owner from, liability are unenforceable to the extent of the active negligence of the owner, including that of its employees.

(2) For purposes of this subdivision, an owner of privately owned real property to be improved includes the owner of any interest therein, other than a mortgage or other interest that is held solely as security for performance of an obligation.

(3) This subdivision shall not apply to a homeowner performing a home improvement project on his or her own single family dwelling.

(d) For all construction contracts, and amendments thereto, entered into after January 1, 2009, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to insure or indemnify, including the cost to defend, the builder, as defined in Section 911, or the general contractor or contractor not affiliated with the builder, as described in subdivision (b) of Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the builder or contractor or the builder's or contractor's other agents, other servants, or other independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. Nothing in this subdivision shall prevent any party from exercising its rights under subdivision (a) of Section 910. This subdivision shall not affect the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571. Nor shall this subdivision affect the obligations of a builder or subcontractor pursuant to Title 7 (commencing with Section 895) of Part 2 of Division 2.

(e) Subdivision (d) does not prohibit a subcontractor and builder or general contractor from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (d) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a builder or general contractor for a construction defect claim unless and until the builder or general contractor provides a written tender of the claim, or portion thereof, to the subcontractor which includes all of the information provided to the builder or general contractor by the claimant or claimants, including, but not limited to, information provided pursuant to subdivision (a) of Section 910, relating to claims caused by that subcontractor's scope of work. This written tender shall have the

same force and effect as a notice of commencement of a legal proceeding. If a builder or general contractor tenders a claim for construction defects, or a portion thereof, to a subcontractor in the manner specified by this provision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the builder or general contractor:

(1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the builder or general contractor within a reasonable time period following receipt of the written tender, and in no event later than 90 days following that receipt. Consistent with subdivision (d), the defense by the subcontractor shall be a complete defense of the builder or general contractor of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the builder or general contractor resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the builder, general contractor, or any other party. Any vicarious liability imposed upon a builder or general contractor for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the builder, general contractor, or claimant.

(2) Pay, within 30 days of receipt of an invoice from the builder or general contractor, no more than a reasonable allocated share of the builder's or general contractor's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (d), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The builder or general contractor shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the builder or general contractor actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory and consequential damages, as well as for interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, and for the builder's or general contractor's reasonable attorney's fees incurred to recover these amounts. The builder or general contractor shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting damages. If, upon request by a subcontractor, a builder or general contractor does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim as described above, the subcontractor shall have the right to pursue a claim against the builder or general contractor for any resulting compensatory and consequential damages, as well as for interest on the fees, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260, and the subcontractor's reasonable attorney's fees incurred in connection therewith. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section.

(g) A builder, general contractor, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section.

(h) Nothing in this section limits, restricts, or prohibits the right of a builder, general contractor, or subcontractor to seek equitable indemnity against any supplier, design professional, or product manufacturer.

(i) As used in this section, "construction defect" means a violation of the standards set forth in Sections 896 and 897.

(Amended by Stats. 2011, Ch. 707, Sec. 2. (SB 474) Effective January 1, 2012.)

2782.05. (a) Except as provided in subdivision (b), provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract and amendments thereto entered into on or after January 1, 2013, that purport to insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor, by a subcontractor against liability for claims of death or bodily injury to persons, injury to property, or any other loss, damage, or expense are void and unenforceable to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, other servants, or other independent contractors who are responsible to the general contractor, construction manager, or other subcontractor, or for defects in design furnished by those persons, or to the extent the claims do not arise out of the scope of work of the subcontractor pursuant to the construction contract. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. This section shall not affect the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571, nor the rights of an insurance carrier under the holding of Buss v. Superior Court (1997) 16 Cal.4th 35.

(b) This section does not apply to:

(1) Contracts for residential construction that are subject to any part of Title 7 (commencing with Section 895) of Part 2 of Division 2.

(2) Direct contracts with a public agency that are governed by subdivision (b) of Section 2782.

(3) Direct contracts with the owner of privately owned real property to be improved that are governed by subdivision (c) of Section 2782.

(4) Any wrap-up insurance policy or program.

(5) A cause of action for breach of contract or warranty that exists independently of an indemnity obligation.

(6) A provision in a construction contract that requires the promisor to purchase or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations.

(7) Indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and a contracting project owner's lender are parties.

(8) General agreements of indemnity required by sureties as a condition of execution of bonds for construction contracts.

(9) The benefits and protections provided by the workers' compensation laws.

(10) The benefits or protections provided by the governmental immunity laws.

(11) Provisions that require the purchase of any of the following:

(A) Owners and contractors protective liability insurance.

(B) Railroad protective liability insurance.

(C) Contractors all-risk insurance.

(D) Builders all-risk or named perils property insurance.

(12) Contracts with design professionals.

(13) Any agreement between a promisor and an admitted surety insurer regarding the promisor's obligations as a principal or indemnitor on a bond.

(c) Notwithstanding any choice-of-law rules that would apply the laws of another jurisdiction, the law of California shall apply to every contract to which this section applies.

(d) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable.

(e) Subdivision (a) does not prohibit a subcontractor and a general contractor or construction manager from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (a) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a general contractor or construction manager for a claim unless and until the general contractor or construction manager provides a written tender of the claim, or portion thereof, to the subcontractor that includes the information provided by the claimant or claimants relating to claims caused by that subcontractor's scope of work. In addition, the general contractor or construction manager shall provide a written statement regarding how the reasonable allocated share of fees and costs was determined. The written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a general contractor or construction manager tenders a claim, or portion thereof, to a subcontractor in the manner specified by this subdivision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the general contractor or construction manager:

(1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the general contractor or construction manager within a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Consistent with subdivision (a), the defense by the subcontractor shall be a complete defense of the general contractor or construction manager of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the general contractor or construction manager resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the general contractor or construction manager, or any other party. Any vicarious liability

imposed upon a general contractor or construction manager for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the general contractor, construction manager, or claimant. All information, documentation, or evidence, if any, relating to a subcontractor's assertion that another party is responsible for the claim shall be provided by that subcontractor to the general contractor or construction manager that tendered the claim.

(2) Pay, within 30 days of receipt of an invoice from the general contractor or construction manager, no more than a reasonable allocated share of the general contractor's or construction manager's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (a), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The general contractor or construction manager shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the general contractor or construction manager actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, consequential damages, and reasonable attorney's fees incurred to recover these amounts. The general contractor or construction manager shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting damages. If, upon request by a subcontractor, a general contractor or construction manager does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim, the subcontractor shall have the right to pursue a claim against the general contractor or construction manager for any resulting compensatory damages with interest, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section.

(g) For purposes of this section, "construction manager" means a person or entity, other than a public agency or owner of privately owned real property to be improved, who is contracted by a public agency or the owner of privately owned real property to be improved to direct, schedule, or coordinate the work of contractors for a work of improvement, but does not itself perform the work.

(h) For purposes of this section, "general contractor," in relation to a given subcontractor, means a person who has entered into a construction contract and who has entered into a subcontract with that subcontractor under which the subcontractor agrees to perform a portion of that scope of work. Where a subcontractor has itself subcontracted a portion of its work, that subcontractor, along with its general contractor, shall be considered a general contractor as to its subcontractors.

(i) For purposes of this section, "subcontractor" means a person who has entered into a construction contract either with a contractor to perform a portion of that contractor's work under a construction contract or with any person to perform a construction contract subject to the direction or control of a general contractor or construction manager.

(j) A general contractor, construction manager, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section.

(k) Nothing in this section limits, restricts, or prohibits the right of a general contractor, construction manager, or subcontractor to seek equitable indemnity against any supplier, design professional, product manufacturer, or other independent contractor or subcontractor.

(l) This section shall not affect the validity of any existing insurance contract or agreement, including, but not limited to, a contract or agreement for workers' compensation or an agreement issued on or before January 1, 2012, by an admitted insurer, as defined in the Insurance Code.

(m) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to indemnify, including defending or paying the costs to defend, a public agency against any claim arising from the alleged active negligence of the public agency under subdivision (b) of Section 2782 or to indemnify, including defending or paying the costs to defend, an owner of privately owned real property to be improved against any claim arising from the alleged active negligence of the owner under subdivision (c) of Section 2782.

(n) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to provide or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations pursuant to a construction contract with a public agency

under subdivision (b) of Section 2782 or an owner of privately owned real property to be improved under subdivision (c) of Section 2782.

(Added by Stats. 2011, Ch. 707, Sec. 3. (SB 474) Effective January 1, 2012.)

2782.1. Nothing contained in Section 2782 shall prevent a contractor responsible for the performance of a construction contract, as defined in Section 2783, from indemnifying fully a person, firm, corporation, state or other agency for whose account the construction contract is not being performed but who, as an accommodation, enters into an agreement with the contractor permitting such contractor to enter upon or adjacent to its property for the purpose of performing such construction contract for others.

(Added by Stats. 1968, Ch. 466.)

2782.2. (a) Nothing contained in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer against liability for the negligence of the engineer, or the engineer's agents or employees, in providing inspection services to plants or other facilities if all the following criteria are satisfied:

(1) The promisor is the owner of the plants or facilities inspected.

(2) The promisor is audited annually by an independent certified public accountant, public accountant, or accounting licentiate of another state authorized by the laws of that state to perform the audit.

(3) The net worth of the promisor exceeds ten million dollars ($10,000,000), as determined by the promisor's most recent annual independent audit. The requirement of this paragraph shall be satisfied at the time the contract for indemnification is entered, and a subsequent reduction of the promisor's net worth shall not void the obligation to indemnify.

(4) The promisor is self-insured with respect to liability arising from ownership of the plant or facility.

(5) The indemnification shall not be applicable to the first two hundred fifty thousand dollars ($250,000) of liability.

(b) Subdivision (a) does not authorize contracts for indemnification of liability arising from willful misconduct.

(Added by Stats. 1985, Ch. 567, Sec. 2.)

2782.5. Nothing contained in Section 2782 shall prevent a party to a construction contract and the owner or other party for whose account the construction contract is being performed from negotiating and expressly agreeing with respect to the allocation, release, liquidation, exclusion, or limitation as between the parties of any liability (a) for design defects, or (b) of the promisee to the promisor arising out of or relating to the construction contract.

(Amended by Stats. 1980, Ch. 211, Sec. 2.)

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of that engineer or geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services, or other services of the types described in Sections 78125 and 78135 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

(1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials.

(2) The promisor is responsible, or potentially responsible, for all or part of the contamination.

(b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars ($250,000) of liability or a greater amount as is agreed to by the parties.

(c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.

(d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste that is or becomes subject to regulation by any agency of the state, any municipality or political subdivision of the state, or the United States. "Hazardous materials" includes, but is not limited to, any material or substance that is any of the following:

(1) A hazardous substance, as defined in subdivision (a) of Section 78075 of the Health and Safety Code.

(2) Hazardous material, as defined in subdivision (n) of Section 25501 of the Health and Safety Code.

(3) A regulated substance, as defined in subdivision (i) of Section 25532 of the Health and Safety Code.

(4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

(5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.

(6) Petroleum.

(7) Asbestos.

(8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

(9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).

(10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601).

(11) A regulated substance, as defined by subsection (7) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

(e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

(Amended by Stats. 2022, Ch. 258, Sec. 6. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

2782.8. (a) For all contracts, and amendments thereto, entered into on or after January 1, 2018, for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the duty and the cost to defend, the indemnitee by a design professional against liability for claims against the indemnitee, are unenforceable, except to the extent that the claims against the indemnitee arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in this section. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties.

(b) All contracts and all solicitation documents, including requests for proposal, invitations for bid, and other solicitation documents for design professional services are deemed to incorporate by reference the provisions of this section.

(c) For purposes of this section, "design professional" includes all of the following:

(1) An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.

(2) An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.

(3) An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.

(4) An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

(d) This section shall apply only to a professional service contract, or any amendment thereto, entered into on or after January 1, 2018.

(e) The provisions of this section pertaining to the duty and cost to defend shall not apply to either of the following:

(1) Any contract for design professional services, or amendments thereto, where a project-specific general liability policy insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis.

(2) A design professional who is a party to a written design-build joint venture agreement.

(f) Nothing in this section shall abrogate the provisions of Section 1104 of the Public Contract Code.

(g) Indemnitee, for purposes of this section, does not include any agency of the state.

(Amended by Stats. 2017, Ch. 8, Sec. 1. (SB 496) Effective January 1, 2018.)

2782.9. (a) All contracts, provisions, clauses, amendments, or agreements contained therein entered into after January 1, 2009, for a residential construction project on which a wrap-up insurance policy, as defined in subdivision (b) of Section 11751.82 of the Insurance Code, or other consolidated insurance program, is applicable, that require an enrolled and participating subcontractor or other participant to indemnify, hold harmless, or defend another for any claim or action covered by that program, arising out of that project are unenforceable.

(b) To the extent any contractual provision is deemed unenforceable pursuant to this section, any party may pursue an equitable indemnity claim against another party for a claim or action unless there is coverage for the claim or action under the wrap-up policy or policies. Nothing in this section shall prohibit a builder or general contractor from requiring a reasonably allocated contribution from a subcontractor or other participant to the self-insured retention or deductible required under the wrap-up policy or other consolidated insurance program, if the maximum amount and method of collection of the participant's contribution is disclosed in the contract with the participant and the contribution is reasonably limited so that each participant may have some financial obligation in the event of a claim alleged to be caused by that participant's scope of work. The contribution shall only be collected when and as any such self-insured retention or deductible is incurred by the builder or general contractor and in an amount that bears a reasonable and proportionate relationship to the alleged liability arising from the claim or claims alleged to be caused by the participant's scope of work, when viewed in the context of the entirety of the alleged claim or claims. Any contribution shall only be collected from a participant after written notice to the participant of the amount of and basis for the contribution. In no event shall the total amount of contributions collected from participants exceed the amount of any self-insured retention or deductible due and payable by the builder or general contractor for the claim or claims. However, this requirement does not prohibit any legally permissible recovery of costs and legal fees to collect a participant's contribution if the contribution satisfies the requirements of this subdivision and is not paid by the participant when due.

(c) This section shall not be waived or modified by contractual agreement, act, or omission of the parties.

(Added by Stats. 2008, Ch. 467, Sec. 2. Effective January 1, 2009.)

2782.95. For any wrap-up insurance policy or other consolidated insurance program that insures a private residential (as that term is used in Title 7 (commencing with Section 895) of Part 2 of Division 2) work of improvement that first commences construction after January 1, 2009, the following shall apply:

(a) The owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program shall disclose the total amount or method of calculation of any credit or compensation for premium required from a subcontractor or other participant for that wrap-up policy in the contract documents.

(b) The contract documents shall disclose, if and to the extent known:

(1) The policy limits.

(2) The scope of policy coverage.

(3) The policy term.

(4) The basis upon which the deductible or occurrence is triggered by the insurance carrier.

(5) If the policy covers more than one work of improvement, the number of units, if any, indicated on the application for the insurance policy.

(6) A good faith estimate of the amount of available limits remaining under the policy as of a date indicated in the disclosure obtained from the insurer.

(7) Disclosures made pursuant to paragraphs (5) and (6) are recognized to be based upon information at a given moment in time and may not accurately reflect the actual number of units covered by the policy nor the amount of insurance available, if any, when a later claim is made. These disclosures are presumptively made in good faith if the disclosure pursuant to paragraph (5) is the

same as that contained in the application to the wrap-up insurer and the disclosure pursuant to paragraph (6) was obtained from the wrap-up insurer or broker. The presumptions stated above shall be overcome only by a showing that the insurer, broker, builder, or general contractor intentionally misrepresented the facts identified in paragraphs (5) or (6).

(c) Upon the written request of any participant, a copy of the insurance policy shall be provided, if available, that shows the coverage terms and items in paragraphs (1) to (4), inclusive, of subdivision (b) above. If the policy is not available at the time of the request, a copy of the insurance binder or declaration of coverage may be provided in lieu of the actual policy. Paragraphs (1) to (4), inclusive, of subdivision (b) may be satisfied by providing the participant with a copy of the binder or declaration. Any party receiving a copy of the policy, binder, or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder, or declaration to any third party unless required to do so by law.

(d) If the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program does not disclose the total amount or method of calculation of the premium credit or compensation to be charged to the participant prior to the time the participant submits its bid, the participant shall not be legally bound by the bid unless that participant has the right to increase the bid up to the amount equal to the difference between the amount the participant included, if any, for insurance in the original bid and the amount of the actual bid credit required by the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program. This subdivision shall not apply if the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program did not require the subcontractor to offset the original bid amount with a deduction for the wrap-up insurance policy or program.

(Added by Stats. 2008, Ch. 467, Sec. 3. Effective January 1, 2009.)

2782.96. If an owner, builder, or general contractor obtains a wrap-up insurance policy or other consolidated insurance program for a public work as defined in Section 1720 of the Labor Code or any other project other than residential construction, as that term is used in Title 7 (commencing with Section 895) of Part 2 of Division 2, that is put out for bid after January 1, 2009, the following shall apply:

(a) The total amount or method of calculation of any credit or compensation for premium required from a subcontractor or other participant for that policy shall be clearly delineated in the bid documents.

(b) The named insured, to the extent known, shall disclose to the subcontractor or other participant in the contract documents the policy limits, known exclusions, and the length of time the policy is intended to remain in effect. In addition, upon written request, once available, the named insured shall provide copies of insurance policies to all those who are covered by the policy. Until such time as the policies are available, the named insured may also satisfy the disclosure requirements of this subdivision by providing the subcontractor or other participant with a copy of the insurance binder or declaration of coverage. Any party receiving a copy of the policy, binder, or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder, or declaration to any third party unless required to do so by law.

(c) The disclosure requirements in subdivisions (a) and (b) do not apply to an insurance policy purchased by an owner, builder, or general contractor that provides additional coverage beyond what was contained in the original wrap-up policy or other consolidated insurance program if no credit or compensation for premium is required of the subcontractor for the additional insurance policy.

(Amended by Stats. 2009, Ch. 140, Sec. 37. (AB 1164) Effective January 1, 2010.)

2783. As used in Sections 2782 and 2782.5, "construction contract" is defined as any agreement or understanding, written or oral, respecting the construction, surveying, design, specifications, alteration, repair, improvement, renovation, maintenance, removal of or demolition of any building, highway, road, parking facility, bridge, water line, sewer line, oil line, gas line, electric utility transmission or distribution line, railroad, airport, pier or dock, excavation or other structure, appurtenance, development or other improvement to real or personal property, or an agreement to perform any portion thereof or any act collateral thereto, or to perform any service reasonably related thereto, including, but not limited to, the erection of all structures or performance of work in connection therewith, electrical power line clearing, tree trimming, vegetation maintenance, the rental of all equipment, all incidental transportation, moving, lifting, crane and rigging service and other goods and services furnished in connection therewith.

(Amended by Stats. 2011, Ch. 707, Sec. 4. (SB 474) Effective January 1, 2012.)

2784. As used in Sections 2782 and 2782.5, a "design defect" is defined as a condition arising out of its design which renders a structure, item of equipment or machinery or any other similar object, movable or immovable, when constructed substantially in accordance with its design, inherently unfit, either wholly or in part, for its intended use or which impairs or renders the use of such structure, equipment, machinery or property dangerous.

(Added by Stats. 1967, Ch. 1327.)

2784.5. Any provision, promise, agreement, clause, or covenant contained in, collateral to, or affecting any hauling, trucking, or cartage contract or agreement is against public policy, void and unenforceable if it purports to indemnify the promisee against liability for any of the following damages which are caused by the sole negligence or willful misconduct of the promisee, agents, servants, or the independent contractors directly responsible to the promisee, except when such agents, servants, or independent contractors are under the direct supervision and control of the promisor:

(a) Damages arising out of bodily injury or death to persons.

(b) Damage to property.

(c) Any other damage or expense arising under either (a) or (b).

This section shall not affect the validity of any insurance contract, workmen's compensation insurance contract, or agreement issued by an admitted insurer as defined by Sections 23 and 24 of the Insurance Code or insurance effected by surplus line brokers under Sections 1760 through 1780 of the Insurance Code.

(Added by Stats. 1967, Ch. 1314.)