



CONSTRUCTION ANTI-INDEMNITY STATUTES

“Attorneys For Policyholders in Insurance Coverage Disputes”

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STATE CONSTRUCTION ANTI-INDEMNITY STATUTES					
State	Types of Persons Contracts Affected	Type of Indemnity Allowed			Statute
		Sole Negligence of Indemnitee	Concurrent Negligence		
			Full Indemnity	Partial Indemnity	
AK	All Construction and Design Contracts	No	Yes		Alaska Stat. § 45.45.900
AL		Yes	Yes		No Statute. See e.g. <u>Doster Construction Co. Inv. V. Marathon Electrical Contractors, Inc.</u> , 32 So.3d 1277, (Ala. 2009). "Indemnification for an indemnitee's own negligence requires clear and unequivocal language."
AZ	Public Construction and Design Contracts	No		Yes	Ariz. Rev. Stat. § 34-226 (Definitions) Ariz. Rev. Stat. § 41-2586
AZ	Private Construction and Design Contracts	No *Allows for indemnification of an adjacent property owner.	Yes		Ariz. Rev. Stat. § 34-226 (Definitions) Ariz. Rev. Stat. § 32-1159
AR	Applies to all Construction and Design Contracts	No	No, unless there is a monetary limit on the extent of indemnification as required by the contract.		A.C.A. §4-56-104
CA	Residential Construction and Design Contracts, post Jan 1, 2008.	No		Yes	Cal. Civ. Code § 2782(c) & (e)(1)

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CA	Commercial Construction and Design Contracts, post Jan 1, 2008.	No *Allows for indemnification of an adjacent property owner.	Yes		Cal. Civ. Code § 2782.1
CO	"Public Entity" Construction and Design Contracts	No		Yes	Colo. Rev. Stat. § 13-50.5-102(8)
CO	Construction Agreements	No		Yes *Up to extent of indemnitor's liability	C.R.S. §13-21-111.5
CT	All Construction Contracts. No Mention of Design.	No		Yes	Conn. Gen. Stat. § 52-572k
DC		Yes	Yes		No Statute. <u>N.P.P. Contractors, Inc. v. John Canning & Co.</u> , 715 A.2d 139, 142 (D.C. 1998) (indemnification contract allowed as it was clear and unambiguous).
DE	All Construction and Design Contracts	No		Yes	Del. Code Ann. Tit.6, § 2704

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FL	All Construction and Design Contracts (see exception per Fla. Stat. § 725.08)	No, unless there is monetary limit on the extent of the indemnification that bears a reasonable commercial relationship to the contract.	No, unless there is monetary limit on the extent of the indemnification that bears a reasonable commercial relationship to the contract.	Yes	Fla. Stat. § 725.06 Fla. Stat. § 725.08 (Allows a public agency to require a design professional to hold that agency harmless for design professional's negligence, recklessness or wrongdoing.)
GA	All Construction Contracts. No Mention of Design.	No	Yes		Ga. Code Ann. § 13-8-2(b)
HI	All Construction Contracts. No Mention of Design.	No	Yes		Hawaii Rev. Stat. § 431:10-222
IA		Yes	Yes		No Statute. Indemnification for sole negligence allowed in construction contracts if clearly and unambiguously stated. See e.g. <i>Cremona v. R.S. Bacon Veneer Co.</i> , 433 F.3d 617, 620 (8th Cir. 2006) (Iowa) citing <i>Cochran v. Gehrke, Inc.</i> , 293 F. Supp. 2d 986, 994-95 (N.D. Iowa 2003)
ID	All Construction Contracts. No Mention of Design.	No	Yes		Idaho Code § 29-114
IL	All Construction Contracts. No Mention of Design.	No		Yes	Ill. Stat. Ann. 740 ¶ 35/1
IN	All Construction and Design Contracts. Highway Contracts are excepted.	No	Yes		Ind. Code Ann. 26-2-5-1,-2

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KS	Applies to all contracts	No		Yes	Kan. Stat. Ann § 16-121 (b), (c) Prohibits AI liability coverage for AI's own negligence, intentional acts or misconduct
KY	All Construction Contracts. No Mention of Design.	No		Yes	Ky. Rev. Stat. § 371.180
LA	All Construction and Design Contracts	No		Yes	La. Rev. Stat. Ann. 9:2780.1 (For contracts entered into after 1/1/11)
LA	All public works contracts between a contractor and a public entity or between a contractor and design specialist.	No		Yes	La. Rev. Stat. Ann. 38:2216(G)
LA	All construction contracts	No		Yes	La .Rev. Stat. Ann. §2780.1 (effective for all contracts entered into after 1/1/2011) and precludes a contractor from seeking indemnity for its own negligence.
LA	Other contracts				No statute. For construction contracts entered into prior to 1/1/2011, indemnification contracts allowed if intent is expressed in unequivocal terms. <u>See e.g. Roundtree v. New Orleans Aviation Vd.</u> , 844 So.2d 1091, 1096 (La. Ct. App. 2003) <u>citing Polozola v. Garlock</u> , 343 So. 3d 1000, 1003 (La. 1977).
MA	All contracts in which a subcontractor agrees to indemnify another for injury or damage not caused by the subcontractor.	No	Yes		Mass. Gen. Ann. Laws Ch. 149 § 29C; <u>See Bruce Johnson, et al v. Modern Continental Construction Co.</u> , 49 Mass.App.Ct. 545 (2000)(explaining application of statute); <u>see also James Kelly, et al v. Dimeo, Inc.</u> , 31 Mass.App.Ct. 626 (1991)(allowing full indemnity)
MD	All Construction Contracts.	No	Yes		Md. Cts. & Jud. Proc. Code § 5-401

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ME		Yes	Yes		No Statute. Indemnification contracts allowed if clearly stated. See e.g. <u>State Farm Mut. Ins. Co. v. Koshy</u> , 995 A.2d 651, 668 (Me. 2010).
MI	All contracts "relative to" construction. No specific mention of design contracts or design professionals.	No	Yes		Mich. Comp. Laws Ann. 691.991 Note: There is some confusion over whether the anti-indemnity statute applies to insurance obligations. The statute on its face does not apply to insurance. See <u>Sentry Ins. Co. v. Great Lakes Steel Corp.</u> , 147 Mich. App.214 (1985), c.f. <u>Peeples v. City of Detroit</u> , 99 Mich. App.285 (1980); <u>Chrysler Corp. v. Skyline Industrial Services, et. al</u> , 448 Mich. 113 (1995).
MN	All construction contracts.	No	Yes, if injury is attributable to breach of duty, or a negligent or wrongful act or omission.		Minn. Stat. Ann. § 337.01 (Definitions) Minn. Stat. Ann. § 337.02
MO	All construction contracts. (Exception for contracts between state and governmental agencies, or between such entities and a private person.)	No		Yes	Mo. Rev. Stat. 434.100.2(1)
MS	All construction contracts.	No		Yes	Miss. Code Ann. § 31-5-41

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MT	All private construction contracts.	No		Yes	Mont. Rev. Code Ann. § 28-2-2111 (“a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party...for liability...caused by the negligence...of the other party...is void as against the public policy of this state.”) Note: No case law exists which interprets this statute.
MT	Applies to all Public Construction Contracts	No		Yes	Mont. Code Anno. § 18-2-124
NC	All construction and design contracts.	No		Yes	N.C. Gen. Stat. Ann. 22B-1
ND	All contracts where contractor indemnifies owner or its agents for design errors.	Yes	Yes		No statute. Indemnification agreements allowed if clearly stated. See <i>Konrad ex rel McPhail v. Bismarck Park Dist.</i> , 655 N.W.2d 411 (N.D. 2003). Note: Parties cannot be indemnified for intentional conduct per N.D. Cent. Code § 9-08-02. Also, an owner cannot be indemnified by a contractor for design errors per N.D. Cent. Code § 9-08-02.1
NE	All Construction and Design Contracts.	No		Yes	Neb. Rev. Stat. § 25-21,187(1)
NH	All contracts	No		Yes	N.H. Rev. Stat. Ann. § 338-A:1 (2010) (Design Professionals) N.H. Rev. Stat. Ann. § 338-A:2 (2010) (All contracts)
NJ	All construction contracts.	No	Yes		N.J. Stat. Ann. § 2A:40A-1

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NJ	All agreements where the indemnitee is a design professional and liability arises out of design services	No	Yes		N.J. Stat. Ann. § 2A:40A-2
NM	All construction-related design contracts.	No		Yes	N.M. Stat. Ann. § 56-7-1. <u>See J.R. Hale Contracting Co. v. Union Pac. R.R.</u> , 143 N.M. 574 (2007) (§56-7-1 “bars enforcement of an indemnification clause in construction contracts on public policy grounds where the indemnification is based on the indemnity’s own negligence.”
NV	All contracts (except worker’s compensation see Nev. Rev. Stat. Ann. § 616B.609)	No		Yes	No Statute. Indemnification contracts allowed if clearly and explicitly stated. <u>See e.g. George L. Brown Ins. Agency, Inc. v. Star Ins. Co.</u> , 237 P.3d 92 (Nev. 2010).
NY	All construction contracts.	No		Yes	N.Y. Gen. Oblig. Law § 5-322.1
NY	Design professional seeking indemnity for liability arising out of defective maps, plans, design or specifications.	No		Yes	N.Y. Gen. Oblig. Law § 5-324; <u>See Brooks v. Judlau Contracting</u> , 11 N.Y.3d 204 (2008)
OH	All construction and design contracts.	No		Yes	Ohio Rev. Code Ann. § 2305.31 NOTE: Conflict among Ohio Appellate courts re application to additional insured endorsements. <u>Compare Buckeye Union Ins. Co. v. Zavarella Bros. Const. Co.</u> , 121 Ohio App. 3d 147 (8th Dist. 1997)(AI endorsement barred) with <u>Stickovich v. Cleveland</u> , 143 Ohio App.3d 13 (8th Dist. 2001)(AI endorsement permitted).
OK	Construction Agreements	Yes		Yes	15 Okl. St. § 221 Note: This statute may limit additional insured coverage.

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OR	All construction and design contracts. Does not apply to railroads as defined in O.R.S 824.200.	No		Yes	Or. Rev. Stat. § 30.140(1) &(2) NOTE: See <u>Walsh Construction Co. v. Mutual Enumclaw</u> , 338 Or. 1 (2005) (statute applies to additional insured claims).
PA	All construction design contracts where design professional is the indemnitee.	No		Yes	Pa. Stat. Ann. Tit. 68 § 491
PA	Construction contracts.	Yes	Yes		Indemnification contracts allowed if clearly stated. See e.g., <u>Ocean Spray Cranberries, Inc. v. Refrigerated Food</u> , 2007 PA Super 311; 936A.2d 81 (2007)
RI	All construction and design contracts.	No		Yes	R.I. Gen. Law § 6-34-1
SC	All construction and design contracts. Electric utility, RR carriers, SCPSA exempted.	No	Yes		S.C. Code An. § 32-2-10
SD	All construction and design contracts.	No	Yes		S.D. Codified Laws Ann. § § 56-3-18
TN	All Construction Contracts	No	Yes		Tenn. Code Ann. § 62-6-123; NOTE: See <u>Posey v. Union Carbide Corp.</u> , 507 F. Supp. 39 (D. Tenn. 1980) (limiting the availability of additional insured coverage when underlying contract between named insured and additional insured violates Tenn. Code Ann. § 62-6-123); see also <u>Rentenbach Constructors, Inc. v. Bowen</u> , 2000 Tenn. App. LEXIS 747 (Tenn. Ct. App. Nov. 13, 2000).
TX	All construction-related design contracts.	No		Yes	Tex. Civ. Prac. & Rem. Code § 130.002(1)&(2)

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TX	All other contracts	Yes	Yes		No statute. Indemnification contracts allowed if unambiguously stated. <u>XL Specialty Ins. Co. v. Kiewitt Offshore Services, LTD.</u> , 513 F.3d 146 (5th Cir. 2008). *[Owner construction contracts entered into after 1/1/2012 will be subject to Tex. Civ. Prac. & Rem. Code §151.102 which prevents an indemnitee from being indemnified for its own negligence. §151.102 does not preclude full indemnification to the indemnitee for bodily injury claims of the indemnitor's employee or any subcontractor.]
UT	All Construction Contracts between Owner and another party (All other indemnification provisions in construction contracts are void)	No		Yes	Utah Code Ann. § 13-8-1, 2
VA	All Construction Contracts	No	Yes		Va. Code Ann. § 11-4.1
VT		Yes	Yes		No Statute. Indemnification contracts allowed if clearly stated. See e.g. <u>Tateosian v. Vermont</u> , 945 A.2d 833, 841 (Vt. 2007)
WA	All Construction Contracts	No		Yes	Wash. Rev. Code Ann. 4.24.115(1)&(2); <u>Gilbert H. Moen Co. v. Island Steel Erectors, Inc.</u> , 128 Wn.2d 745, 912 P.2d 472 (1996)
WI	All Construction Contracts	No		Yes	Wis. Stat. Ann. § 895.447(1) See e.g. <u>Gerdmann v. U.S. Fire Insurance Co.</u> , 119 Wis. 2d 367 (Ct. App. 1984) (Statute does not apply to indemnity clause in contract in which a subcontractor agreed to hold the contractor harmless from any liability for damages resulting from the work of the contract or subcontractor under the contract.)
WV	All Construction Contracts	No	Yes		W. Va. Code § 55-8-14

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WY		Yes	Yes		No Statute. Indemnification agreements allowed if clearly stated. See e.g. <u>Union Pacific Resources Co. v. Dolenc</u> , 86 P.3d 1287, (Wyo. 2004).

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