



CONSTRUCTION ANTI-INDEMNITY STATUTES

“Advocates 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 | | | Sole Negligence of Indemnitor |
| | | | Full Indemnity | Partial Indemnity | | |
| AK | All Construction and Design Contracts | No | Yes | | Alaska Stat. § 45.45.900 | |
| AL | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>Industrial Tile, Inc. v. Stewart</i> , 388 So.2d 171, 175 (Ala.1980), cert. denied, 449 U.S. 1081, 101 S.Ct. 864, 66 L.Ed.2d 805 (1981). | |
| 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 | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See <i>Chevron USA v. Murph Exploration & Production Co.</i> , 356 Ark. 324, 329, 151 SW 3d 306, 310 (2004). | |
| CA | Residential Construction and Design Contracts, post Jan 1, 2008. | No | | Yes | Cal. Civ. Code § 2782(c) & (e)(1) | |
| CA | Commercial Construction and Design Contracts, post Jan 1, 2008. | No | Yes | | Cal. Civ. Code § 2782 et seq. | |
| CO | "Public Entity" Construction and Design Contracts | No | | Yes | Colo. Rev. Stat. § 13-50.5-102(8) | |
| CT | All Construction Contracts. No Mention of Design. | No | | Yes | Conn. Gen. Stat. § 52-572k | |
| DC | | Yes | Yes | | No Statute. <i>N.P.P. Contractors, Inc. v. John Canning & Co.</i> , 715 A.2d 139, 142 (D.C. 1998) (indemnification contract allowed as it | |

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| | | | | | was clear and unambiguous). | |
| DE | All Construction and Design Contracts | No | | Yes | Yes | Del. Code Ann. Tit.6, § 2704 |
| 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 | 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 | | Yes | Ga. Code Ann. § 13-8-2(b) |
| HI | All Construction Contracts. No Mention of Design. | No | Yes | | Yes | Hawaii Rev. Stat. § 431:10-222 |
| IA | | Yes | Yes | | Yes | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>McNally & Nimergood v. Neumann-Kiewit Constructors, Inc.</i> , 648 N.W.2d 564 (Iowa 2002). |
| ID | All Construction Contracts. No Mention of Design. | No | Yes | | Yes | Idaho Code § 29-114 |
| IL | All Construction Contracts. No Mention of Design. | No | | Yes | Yes | Ill. Stat. Ann. 740 ¶ 35/1 |
| IN | All Construction and Design Contracts. Highway Contracts are excepted. | No | Yes | | Yes | Ind. Code Ann. 26-2-5-1,-2 |

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| KS | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>Shoup v. Higgins Rental Center, Inc.</i> , 991 F.Supp. 1265, 1267 (D.Kan. 1998) | |
| KY | All Construction Contracts. No Mention of Design. | No | | Yes | Ky. Rev. Stat. § 371.180 | |
| 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) | |
| 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; See <i>Bruce Johnson, et al v. Modern Continental Construction Co.</i> , 49 Mass.App.Ct. 545 (2000)(explaining application of statute); see also <i>James Kelly, et al v. Dimeo, Inc.</i> , 31 Mass.App.Ct. 626 (1991)(allowing full indemnity) | |
| MD | All Construction Contracts. | No | Yes | | Md. Cts. & Jud. Proc. Code § 5-401 | |
| ME | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>Denaco v. Blanche</i> , 148 Me. 120, 90 A.2d 707 (Me. 1952) | |
| MI | All contracts "relative to" construction. No specific mention of design contracts or design professionals. | No | Yes | | Mich. Comp. Laws Ann. 691.991 | |

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| MN | All construction contracts. | No | Yes, if injury is attributable to breach of duty, or a negligent or wrongful act or omission. | | Yes | 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 | Yes | Mo. Rev. Stat. 434.100.2(1) |
| MS | All construction contracts. | No | | Yes | Yes | Miss. Code Ann. § 31-5-41 |
| MT | All 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. |
| NC | All construction and design contracts. | No | | Yes | Yes | N.C. Gen. Stat. Ann. 22B-1 |
| ND | All contracts where contractor indemnifies owner or its agents for design errors. | No | | Yes | Yes | N.D. Cent. Code 9-08-02.1 |
| NE | All Construction and Design Contracts. | No | | Yes | Yes | Neb. Rev. Stat. § 25-21,187(1) |
| NH | All contracts with design professionals. | No | | Yes | Yes | N.H. Rev. Stat. Ann. § 338-A:1 |

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| NJ | All construction contracts. | No | Yes | | Yes | N.J. Stat. Ann. § 2A:40A-1 |
| NJ | All agreements where the indemnitee is a design professional and liability arises out of design services | No | Yes | | Yes | N.J. Stat. Ann. § 2A:40A-2 |
| NM | All construction-related design contracts. | No | | Yes | Yes | N.M. Stat. Ann. § 56-7-1. See J.R. Hale Contracting Co. v. Union Pac. R.R., 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 agreements. | No | | Yes | Yes | Nev. Rev. Stat. Ann. 616B.609 |
| NY | All construction contracts. | No | | Yes | 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 | Yes | N.Y. Gen. Oblig. Law § 5-324; See Brooks v. Judlau Contracting, 11 N.Y.3d 204 (2008) |
| OH | All construction and design contracts. | No | | Yes | Yes | Ohio Rev. Code Ann. § 2305.31 Conflict among Ohio Appellate courts regarding whether statute extends to additional insured endorsements. Compare Buckeye Union Ins. Co. v. Zavarella Bros. Const. Co., 121 Ohio App. 3d 147 (8th Dist. 1997)(AI endorsement barred) with Stickovich v. Cleveland, 143 Ohio App.3d 13 (8th Dist. 2001)(AI endorsement permitted). |
| OK | Construction Agreements | Yes | | 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 | Yes | Or. Rev. Stat. § 30.140(1) &(2) NOTE: See <i>Walsh Construction Co. v. Mutual Enumclaw</i>, 338 Or. 1 (2005) (extending statute to additional insured claims), Also See <i>Richardson v. Howard S. Wright Constr. Co.</i>, 2007 U.S. Dist. LEXIS 37011, Also See <i>Hoffman Constr. Co. v. Travelers Indem. Ins. Co.</i>, 2005 U.S. Dist. LEXIS 39752 (D. Or. Nov. 28, 2005). |
| PA | All construction design contracts where design professional is the indemnitee. | No | Yes | | Yes | Pa. Stat. Ann. Tit. 68 § 491 |
| PA | Construction contracts. | Yes | Yes | | Yes | Indemnification contracts allowed if clearly stated. See e.g., <i>Ocean Spray Cranberries, Inc. v. Refrigerated Food</i> , 2007 PA Super 311; 936A.2d 81 (2007) |
| RI | All construction and design contracts. | No | | Yes | Yes | R.I. Gen. Law § 6-34-1 |
| SC | All construction and design contracts. Electric utility, RR carriers, SCPSA exempted. | No | Yes | | Yes. Specifically provided for in Statute | S.C. Code An. § 32-2-10 |
| SD | All construction and design contracts. | No | Yes | | Yes | S.D. Codified Laws Ann. § § 56-3-18 |
| TN | All Construction Contracts | No | Yes | | Yes | Tenn. Code Ann. § 62-6-123 |
| TX | All construction-related design contracts. | No | | Yes | Yes | Tex. Civ. Prac. & Rem. Code § § 130.002(1)&(2) |
| UT | All Construction Contracts | No | Yes | | Yes | Utah Code Ann. § § 13-8-1-2 |
| VA | All Construction Contracts | No | Yes | | Yes | Va. Code Ann. § 11-4.1 |

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| VT | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>Hamelin v. Simpson Paper (Vermont) Co.</i> , 167 Vt. 17, 19, 702 A.2d 86 (1997). | |
| WA | All Construction Contracts | No | Yes | | Wash. Rev. Code Ann. 4.24.115(1)&(2) | |
| WI | All Construction Contracts | No | | Yes | Wis. Stat. Ann. § 895.447(1) | |
| WV | All Construction Contracts | No | Yes | | W. Va. Code § 55-8-14 | |
| WY | | Yes | Yes | | No Statute. Indemnification contracts allowed if clearly stated. See e.g., <i>Northwinds of Wyoming, Inc. v. Phillips Petroleum Co.</i> , 779 P.2d 753, 759 (WY 1989) | |

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