Contractual Indemnity
Anti-Indemnity Statutes and Additional Insured Coverage

By Gregory D. Podolak and Tiffany Casanova
risk is an unavoidable factor in business transactions across all industries. It must be managed to ensure that it is limited. A common device utilized to manage risk is indemnity. Indemnity is a legal mechanism by which one party agrees to compensate another party for any loss, damage, or liability if a certain event or loss occurs. There are different forms of indemnification, including both common law and statutory; but for the purposes of strategic risk transfer in the commercial context, contractual indemnification is the most important.

Indemnification provisions and agreements are commonplace in contracts across all industries. The pervasive use of contractual indemnification in business transactions has resulted in state regulation called anti-indemnity laws. While the exact prohibitions of anti-indemnity laws vary by state, they generally prohibit one party from absorbing the sole negligence of another.

Additional insured coverage, a counterpart to contractual indemnification, has evolved into an equally important risk-transfer tool. Additional insured coverage is intended to function as a risk-transfer path parallel to contractual indemnity—both typically utilized in the same transaction. If one is unavailable, the other may serve as an adequate replacement. The development of anti-indemnity laws and the trend to utilize insurance and indemnity in conjunction have resulted in the application of anti-indemnity laws to additional insured coverage.

This article will provide a broad overview of contractual indemnification, anti-indemnity laws, and the emerging application of anti-indemnity laws to additional insured coverage. Those responsible for or interested in managing the risks of business transactions should develop an understanding of the types of indemnification, statutory regulation of indemnification, and the application of anti-indemnity laws to additional insured requirements. Awareness of the law and recent trends regarding anti-indemnity statutes will assist in contractual drafting, decreasing risk, and increasing recoveries.

**Contractual Indemnity**

Contractual indemnity is a common risk-transfer tool utilized in many types of transactions that allows contracting parties to shift the risk between them as it relates to certain claims or losses. Indemnification contracts, or provisions within contracts, are used across all types of industries, including construction, transportation, and oilfield services. A typical indemnification arrangement is one-sided and involves an “indemnitor,” often a downstream party, promising to indemnify the “indemnitee,” an upstream party. While an indemnification agreement does not eliminate a party’s legal obligations as they relate to a loss, it does shift the financial obligations of a loss from the indemnitee to the indemnitor. The types of loss covered can be broad and depend on the language of the provision, but they often include bodily injury, property damage, claims, suits, and attorney fees.

There are many benefits to indemnity. Most significantly, indemnity typically shifts the risk to the party that usually is in a better position to manage it. For example, in the construction industry, an owner of property may hire a general contractor to construct a building. In turn, the general contractor enters into agreements with multiple subcontractors to construct the building. Each individual subcontractor likely has multiple employees responsible for various tasks at the project. A subcontractor would further contract with another subcontractor to take on a portion of its scope of services. At this juncture, the general contractor would be exposed to liability for loss from multiple points. If, however, in every agreement with each subcontractor, the general contractor included an indemnification provision, the risk of loss arising out of the relevant contract would shift to the individual subcontractor who is in the best position to manage each employee and the specific risks that come with its scope of work. The general contractor, who is more remotely positioned from the risks, has reduced its liability and spread the risks throughout the project participants.

Another benefit, at least from the perspective of the indemnitee, is that indemnification agreements might require the indemnitor to indemnify a third party that might not be a party to the contract but that could also face some risk related to the transaction. In the construction example provided, the indemnification agreement between the general contractor and the subcontractor would include the owner of the project as an indemnitee. Thus, if loss arose out of the contract, the subcontractor would indemnify both the owner and the general contractor.

Not all aspects of indemnification are beneficial. Indemnification has the power to be abused, shift more risk to a party than the party had control over, and create a moral hazard among upstream parties. The negative aspects of indemnification have led to legislative regulation of indemnification, as discussed later.

**Types of Contractual Indemnification Agreements**

Though indemnification agreements often can go by different names and relevant language can vary dramatically from contract to contract, there are essentially three forms of indemnification: (1) limited form indemnification, (2) intermediate form indemnification, and (3) broad form indemnification. The more risk assumed by the indemnitor, the broader the form.

**Limited form indemnification.** Limited form indemnity occurs when the indemnitee agrees to indemnify the indemnitee for the indemnitor’s own negligence. In other words, the indemnitor only assumes the risk for its own, sole negligence. This type of indemnity provides the least amount of protection to an indemnitee. There
is no protection for the indemnitee unless the indemnitor is 100 percent at fault. If any other party is involved in the loss, the indemnification agreement does not apply, and the indemnitor owes the indemnitee no indemnity.

Intermediate form indemnification. Intermediate form indemnity occurs when the indemnator agrees to indemnify the indemnitee for the concurrent negligence of both parties. It is a more valuable risk-transfer mechanism than limited form indemnity because it is common for both parties to have played a role in causing the loss.

There are two types of intermediate form indemnification: full indemnification and partial indemnification. Full indemnification is when the indemnator agrees to indemnify the indemnitee for all loss when both parties are at fault. To illustrate, an indemnitee who is 1 percent at fault must indemnify an indemnitee who is 99 percent at fault for 100 percent of the losses attributable to the claim. Partial indemnification is when the indemnator agrees to indemnify the indemnitee only for loss attributable to the indemnitee.

Gregory D. Podolak is the managing partner of the southeast office of Saxe Doernberger & Vita, P.C. (SDV), in Naples, Florida, and can be reached at gdp@sdvlaw.com. Tiffany Casanova is an associate in the same law firm’s northeast office in Trumbull, Connecticut, and can be reached at tlc@sdvlaw.com. SDV focuses exclusively on the representation of policyholders nationally. This article is updated and expanded from a paper by Podolak, “Contractual Indemnity, Additional Insured Coverage, and the Recent Effects of Anti-Indemnity Statutes,” included in the ABA Tort Trial & Insurance Practice Section’s 24th Annual Insurance Coverage Litigation Midyear Program in February 2017 in Phoenix, Arizona.

to the indemnitor itself. In transactions where the parties have agreed to partial indemnification, the indemnitor’s obligation is capped at its percentage of negligence.

Broad form indemnification. Finally, the third type of indemnification is broad form indemnification. Broad form indemnification occurs when the indemnator agrees to indemnify the indemnitee for all liabilities regardless of whether the liability is solely attributable to the indemnitee. It provides the most protection to an indemnitee because the indemnator assumes the entire risk. This type of agreement is the most beneficial to an indemnitee because it does not matter if the indemnitor had any fault in the loss.

Anti-Indemnity Laws
Initially, only common law and the language of the agreement governed indemnification agreements. As long as the indemnity requirement was obvious and plainly described, it would be enforced, regardless of its breadth. However, an imbalance in negotiation between contracting parties led to the introduction of anti-indemnity statutes. Anti-indemnity statutes are designed to limit the extent of indemnification that can be required by contract or agreement.

While indemnification agreements are utilized in a variety of transactions across industries, anti-indemnity legislation principally has targeted the construction industry. Recently, though, there has been a trend toward the adoption of anti-indemnity statutes in nonconstruction industries, including the transportation industry and the oil-field-services industry.

Construction anti-indemnity laws. Construction is a high-risk industry. Millions of workplace injuries occur annually, and property damage is inherent in the trade. Consequently, risk-transfer tools, such as contractual indemnification, are highly regarded and utilized in almost every contract.

In construction agreements, there is almost always an upstream party, such as an owner or general contractor, hiring a downstream party, usually a subcontractor or design professional. It became apparent that upstream parties, which were typically larger and more sophisticated, and downstream parties were not equipped with equal bargaining power; and downstream parties were often absorbing most of the risk, including for the upstream party’s negligence.

Therefore, 45 states have enacted construction anti-indemnity statutes. The limitations in construction anti-indemnity statutes vary by state. All states allow for the inclusion of limited indemnity provisions. Most states have prohibitions on broad form indemnity agreements but will allow some version of intermediate indemnification.

A few states allow broad form indemnification if the agreement is clearly and unequivocally stated. These states do not have anti-indemnity statutes and are regulated solely by common-law jurisprudence. For example, in Alabama, in contracts between private parties, an indemnity agreement is enforceable as long as the intention to indemnify is “clearly indicated[s]” in the contract and there is no evidence of unequal bargaining power.

Interestingly, there are a few states that statutorily sanction the use of broad form indemnity agreements. The agreements must meet certain requirements, such as inclusion within the bid documents, inclusion of a monetary limitation, or inclusion of a requirement to procure insurance to support the indemnity obligation.

Transportation anti-indemnity laws. The transportation industry follows the construction industry closely with respect to the enactment of anti-indemnity legislation. On a basic level, the transportation anti-indemnity laws function the same as the construction anti-indemnity laws: they impose limitations on the
indemnity assumed by the contracting parties. The rationale behind these laws in this industry is identical to that in construction: there was a need to protect downstream parties, like truckers and other motor carriers with little to no bargaining power, from absorbing most of the risk. To date, 45 states have enacted motor carrier transportation anti-indemnity laws.8

Generally, these statutes take one of two forms: (1) they prohibit requirements in indemnification agreements where the motor carrier must indemnify the non–motor carrier, usually a shipper or broker, for liability arising out of the non–motor carrier’s negligent or intentional acts; or (2) they prohibit indemnification provisions in motor carrier contracts that have the effect of indemnifying an indemnitee for the indemnitee’s negligent or intentional acts.9

Some states have implemented more nuanced transportation anti-indemnity statutes. For example, some limit indemnification for either party in both directions.10 In other words, both the upstream party and the motor carrier are prohibited from receiving indemnification for their own negligence. Some prohibit more than just indemnification for the parties’ own negligent acts, such as the Alabama statute, which prohibits indemnification for the shipper for loss arising out of the criminal, intentionally wrongful, or wanton acts of the shipper; for latent defects of the product being shipped; or when property in the trailer is loaded and sealed by the shipper and unable to be inspected by the motor carrier.12

Notably, the motor carrier anti-indemnification laws do not apply to businesses or people who transport property incidentally to their primary business, such as a furniture store or restaurant that might provide delivery of furniture or food sold for a fee.13

Oilfield-services anti-indemnity laws. The rationale for the recent trend in implementation of oilfield-services anti-indemnity laws mirrors those of construction and transportation. Oil companies and well operators—upstream parties—entered into services agreements with smaller companies. Those agreements typically contained indemnification provisions that required the smaller companies to indemnify the upstream parties for liability arising out of the negligence of both the smaller parties and the upstream parties, including the sole negligence of the upstream parties. The smaller contractors faced significant liability that typically they were unable to insure due to cost and risk. This dynamic resulted in an unfair and unreasonable burden on smaller companies.

As a result, legislatures in jurisdictions where oilfield services are prevalent—Louisiana, New Mexico, Texas, and Wyoming—passed anti-indemnity acts to prohibit the unreasonable transfer of risk. While the statutes all void indemnification agreements that purport to indemnify the indemnitee for its own negligence, each state has adopted various provisions that are distinct and complex. Those nuances should be assessed by a careful study of each particular statute, but there are notable provisions in each worth mentioning. In Texas, the anti-indemnity statute applies to both production activities and other related or limited services furnished in connection with the production activities.14 The New Mexico statute, on the other hand, applies only to production activities.15 In Louisiana, the statute applies only to bodily injury and wrongful death, not to property damage.16

Additionally, some of the statutes include exceptions to the prohibition against broad indemnity provisions. In Texas, broad indemnification is permissible if the indemnification agreement meets Texas’s “fair notice doctrine” standard and is supported with certain insurance coverage.17 In Louisiana, there is a similar exception for broad indemnification if the indemnification is supported by additional insured coverage and the indemnitee pays the associated costs of that coverage.18

Anti-Indemnity Statutes and Additional Insured Coverage

With the surge in anti-indemnity statute limitations came the need for upstream parties to diversify their risk-transfer efforts. Modern additional insured coverage emerged as a parallel risk-transfer path. Many contracts now include a requirement for the downstream party to procure additional insured coverage for the upstream party and related third parties, such as an ownership entity, in addition to indemnification agreements.

An additional insured essentially enjoys the same benefits of an insurance policy that the named insured does. As an example, in the construction industry, a general contractor might include a requirement for the subcontractor to procure general liability coverage for any liability arising out of the subcontractor’s work and to name the general contractor and owner as additional insureds on said liability policy. The general contractor intends to be covered under the subcontractor’s insurance policy for property damage and bodily injury liability that arises out of the subcontractor’s work.

The question that eventually emerged is whether contractual insurance requirements to obtain additional insured coverage should be treated identically to indemnification requirements with respect to regulation and enforceability. Within the construction industry, courts and legislatures (see table on page 37) increasingly are assessing additional insured agreements in a manner similar to traditional contractual indemnification provisions, but the results are inconsistent.19 The results demonstrate the battle between “freedom of contract” and public
policy. Some courts have found that anti-indemnity statutes or principles do not apply to additional insured coverage requirements, while others find that they do, even when the relevant anti-indemnity statute is silent on the issue or seems to explicitly exempt insurance from its reach.

While this has not yet become an issue in the transportation and oilfield-services industries, the impact on the construction industry likely will have significant implications for other industries utilizing indemnification agreements that have their own set of indemnification laws. Participants in other industries should take note of the trends in the construction industry.

**Application of Anti-Indemnity Laws to Insurance: Express Language**

Some legislatures have attempted to clarify whether anti-indemnity statutes apply to additional insured requirements in contracts by expressly including language that dictates whether the statute applies to insurance requirements and/or policies.

**Express application.** Several anti-indemnity statutes expressly state that they apply to insurance requirements regarding liability for the sole negligence of the upstream party. They reason that an agreement to procure this type of insurance coverage violates public policy and is no different than an agreement to indemnify.

For example, Oregon’s anti-indemnity statute applies to both construction indemnification agreements and additional insured agreements. Specifically, it states thus:

> Any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.21

In Walsh Construction Co. v. Mutual of Enumclaw,23 the Supreme Court of Oregon reviewed an agreement between a subcontractor and a general contractor to procure additional insured coverage for the sole negligence of the general contractor. The court held that the requirement was no different than a direct requirement for the subcontractor to indemnify the general contractor for its sole negligence and that the limitations of the anti-indemnity statute thus applied.24 Consistent with the terms of the Oregon anti-indemnity statute, however, Oregon courts do not prevent a requirement for a subcontractor to procure additional insured coverage for a general contractor for the subcontractor’s negligence.25

Like Oregon, several other states have gone a step further and included specific language in their anti-indemnity statutes to ensure the application of the statutes to insurance agreements. These states include Arizona, Colorado, Georgia, Kansas, Minnesota, Montana, New Mexico, Oklahoma, and Texas. Of these states, those that have confronted the issue have ruled in a manner identical to that of the Oregon Supreme Court.27

**Express denial of application.** In the same vein, other anti-indemnity statutes expressly deny application of the limitations to insurance requirements in contracts.28 Consider the Missouri anti-indemnity statute as an example:

> [I]n any contract or agreement for public or private construction work, a party’s covenant . . . to indemnify or hold harmless another person from that person’s own negligence or wrongdoing is void as against public policy and wholly unenforceable. . . . [This] shall not apply to: . . . a party’s promise to cause another person or entity to be covered as an insured or additional insured in an insurance contract. . . . 29

This language is explicit and indicates that the anti-indemnity statute will have no bearing on an additional insured contract requirement.

**Express language, diverse interpretations.** More commonly, legislatures include language in the anti-indemnity statutes stating that the statutes shall not apply to any insurance contract. Courts nationwide have interpreted this language inconsistently or completely disregard its impact in analyzing whether the anti-indemnity statute applies to additional insured requirements in a construction contract.

In California, for example, courts consistently have held that this language means that this statute does not apply to requirements to procure additional insured coverage and does not bar an insurer from providing additional insured coverage for its sole negligence.20

Specifically, the California Court of Appeal reviewed the application of the California anti-indemnity statute with respect to a requirement to procure insurance and held that the specific language included in it, which reads “this section shall not affect the validity of any insurance contract,”30 demonstrated that the “clear import” of the anti-indemnity statute language has no impact on any provision requiring additional insured coverage.22 Furthermore, the court held that “it will not be deemed contrary to public policy or unenforceable merely because that additional insured party may have incurred claim liability due to its ‘sole negligence.'”31

Other jurisdictions with identical language in their anti-indemnity statutes have come to the same conclusion as California...
but on a distinct basis with little regard for the language in the statute. Like California, the Mississippi anti-indemnity statute states that “[i]t is not applicable to . . . insurance contracts or agreements.” Following an extensive analysis of the law in other jurisdictions on an issue of first impression, the U.S. District Court for the Southern District of Mississippi in Roy Anderson Corp. v. Transcontinental Insurance Co. held that an agreement to procure insurance is distinguishable from an indemnification provision. The court, however, included a caveat to this conclusion: the statute will apply to the agreement if the insurance requirement is linked to the indemnity agreement. The Anti-Indemnity statute states that it does “not apply to . . . insurance contracts or agreements.” In Transcontinental Insurance Co. v. National Union Fire Insurance Co. of Pittsburgh, the court reviewed an agreement between a contractor and a subcontractor. The agreement contained both an indemnification provision and a provision that required the subcontractor to procure additional insured coverage for the contractor. The insurance requirement included a portion that stated that “the insurer shall insure Subcontractor’s obligations under Paragraph 17 and 18 herein.” Paragraph 18 contained the indemnification provision. The court determined that the insurance agreement and the indemnity agreement were “inextricably linked” to one another. Because of this, the anti-indemnity statute limitations applied to the insurance requirements. As a result, the court voided the insurance provision because it required the subcontractor, the indemnitor, to indemnify the contractor, the indemnitee, for the contractor’s sole negligence, violating the Illinois anti-indemnity statute, which only allows for partial indemnification.

Similarly, in Clarendon America Insurance Co. v. Prime Group Realty Services, Inc., the Illinois Appellate Court held that the anti-indemnity statute did not apply to requirements to procure insurance agreements that are not inextricably linked to indemnification agreements. There, the court reviewed a lease agreement between a commercial tenant and a building owner. The lease agreement contained a provision that required the tenant to procure general liability insurance for the landlord, as an additional insured, for bodily injury and property damage resulting from the tenant’s or landlord’s negligence. The agreement additionally contained an indemnification agreement that did not provide indemnification for the landlord’s negligence. The court held that nothing connected the promise to procure insurance to the promise to indemnify. Thus, the agreement to procure insurance was not subject to the limitations included in the anti-indemnity statute.

Other states have come to similar conclusions on the basis of a distinction between separate indemnity and insurance agreements and those that are inextricably linked. Finally, one state, when reviewing nearly identical statutory language, came to the exact opposite conclusion, i.e., that the anti-indemnity statute does apply to requirements to procure additional insured coverage. The U.S. District Court for the District of New Jersey examined New Jersey law and held that the state anti-indemnity law, which prevents a party from being indemnified for its own negligence absent a “clear and unequivocal agreement,” is applicable to additional insured provisions despite the statutory language that seemingly exempts insurance from its reach. The court reasoned that any other outcome would result in “back-door attempt[s] at the statutorily prohibited result of indemnification for [an indemnitee’s] own negligence.”

Application of Anti-Indemnity Laws to Insurance: Silence

Not every anti-indemnity statute makes express reference to the application of its limitations to additional insured coverage. This silence renders the impact of anti-indemnity statutes on additional insured agreements in these jurisdictions unpredictable, unclear, or simply unknown. For example, the Tennessee statute, on its face, does not make reference to insurance requirements; but, in one case, additional insured coverage was limited regardless. The court reviewed a contractual indemnity provision, determined that it did not comply with the anti-indemnity law, and reformed it. Then, in reviewing the insurance coverage available, it determined that the coverage available would be equally limited because the coverage was based on what was required in the “insured contract,” which was just reformed by the court.

Many anti-indemnity statutes are similar in form. Nevertheless, they are applied inconsistently to additional insurance requirements across jurisdictions and sometimes within a particular jurisdiction. The very different outcomes of the decisions discussed within this article demonstrate the general unpredictability in this field.
Best Practices: Anti-Indemnity Statutes and Contract Drafting

Contractors, their risk managers, and their counsel routinely rely upon contractual indemnity and additional insured coverage to transfer risk to downstream parties. As the complexities of anti-indemnity statutes continue to grow and, in some cases, overlap with additional insured considerations, both parties to the construction contract must appreciate fully how these intricacies will impact an effective risk-transfer structure and must be prepared to adapt appropriately. Below are important practices and considerations that should be adopted and applied by those in these roles.

Contractual indemnity agreement. When negotiating a contractual indemnity agreement, it is important for a party to consider its role in the transaction. An indemnification agreement that favors an owner is different from one that favors a subcontractor. Consideration of its role, combined with an understanding of the differences between the types of indemnity agreements, will allow a party to determine the type and scope of indemnity provision it should be favoring in negotiations.

Equally as important in the drafting phase is the need for a party to familiarize itself with the relevant anti-indemnity statute of its jurisdiction to ensure that the agreed-upon indemnification provision is compliant with it. For those entities operating on a national scale, a careful examination of choice of law principles—including public policy exceptions—will be equally critical. Not only does the drafter want to ensure that the provision grants indemnification only to the extent allowed by the statute, but also the drafter should be aware that some jurisdictions might require the inclusion of certain provisions, such as a monetary cap or an explicit allocation of the responsibility for the premium payment.66

Finally, it is vital to recognize the potential outcome of including a noncompliant indemnification provision in a contract. While some jurisdictions might reform the indemnity provision to give effect to the basic purpose of the contract, other jurisdictions void the indemnification agreement entirely for noncompliance.59 If the parties inadvertently include indemnification language that is broader than what is allowable by statute, a detrimental outcome could result. Both parties should consider qualifying the indemnification agreement with a “saving” clause, such as “to the fullest extent permitted by law.” Inclusion of this language is likely to prevent a court from pronouncing an entire indemnification provision void. It shows that the intent of the parties is to permit reformation of the indemnification agreement in the event that the indemnity clause included in the contract does not comply with the relevant anti-indemnity statute.58

Additional insured coverage requirement. Contractual indemnification is only one method of successful risk transfer. Inclusion of a requirement to procure proper sufficient additional insured coverage is also important. Requiring insurance not only is a way to assure that the other party to the contract has sufficient funds to fulfill its indemnification promises but also potentially serves as an alternative if contractual indemnification is unavailable.

After assessing the law of its jurisdiction, a party needs to take care that the insurance and indemnity agreements are not written such that they apply together or could be interpreted as such if this might be detrimental to coverage. As explained previously, certain jurisdictions, such as Illinois and Mississippi, will distinguish between insurance agreements that are inextricably linked to the indemnity requirement—to which a court would apply the anti-indemnity statute—versus those that are separate and distinct requirements.

Risk-transfer alternatives. Finally, it is worth considering potential risk-transfer alternatives in jurisdictions where anti-indemnity law specifically places constraints on contractual indemnification and additional insured coverage. Texas’s anti-indemnity law, for instance, specifically excepts owner-controlled and contractor-controlled wrap-up insurance programs from its reach.59 A wrap-up insurance program is a general liability program that is provided by the owner or general contractor but paid for by all of the parties enrolled in the program and meant to provide coverage for all parties enrolled. Thus, in Texas, the drafter of a contract should consider a wrap-up program in order to circumvent the restrictions of anti-indemnity provisions.

Conclusion

An important takeaway from this article is that anti-indemnity statutes may have a broader reach than those drafting contract agreements might anticipate. While many anti-indemnity statutes are similar in form, they are inconsistently applied to additional insurance requirements across jurisdictions and sometimes within a particular jurisdiction. The very different outcomes of the decisions discussed within this article demonstrate the general unpredictability in this field. This unpredictability warrants greater consideration than often is provided to indemnification provisions in contracts to ensure that risk is actually transferred. Those that are responsible for risk management must apprise themselves of their jurisdictional trends because failing to do so could be detrimental to the risk structure created.
## Construction Anti-Indemnity Statutes: Prohibition on Additional Insured Coverage Requirement?

### A State-By-State Review

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Yes</th>
<th>No</th>
<th>Unclear</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>no statute</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AK</td>
<td>Alaska Stat. § 45.45.900</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>CA</td>
<td>Cal. Civ. Code §§ 2782, 2782.05</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>CO</td>
<td>Colo. Rev. Stat. §§ 13-50.5-102, 13-21-111.5</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CT</td>
<td>Conn. Gen. Stat. § 52-572k</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>DE</td>
<td>Del. Code Ann. tit. 6, § 2704</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DC</td>
<td>no statute</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td>Fla. Stat. § 725.06</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ID</td>
<td>Idaho Code Ann. § 29-114</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>IL</td>
<td>740 Ill. Comp. Stat. Ann. 35/1, 35/3</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IN</td>
<td>Ind. Code Ann. § 26-2-5-1</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>IA</td>
<td>Iowa Code Ann. § 537A.5</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>ME</td>
<td>no statute</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MN</td>
<td>Minn. Stat. Ann. §§ 337.02, 337.05</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>MS</td>
<td>Miss. Code Ann. § 31-5-41</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MO</td>
<td>Mo. Rev. Stat. § 434.100</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

See Chrysler Corp. v. Merrell & Garaguso, Inc., 796 A.2d 648 (Del. 2002) (explaining that in situation where additional insured was already added to policy and paid for, insurer could not refuse to provide coverage; but suggesting that insurer might be able to refuse initial grant of coverage based on statute).
<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
<th>Section Numbers</th>
<th>Indemnity Statutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>NV</td>
<td>no statute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NM</td>
<td>N.M. Stat. Ann.</td>
<td>§ 56-7-1</td>
<td>X</td>
</tr>
<tr>
<td>NY</td>
<td>N.Y. Gen. Oblig. Law</td>
<td>§§ 5-322.1, 5-324</td>
<td>X</td>
</tr>
<tr>
<td>ND</td>
<td>N.D. Cent. Code</td>
<td>§ 9-08-02.1</td>
<td>X</td>
</tr>
<tr>
<td>OH</td>
<td>Ohio Rev. Code Ann.</td>
<td>§ 2305.31</td>
<td>X</td>
</tr>
<tr>
<td>OK</td>
<td>Okla. Stat. tit.</td>
<td>§ 15, § 221</td>
<td>X</td>
</tr>
<tr>
<td>RI</td>
<td>R.I. Gen. Laws</td>
<td>§ 6-34-1</td>
<td>X</td>
</tr>
<tr>
<td>SD</td>
<td>S.D. Codified Laws</td>
<td>§ 56-3-18</td>
<td>X</td>
</tr>
<tr>
<td>TN</td>
<td>Tenn. Code Ann.</td>
<td>§ 62-6-123</td>
<td>X</td>
</tr>
<tr>
<td>TX</td>
<td>Tex. Ins. Code Ann. art.</td>
<td>151.104</td>
<td>X</td>
</tr>
<tr>
<td>UT</td>
<td>Utah Code Ann.</td>
<td>§ 13-8-1</td>
<td>X</td>
</tr>
<tr>
<td>VT</td>
<td>no statute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VA</td>
<td>Va. Code Ann.</td>
<td>§ 11-4-1</td>
<td>X</td>
</tr>
<tr>
<td>WI</td>
<td>no statute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WY</td>
<td>no statute</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes**

1. Indemnity, Black’s Law Dictionary (10th ed. 2014).
8. IRMI, Contractual Risk Transfer: State Motor Carrier Transportation Anti-Indemnity Statutes (Oct. 2017), www.irmi.com/online/crt/ch004/1l04m-motor-carrier-transportation-anti-indemnity-statutes.aspx. (The website permits access only to those with IRMI accounts.)
19. Refer to table for a state-by-state breakdown of the application of construction anti-indemnity statutes to additional insured coverage.
23. Walsh, 104 P.3d 1146.
24. Id. at 1148–51.
27. See, e.g., First Mercury Ins. Co. v. Cincinnati Ins. Co., 882 F.3d 1289 (10th Cir. 2018) (holding that explicit language of statute includes express application to requirements to insure for sole negligence of indemnitee); Federated Dep’t Stores v. Superior Drywall & Acoustical, Inc., 592 S.E.2d 485 (Ga. Ct. App. 2003) (holding that indemnity clause purporting to indemnify general contractor and owner for their own negligence was void against public policy, but the insurance clause was not because it only required the purchase of insurance for coverage for liability resulting from the subcontractor’s negligent acts).
33. Id.
36. Id.
37. 740 Ill. Comp. Stat. 35/1 (West 2010).
38. 2005).
40. Id.
41. Id. at 506.
42. Id.
43. Id.
45. Id. at 14.
46. Id. at 9.
47. Id.
48. Id. at 14.
49. Id.
50. See, e.g., Stickovich v. Cleveland, 757 N.E.2d 50, 66 (Ohio Ct. App. 2001) (explaining that there is a distinct difference between insurance agreements and indemnification agreements).
52. Id.
54. Id.
55. Id.