

Construction Anti-Indemnity Statutes

Thursday, September 19, 2024

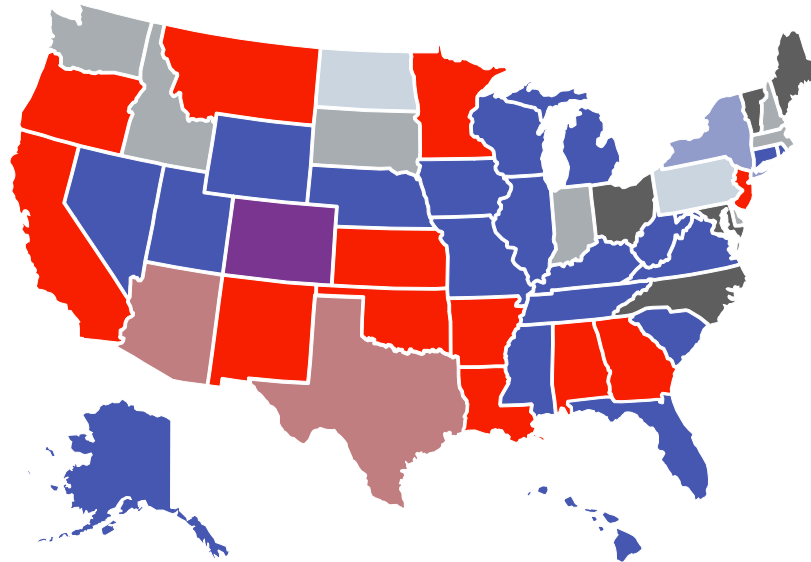
In addition to additional insured coverage afforded to upstream parties, indemnity is an effective risk transfer tool. Indemnity is the right of an injured party to claim reimbursements for its loss, damage, or liability from another party. An indemnification agreement is a "contract between two parties whereby the one undertakes and agrees to indemnify the other against loss or damage arising from some contemplated act on the part of the indemnitor, or from some responsibility assumed by the indemnitee, or from the claim or demand of a third person, that it, to make good to him such pecuniary damage as he may suffer." Black's Law Dictionary 393 (5th ed. 1979). A party's indemnity obligation to another party arises in two situations: common law indemnity and contractual indemnity. This survey focuses solely on the enforceability of contractual indemnity obligations.

A classic example of a typical contractual indemnity provision is as follows:

"Subcontractor shall defend, indemnify, and hold harmless the Contractor from any claims, damages, losses, and expenses arising out of the performance of the work."

Most states have enacted "anti-indemnity statutes," which limit or prohibit enforcing indemnification agreements in construction contracts. In addition, some states further limit the anti-indemnity statute's application to public and/or design projects. In general, there are two overarching reasons why construction contracts are often singled out for special treatment when it comes to the limitation of indemnification for an indemnitee's own negligence. 1-13 General Liability Insurance Coverage § 13.00 (3rd 2015). First is a concern that a party being indemnified for its own negligence will have less incentive to exercise due care in the performance of its work. *Id.* The other rationale is a concern that general contractors, because of unequal bargaining power, can compel their subcontractors to accept such an onerous contractual term as one that requires a party to assume liability for the negligence of others. *Id.*

This survey depicts the states that allow for the following forms of indemnity: indemnity for a party's sole negligence; full indemnity in situations of concurrent negligence; and partial indemnity in situations of concurrent negligence. Some states have extended the anti-indemnity principle to contractual requirements for additional insured coverage. Those states are noted in the survey. In addition, the map on the following page identifies which states extend the reach of their anti-indemnity statute to additional insured coverage, either explicitly by the terms of the statute or by court interpretation.



Application of Anti-Indemnity to Additional Insured Coverage

	Anti-Indemnity statute also prohibits additional insured coverage for the sole negligence of the indemnitee.
	Anti-Indemnity statute does not apply to additional insured coverage, by statute or case law.
	Anti-Indemnity statute does not specify whether it applies to additional insureds, and no case law interpreting.
	Unclear or no statute.
	Anti-Indemnity statute does not specify whether it applies to additional insureds, and no case law interpreting. & Anti-Indemnity statute also prohibits additional insured coverage for the sole negligence of the indemnitee.
	Anti-Indemnity statute does not apply to additional insured coverage, by statute or case law. & Anti-Indemnity statute also prohibits additional insured coverage for the sole negligence of the indemnitee.
	Unclear or no statute. & Anti-Indemnity statute does not specify whether it applies to additional insureds, and no case law interpreting.
	Anti-Indemnity statute does not specify whether it applies to additional insureds, and no case law interpreting. & Anti-Indemnity statute does not apply to additional insured coverage, by statute or case law.

Disclaimer: This survey is current as of 11/2021. This material is made available for general informational purposes only. The field of insurance law is ever evolving, and courts may change their views at any time. Accordingly, readers are advised to verify the information contained herein independently. This material is not intended to, and does not constitute, legal advice, nor is it intended to constitute a solicitation for the formation of an attorney-client relationship. For more information or questions on anti-indemnity strategies, please contact us at coverage@sdvlaw.com.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Alabama	Non-Specific	Yes	Yes	Yes	No statute. <i>See Indus. Tile, Inc. v. Stewart</i> , 388 So.2d 171, 175 (Ala. 1980) ("between private parties, indemnity contracts are enforceable if the contract clearly indicates an intention to indemnify against the consequences of the indemnitee's negligence, and such provision was clearly understood by the indemnitor, and there is not shown to be evidence of a disproportionate bargaining position in favor of the indemnitee."); <i>Doster Constr. Co., Inc. v. Marathon Elec. Contractors, Inc.</i> , 32 So.3d 1277, 1283 n.2 (Ala. 2009) ("[i]ndemnification for an indemnitee's own negligence requires 'clear and unequivocal language.'")		Alabama law may limit an indemnitee's ability to recover attorneys' fees when defending claims predicated on its own negligence. <i>See Stone Bldg. Co. v. Star Elec. Contractors, Inc.</i> , 796 So.2d 1076, 1092 (Ala. 2000).
 Alaska	All Construction and Design Contracts	No	Yes	Yes		No Alaska Stat. § 45.45.900.	
 Arizona	Public Construction and Design Contracts	No	No	Yes	Ariz. Rev. Stat. § 41-2586. Ariz. Rev. Stat. § 34-226.	Yes Ariz. Rev. Stat. § 34-226(C).	Indemnitor may indemnify person not a party to the construction contract, and who, as an accommodation, enters into an agreement with the subcontractor to enter on or adjacent to its property to perform the construction contract for others.
	Private Construction and Design Contracts	No	Yes	Yes	Ariz. Rev. Stat. § 32-1159.		Indemnitor may indemnify person not a party to the construction contract, and who, as an accommodation, enters into an agreement with the subcontractor to enter on or adjacent to its property to perform the construction contract for others.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Arkansas	All Construction and Design Contracts	No	No	Yes	Ark. Code Ann. §§ 4-56-104, 22-9-214. Note: There are additional restrictions that apply to the indemnitee and third parties that do not qualify as the contractor's agent, representative, subcontractor, or supplier.	Yes Ark. Code Ann. § 4-56-104(b), (e).	The indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitors, its agents, representatives, subcontractors, or suppliers. See Ark. Code Ann. § 4-56-104(e)(1).
	Residential Construction and Design Contracts	No	No	Yes	Cal. Civ. Code § 2782(a), (c), (d).	Yes Cal. Civ. Code § 2782(d).	Exceptions for indemnification of adjacent property owner, certain engineers, and geologists. See Cal. Civ. Code §§ 2782.1, 2782.2, 2782.6.
 California	Construction Contracts with Public Agency	No	No	Yes	Cal. Civ. Code § 2782(a), (b).	Yes Cal. Ins. Code § 11580.04.	
	All Other Construction Contracts	No	No	Yes	Cal. Civ. Code §§ 2782(a), (c), 2782.05, 2783.	Yes Cal. Civ. Code § 2782 (C).	Exceptions for indemnification of adjacent property owner, certain engineers, and geologists. See Cal. Civ. Code §§ 2782.1, 2782.2, 2782.6.
 Colorado	"Public Entity" Construction and Design Contracts	No	No	Yes	Colo. Rev. Stat. § 13-50.5-102(8).	No Colo. Rev. Stat. § 13-50.5-102(8).	
	Construction Agreements	No	No	Yes	Colo. Rev. Stat. § 13-21-111.5.	Yes Allows contract clauses that requires a party to purchase insurance and to name the other party as an additional insured but only to the extent that such additional insurance coverage provides coverage to the indemnitee for liability due to the acts or omissions of the indemnitor. Colo. Rev. Stat. § 13-21-111.5(d)(II).	

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Connecticut	All Construction Contracts	No	No	Yes	Conn. Gen. Stat. § 52-572k.	No Conn. Gen. Stat. § 52-572k	
 Delaware	All Construction and Design Contracts	No	No	Yes	DEL. CODE ANN. tit. 6, § 2704; <i>see also Chrysler Corp. v. Merrell & Garaguso, Inc.</i> , 796 A.2d 648 (Del. 2002) (one party to a construction contract may not agree to indemnify the other party for the latter's own negligence, but the requirement to purchase insurance may or may not be unenforceable dependent on circumstances).	Unclear. <i>See Chrysler Corp. v. Merrell & Garaguso, Inc.</i> , 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).	Does not apply to any insurance policy issued by a "duly authorized" insurer "insuring against losses or damages from any causes whatsoever". Del. Code Ann. tit. 6 § 2704(b).
 Florida	All Construction and Design Contracts (see exception per Fla. Stat. § 725.08)	No, unless contract contains 1) monetary limit on the extent of the indemnification that bears a reasonable commercial relationship to the contract, and 2) is a part of the specification and bid documents.	No, unless contract contains 1) monetary limit on the extent of the indemnification that bears a reasonable commercial relationship to the contract, and 2) is a part of the specification and bid documents.	Yes	Fla. Stat. § 725.06.	No <i>See Cone Bros. Contracting Co. v. Ashland-Warren, Inc.</i> , 458 So.2d 851 (Fla. Dist. Ct. App. 1984).	Fla. Stat. § 725.06 (2), (3) provides that public agency construction contracts may require the other party to indemnify and hold harmless to the extent of loss caused by the indemnifying party's negligence, recklessness, or intentional wrongful conduct, but otherwise it is not permitted. 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 intentional wrongful conduct.
 Georgia	All Construction Contracts, and Engineering, Architectural and Land-Surveying Contracts	No	Yes, for Construction Contracts. No, for Engineering, Architectural and Land-Surveying Contracts.	Yes, for Engineering, Architectural and Land-Surveying Contracts (for negligence, recklessness, wrongful intentional conduct).	Ga. Code Ann. § 13-8-2(b), (c).	Yes GA. CODE ANN. § 13-8-2(b), (c); <i>Federated Dep't Stores v. Superior Drywall & Acoustical, Inc.</i> , 592 S.E.2d 485 (Ga. App. Ct. 2005).	Not applicable to workers' compensation or any insurance agreement.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Hawaii	All Construction Contracts	No	Yes	Yes	Hawaii Rev. Stat. § 431:10-222.	No Hawaii Rev. Stat. § 431:10-222.	Not applicable to workers' compensation claims.
 Idaho	All Construction Contracts	No	Yes	Yes	Idaho Code § 29-114.		
 Illinois	All Construction Contracts	No	No	Yes	740 Ill. Comp. Stat. 35/1-3.	No, unless additional insured coverage agreement is linked to indemnification agreement. <i>See 740 ILL. COMP. STAT. 35/3; Transcon. Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 662 N.E.2d 500 (Ill. App. Ct. 1996).</i>	
 Indiana	All Construction and Design Contracts except Highway Contracts	No	Yes	Yes	Ind. Code § 26-2-5-1, § 26-2-5-2, § 26-2-5-4		Sole negligence does not include vicarious liability, imputed negligence, or assumption of a non-delegable duty. Ind. Code § 26-2-5-1. Does not apply to "highway contracts" and statute has "dangerously instrumentality exception." Ind. Code § 26-2-5-2.
 Iowa	All Construction and Design Contracts	No	No	Yes	Iowa Code Ann. § 537A.5.	No Iowa Code Ann. § 537A.5.	Not applicable to "any obligation of strict liability otherwise imposed by law." Iowa Code Ann. § 537A(3).

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Kansas	All Construction and Design Contracts	No, unless agreement provides in writing that the indemnity will be supported by liability insurance furnished by indemnitor subject to limitations.	No, unless agreement provides in writing that the indemnity will be supported by liability insurance furnished by indemnitor subject to limitations	Yes	Kan. Stat. Ann. § 16-121(b). <i>Great Plains Roofing & Sheet Metal, Inc. v. K. Bldg. Specialties, Inc.</i> , 510 P.3d 1172, 1180-81 (Kan. Ct. App. 2022) (holding where parties agree "to the maximum extent allowed by applicable law, to defend, indemnify, and hold harmless" then the indemnitor will bear liability to the extent of "its own share of negligence in the underlying tort").	Yes Kan. Stat. Ann. § 16-121(c).	Statute does not apply to agreements that provide in writing that the indemnity provision will be supported by liability insurance furnished by the indemnitor. In those circumstances, Indemnification shall be limited to the amount and scope agreed upon by indemnitor in contract. In the case of unilateral indemnification, indemnitee shall be responsible for cost. § 16-121(d) (6). Contract clauses that waive subrogation rights for losses covered by liability or workers' compensation insurance are nullified, with certain exceptions. Kan. Stat. Ann. § 16-4803, § 16-1903.
 Kentucky	All Construction Contracts; No Mention of Design	No	No	Yes	Ky. Rev. Stat. Ann. § 371.180.	No Ky. Rev. Stat. Ann. § 371.180	Not applicable to validity of an insurance contract.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Louisiana	All Construction and Design Contracts	No, unless provision includes requirement to procure insurance to support indemnity requirement subject to limitation.	No, unless provision includes requirement to procure insurance to support indemnity requirement subject to limitation.	Yes	La. Stat. Ann. § 9:2780.1.	Yes La. Stat. Ann. § 9:2780.1(l).	Applicable to contracts entered into after Jan. 1, 2011. Statute does not apply to agreements that the indemnity provision will be supported by liability insurance furnished by the indemnitor. In those circumstances, Indemnification shall be limited to the amount and scope agreed upon by indemnitor in contract and Indemnitor must recover cost in contract price. <i>But see Roundtree v. New Orleans Aviation Bd.</i> , 844 So.2d 1091 (La. Ct. App. 2003) (holding that for contracts entered into before Jan. 1, 2011, indemnification is permitted if the intent is expressed in unequivocal terms).
 Maine	Non-Specific	Yes	Yes	Yes	No statute. <i>See State Farm Mut. Ins. Co. v. Koshy</i> , 995 A.2d 651 (Me. 2010) (allowing indemnification contracts if clearly stated); <i>see also Emery Waterhouse Co. v. Lea</i> , 467 A.2d 986, 993 (Me. 1983) (“[W]hen purportedly requiring indemnification of a party for damage or injury caused by that party’s own negligence, such contractual provisions, with virtual unanimity, are looked upon with disfavor by the courts, and are construed strictly against extending the indemnification to include recovery by the indemnitee for his own negligence.”).		

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Maryland	All Construction & Design Contracts	No	Yes	Yes	Md. Code Ann., Cts. & Jud. Proc. § 5-401.	Unclear. See <i>Heat & Power Corp. v. Air Prods. & Chems., Inc.</i> , 578 A.2d 1202 (Md. 1990) (explaining that it may arguably be against public policy to require purchase of insurance coverage by indemnitor for indemnitee's own negligence, but holding that in situations where insurance coverage was already procured for such purpose must be provided).	Not applicable to validity of an insurance contract or workers' compensation issues.
 Massachusetts	All contracts in which a subcontractor agrees to indemnify another for injury or damage not caused by the subcontractor	No	Yes	Yes	Mass. Gen. Laws ch. 149, § 29C; see also <i>Kelly v. Dimeo, Inc.</i> , 581 N.E.2d 1316 (Mass. App. Ct. 1991) (allowing full indemnity under a contractual indemnity clause requiring indemnification of claims for bodily injury "caused whole or in part" by negligence of subcontractor's employee, although general contractor was found to be concurrently negligent with employee, and subcontractor was found to be free of any negligence); see also <i>Norfolk & Dedham Mut. Fire Ins. Co. V. Morrison</i> , 924 N.E.2d 260, 269, n.10 (Mass. 2010) ("Eight months after its enactment, § 29C was rewritten to remove the language barring insurance agreements.").		

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Michigan	All Construction Contracts	No	Yes	Yes	Mich. Comp. Laws § 691.991.	No, unless additional insured coverage agreement is linked to indemnification agreement. See <i>Sentry Ins. Co. v. National Steel Corp.</i> , 382 N.W.2d 753 (1985) (holding that the statute does not apply to an obligation to provide insurance coverage), but see <i>Peeples v. City of Detroit</i> , 297 N.W.2d 839 (Mich. App. Ct. 1980) (holding that requirement in agreement to procure insurance to support liability is inapplicable because it is governed by indemnification provision, which court found to be void).	
	All Design Contracts	No	Yes, except Public Entity contracts with Michigan-licensed professional	Yes, except Public Entity contracts with Michigan-licensed professional	Mich. Comp. Laws § 691.991.	No, unless additional insured coverage agreement is linked to indemnification agreement.	
 Minnesota	All Construction Contracts	No	Yes, if injury is attributable to breach of contract, or a negligent or wrongful act or omission	Yes	Minn. Stat. § 337.01, § 337.02.	Yes, but there is an exception for project-specific insurance including contractor-controlled insurance programs or policies. Minn. Stat. § 337.05(b), (c).	Exception in cases when owner (or government entity) agrees to indemnify for strict liability under environmental laws.
 Mississippi	All Construction Contracts	No	No	Yes	Miss. Code Ann. § 31-5-41.	No, unless additional insured coverage agreement is linked to indemnification agreement. See <i>Roy Anderson Corp. et. al. v. Trancon. Ins. Co.</i> , 358 F. Supp. 2d (S.D. Miss. 2005).	Not applicable to construction bonds and insurance agreements.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Missouri	All construction contracts, except contracts between state and governmental agencies)	No	No	Yes	Mo. Rev. Stat. § 434.100.	No Mo. Rev. Stat. § 434.100(2) (2).	Statute does not apply to agreements that require indemnity obligations to be supported by liability insurance furnished by the indemnitor. In those circumstances, Indemnification shall be limited to the amount and scope agreed upon by indemnitor in contract. Indemnitor must recover cost in contract price.
 Montana	All Construction Contracts	No	No	Yes	Mont. Code Ann. § 28-2-2111 (private); Mont. Code Ann. § 18-2-124 (public).	Yes Mont. Code Ann. § 28-2-2111 (private); Mont. Code Ann. § 18-2-124 (public).	Exception for requirement to procure project specific insurance.
 Nebraska	All Construction and Design Contracts	No	No	Yes	Neb. Rev. Stat. § 25-21,187(1).	No Neb. Rev. Stat. § 25-21,187(1); <i>Anderson v. Nashua Corp.</i> , 560 N.W.2d 446 (Neb. 1997).	Not applicable to construction bonds or insurance agreements.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Nevada	Residential Construction Contracts	No	Yes	Yes	Nev. Rev. Stat. § 40.693. <i>See George L. Brown Ins. Agency, Inc. v. Star Ins. Co.</i> , 237 P.3d 92 (Nev. 2010) (allowing indemnification for indemnitee's own negligence if clearly and explicitly stated in contract); <i>Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.</i> , 255 P.3d 268 (Nev. 2011) (holding that the intent to indemnify for contributory negligence and sole negligence of the indemnitees must be explicitly stated, and a general provision purporting to indemnify the indemnitee against "any and all claims" is insufficient to achieve this goal).	No. Additional insured must "pursue available means of recover of its defense fees and costs under the policy before pursuing a claim against the subcontractor." Nev. Rev. Stat. § 40.693(e) (1).	
 New Hampshire	All Construction Contracts	No	No	Yes	N.H. Rev. Stat. § 338-A:2 (construction contracts); N.H. Rev. Stat. § 338-A:1 (design contracts).		
 New Jersey	All Construction Contracts	No	Yes	Yes	N.J. Stat. Ann. § 2A:40A-1 (construction contracts); N.J. Stat. Ann. § 2A:40A-2 (design contracts). <i>Englert v. The Home Depot</i> , 911 A.2d 72, 77 (N.J. 2006) (explaining that an indemnification provision must clearly and unequivocally demonstrate an intent to indemnify an indemnitee for its own negligence).	Unclear. N.J. STAT. ANN. § 2A:40A-1 states that section shall not affect insurance contract, workmen's compensation or agreement issued by authorized insurer. N.J. STAT. ANN. § 2A:40A-2 makes no reference to additional insurance, but see <i>Shannon v. B.L. England Generating Station</i> , No. 10-04524, 2013 WL 6199173 (D.N.J. Nov. 27, 2013), which holds that anti-indemnity public policy and laws may apply to additional insured coverage.	

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 New Mexico	All Construction and Design Contracts	No	No	Yes	N.M. Stat. Ann. § 56-7-1	Yes N.M. Stat. Ann. § 56-7-1(A); <i>First Mercury Ins. Co. v. Cincinnati Ins. Co.</i> , 882 F.3d 1289 (10th Cir. 2018) (holding that explicit language of anti-indemnity statute includes application to requirements to insure for sole negligence of indemnitee).	A construction contract that requires a party to purchase a project-specific insurance policy is enforceable. N.M. Stat. Ann. § 56-7-1(B)(2).
 New York	Construction Contracts	No	No	Yes	N.Y. Gen. Oblig. Law § 5-322.1 (construction contracts); N.Y. Gen. Oblig. Law § 5-324 (design contracts).	No <i>Cappellino v. Atco Mech.</i> , 273 A.D.2d 265 (N.Y. Sup.Ct. 2000) (holding that insurance provisions are separable from indemnification agreements, to which the anti-indemnity law applies).	Does not apply to insurance contracts, workers' compensation, or agreement issued by an insurer.
 North Carolina	Construction and Design Contracts	No	No	Yes	N.C. Gen. Stat. § 22B-1.	Unclear. Technically, no. <i>But see Penn. Nat'l Mut. Cas. Ins. Co. v. Assoc. Scaffolders & Equip. Co., Inc.</i> , 579 S.E.2d 404, 407-08 (N.C. Ct. App. 2003) (holding that the insurer did not have to provide defense or indemnity when coverage was only based on "insured contract" and contract was deemed void by the anti-indemnity statute); <i>St. Paul Fire & Marine Ins. v. Hanover Ins.</i> , 187 F. Supp. 2d 584, 590 n.7 (E.D.N.C. 2000) (extending Section 22B-1 to void indemnification of additional insureds for their own negligence).	An agreement where an indemnitor promises to indemnify another for the indemnitor's sole negligence is enforceable. Does not affect the validity of any insurance contract, workers' compensation, or other agreement issued by an insurer. Not applicable to a public utility as an indemnitee, or to contracts entered into by the DOT.
 North Dakota	Contracts where contractor indemnifies owner or its agents for design errors	No	No	Yes	N.D. Cent. Code § 9-08-02.1. Owners cannot be indemnified by contractors for design errors of the owner or the owner's agents.		

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 North Dakota	All other contracts	Yes	Yes	Yes	No Statute. See <i>Rupp v. Am. Crystal Sugar Co.</i> , 465 N.W.2d 614 (N.D. 1991) (finding that indemnification agreements for another party's negligence are permitted provided they clearly indicate an intent to do so); but see N.D. Cent. Code § 9-08-02 ("All contract which have for their object, directly or indirectly, the exempting of anyone from responsibility for that person's own fraud or willful injury to person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.").		
 Ohio	Construction and Design Contracts.	No	No	Yes	Ohio Rev. Code Ann. § 2305.31.	Unclear. See <i>Buckeye Union Ins. V. Zavarella Bros.</i> , 699 N.E.2d 127 (Ohio 8th App. 1997) (holding liability policy naming contractor as an additional insured for liability arising out of the subcontractor's work could not be construed as covering the contractor for its own negligence as a matter of public policy); Compare <i>Stickovich v. Cleveland</i> , 757 N.E.2d 50, 61 (Ohio 8th App. 2001 (holding a commercial liability policy is not an "indemnity agreement" as part of a construction contract and was outside the scope of the statute voiding construction contractors' agreement to indemnify against its own negligence).	Does not affect any person purchasing insurance from an insurance company for his/her own protection.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Oklahoma	Construction Agreements	No	No	Yes	Okla. Stat. tit. 15, § 221.	Yes Okla. Stat. tit. 15, § 221(B), (C). Exception for contract clauses which require procurement of a project-specific insurance policy, including owners' and contractors' protective liability insurance, project management protective liability insurance, or builder's risk insurance. See <i>JP Energy Mktg, LLC v. Com. & Indus. Ins. Co.</i> , 412 P.3d 121, 129 (Okla. Civ. App. 2017) ("The plain language of the statute also prohibits contract provisions requiring the indemnitor to insure another entity for liability arising out of the indemnitee's own negligence . . . [t]his includes agreements that the indemnitor will name the indemnitee as an additional insured . . .").	"The provisions of this section do not affect any provision in a construction agreement that requires an entity or that entity's surety or insurer to indemnify another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, but such indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors, or suppliers." Okla. Stat. tit. 15, § 221(C).

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Oregon	Construction and Design Contracts	No	No	Yes	Or. Rev. Stat. § 30.140	Yes Or. Rev. Stat. § 30.140; <i>Walsh Constr. Co. v. Mut. Enumclaw</i> , 104 P.3d 1146 (Or. 2005).	An amended version of this statute will be enacted January 1, 2025. Act effective Jan. 1, 2025, ch. 112, <i>Oreg. Laws 2024</i> (to be codified at Or. Rev. Stat. § 30.140). Alterations to the statute include section (1), which will define "Related services," "Architectural, engineering . . . services," and "Construction agreement." This statute will permit a public body to require a person or entity contracted for "architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services" to provide a duty to defend the public body only to the extent of the person or entity's own fault as determined by adjudication, alternative dispute resolution, or through a settlement agreement. Statute does not apply to railroads as defined in Or. Rev. Stat. § 824.200
 Pennsylvania	Construction design contracts where design professional is the indemnitee	No	No	No	68 Pa. Cons. Stat. § 491.		

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Pennsylvania	Construction Contracts	Yes	Yes	Yes	No statute. See <i>Ocean Spray Cranberries, Inc. v. Re- frigerated Food Distribs., Inc.</i> , 936 A.2d 81 (Pa. Super. Ct. 2007) (allowing indemnification contracts if clearly and explicitly stated); <i>Keystone Specialty Servs. Co. v. Ebaugh</i> , 267 A.3d 1250, 1256 (Pa. Super. Ct. 2021) ([A]n indemnification clause does not cover claims arising out of the indemnitee's negligence unless it expressly refers to indemnification for the indemnitee's negligence.").		
 Rhode Island	Construction and Design Contracts	No	No	Yes	R.I. Gen. Laws § 6-34-1.	Unclear. Technically, no. But see <i>Cosimini v. Atkinson-Kiewit Joint Venture</i> , 877 F. Supp. 68 (D.R.I. 1995) (reforming insurance provision in contract to align with reformed indemnification provision, which was found non-compliant with anti-indemnity law, because insurance provision had direct reference to indemnification provision).	Not applicable to the validity of any insurance contract, worker's compensation agreement, or an agreement issued by an insurer.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 South Carolina	Construction and design contracts except electric utility, RR carriers, SCPSA	No	Yes	Yes	S.C. Code Ann. § 32-2-10. <i>See D.R. Horton, Inc. v. Builders FirstSource-Southeast Group, LLC</i> (S.C.App. 2018) (Indemnification clause in contract was void as against public policy to the extent it purported to require subcontractor to indemnify contractor for damages caused by contractor's negligence or the negligence of contractor's other subcontractors; statute allowed agreement that subcontractor would indemnify contractor for damages caused by subcontractor or subsubcontractors, but statute did not allow agreement to require subcontractor to indemnify contractor for its own negligence.).	No S.C. Code Ann. § 32-2-10.	Does not apply to insurance contracts or workers' compensation. Does not apply to any electric utility, electric cooperative, or rail carriers.
 South Dakota	Construction and Design Contracts	No	Yes	Yes	S.D. Codified Laws § 56-3-18.		
 Tennessee	Construction Contracts	No	Yes	Yes	Tenn. Code Ann. § 62-6-123.	Likely, no. <i>Am. Guarantee & Liab. Ins. Co. V. Norfolk S. Ry. Co.</i> , 278 F. Supp. 3d 1025, 1046-47 (E.D. Tenn. 2017) (finding that Section 62-6-123 does not cover insurance contracts, meaning it does not prohibit indemnification of an additional insured's own negligence); <i>but see Posey v. Union Carbide Corp.</i> , 507 F. Supp. 39 (D. Tenn. 1980) (limiting the availability of additional insured coverage when coverage was based on "insured contract" and the indemnification provision violated the anti-indemnity statute).	

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Texas	Construction-Related Design Contracts	No	No	Yes	Tex. Civ. Prac. & Rem. Code §§ 130.002(1), (2); 130.005 (stating that this chapter does not apply to the negligent acts of contractors); see <i>Foster, Henry, Henry, & Thorpe, Inc. v. J.T. Constr. Co. Inc.</i> , 808 S.W.2d 139, 141 (Tx. App. 1991) (finding that this statute only applies when the indemnification agreement requires indemnity for loss caused by the design professional, as opposed to the contractor).	No Tex. Civ. Prac. & Rem. Code § 130.005	
	Construction Contracts	No	No	Yes	Tex. Ins. Code Ann. § 151.102; see also Tex. Ins. Code Ann. § 151.103 which contains an exception for bodily injury/death of employee of indemnitor, its agent, or its subcontractor.	Yes Tex. Code Ann. § 151.104.	
 Utah	All Construction Contracts	No	No	No	Utah Code Ann. § 13-8-1(1), (2)	No Utah Code Ann. § 13-8-1(1), (3); <i>Meadow Valley Contractors, Inc. v. Transcon. Ins. Co.</i> , 27 P.3d 594, 598 (Utah Ct. App. 2001) (creating distinction between agreement to personally insure or indemnify and agreement to procure insurance).	Exception where the damages are caused in part by the owner, the fault of the owner is apportioned among the parties pro rata based on the proportional share of fault of each party. Utah Code Ann. § 13-8-1(3).
 Vermont	Non-Specific	Yes	Yes	Yes	No statute. See <i>Tateosian v. Vermont</i> , 945 A.2d 833 (Vt. 2007) (allowing indemnification agreement if explicitly stated).		
 Virginia	Construction Contracts	No	No	Yes	Va. Code Ann. § 11-4.1	No VA. Code Ann. § 11-4.1.	Not applicable to validity of an insurance contract or workers' compensation issues.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnitee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Washington	Construction Contracts	No	No	Yes	Wash. Rev. Code § 4.24.115. <i>Gilbert H. Moen Co. v. Island Steel Erectors, Inc.</i> , 912 P.2d 472, 474 (Wash. 1996) (holding an indemnification provision is valid to the extent it indemnifies an indemnitee for the indemnitor's negligence).		If the loss is caused by the concurrent negligence, the agreement is only enforceable to the extent of the indemnitor's negligence and only if agreement specifically and expressly provides for such.
 Washington, D.C.	Construction Contracts	No	No	Yes	D.C. Code § 27A-202 (2023)	Yes. D.C. Code § 27A-202(b)	The legislature's intent in bringing forth this bill was to prohibit "a contractor from requiring a subcontractor to hold harmless a contractor or owner for a contractor or owner's negligence"). Comm. of the Whole Report on Bill 24-251, B. 24-251, 24th Council, at 3 (2022). Not applicable to contracts entered into prior to April 1, 2023. Not applicable to worker's compensation and does not affect the validity of any insurance contract.
 West Virginia	Construction Contracts	No	Yes	Yes	W. Va. Code § 55-8-14.	No W. VA. Code § 55-8-14. <i>Dalton v. Childress Serv. Corp.</i> , 432 S.E.2d 98, 101 (W. Va. 1993) (holding that a provision requiring a party to procure insurance on behalf of a third party to cover that party's sole negligence is not void).	Does not apply to construction bonds or insurance contracts.

State	Contracts Affected	Type of Indemnity Allowed			Statute	Application to Additional Insured	Comments
		Sole Negligence of Indemnatee	Concurrent Negligence Full Indemnity	Concurrent Negligence Partial Indemnity			
 Wisconsin	Construction Contracts	Yes	Yes	Yes	See Wis. Stat. § 895.447 (rendering a provision in contract purporting to limit or eliminate tort liability void, though it has been narrowly interpreted); <i>But see Gunka v. Consolidated Papers, Inc.</i> , 508 N.W.2d 426 (Wis. Ct. App. 1993) (indemnification of sole negligence of indemnatee allowed if provision is clear and unambiguous); <i>Compare with Gerdman by Habush v. U.S. Fire Ins. Co.</i> , 350 N.W.2d 730 (Wis. Ct. App. 1984) (holding indemnity provision in contract did not violate statute and was a question of law).		
 Wyoming	Non-Specific	Yes	Yes	Yes	No statute. <i>See Union Pac. Resources Co. v. Dolenc</i> , 86 P.3d 1287 (Wyo. 2004) (indemnification agreements allowed if clearly stated). <i>But see</i> Wyo. Stat. § 30-1-131 (voiding covenants or promises pertaining to "any well for oil, gas or water, or mine for any mineral" which purports to indemnify the indemnatee from loss or liability caused by his or her own negligence).		