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50 State Survey – Anti-Indemnity Statutes

STATE	CONTRACTS	STATUTES & CASE LAW	INDEMNITY		
			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Alabama	Not Applicable	No statute. Indemnity provisions generally held valid. Indemnification for an indemnitee's own negligence must be clearly and unequivocally stated. *Craig Constr. Co., Inc. v. Hendrix,* 568 So.2d 752 (Ala. 1990). There is a limit to Alabama's acceptance of broad indemnity agreements. "Agreements that purport to indemnify another for the other's intentional conduct are void as a matter of public policy." *Price-Williams Associates, Inc. v. Nelson,* 631 So. 2d 1016, 1019 (Ala. 1994)	Yes	Yes	Yes
Alaska	Construction & Design	Alaska Statute § 45.45.900	No	Yes	Yes
Arizona	Construction & Design	Ariz. Rev. Stat. §§ 34-226; 41-2586 (public construction) and 32-1159; 32-1159.01 (private construction)	No	Private Contracts Only	Yes
Arkansas	Construction & Design	A.C.A. § 4-56-104; *Arkansas Power & Light Co. v. Home Ins. Co*., 602 F.Supp. 740, 746 (E.D. Ark. 1985). A.C.A. § 22-9-214 (public construction)	No	Yes	Yes
California	Residential Construction Contracts post Jan. 1, 2009	Cal. Civ. Code § 2782(a);(d)	No	No	Yes
California	Non-residential Construction Contracts	Cal. Civ. Code § § 2782(b); (c) & 2782.05 (Contracts entered into on or after January 1, 2013 will no longer be allowed to contain indemnification for the indemnitee's own active negligence)	No	Yes but only for passive fault for contracts entered into before Jan 1, 2013	Yes
Colorado	Construction	C.R.S. § 13-21-111.5. (Applicable to construction agreements entered into on or after July 1, 2007). For construction contracts entered into before July 1, 2007, indemnification is allowed for the indemnitee's own negligence if clearly and unequivocally stated. *Williams v. White Mountain Constr. Co.* 749 P.2d 423, 426 (Colo. 1998)	No (except for contracts entered into before July 1, 2007)	No (except for contracts entered into before July 1, 2007)	Yes

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Colorado	Construction & Design with Public Entities	C.R.S. § 13-50.5-102	No	No	Yes
Connecticut	Construction	Conn. General Statute § 52-572k (Applicable to contracts entered into on or after October 14, 1977)	No	No	Yes
Delaware	Construction & Design	Del. Code Ann. Tit. 6 § 2704	No	No	Yes
District of Columbia	Construction	No statute. Case law provides that indemnity provisions should not be construed to permit an indemnitee to recover for its own negligence unless the court is convinced that such an interpretation reflects the intention of the parties (Parker, et al. v. John Moriarty & Assoc.,189 F.Supp.3d 38 (D.D.C. 2016); W.M. Schlosser Co., Inc. v. Md. Drywall Co., Inc., 673 A.2d 647, 653 (D.C. 1996))	Not Applicable	Not Applicable	Yes
Florida	Construction	Fla. Stat. § 725.06 (Applicable to contracts entered into on or after July 1, 2001)	No, unless there is a monetary limit	No, unless there is a monetary limit	Yes
Florida	Design	Fla. Stat. § 725.08 (Applicable to contracts entered into on or after May 25, 2000)	No	No	Yes
Georgia	Construction	Ga. Codes Ann. § 13-8-2(b)	No	Yes	Yes
Georgia	Design	Ga. Codes Ann. § 13-8-2(c)	No	No	Yes
Hawaii	Construction	Hawaii Rev. Stat. § 431:10-222; *Haole v. State*, 111 Haw. 144 (Haw. 2006). (Applicable to contracts entered into on or after the statute's 1977 effective (specific date is not stated)	No	Yes	Yes
Idaho	Construction	Idaho Code Section § 29-114	No	Yes	Yes
Illinois	Construction	740 ILCS 35/1	No	No	Yes
Indiana	Construction & Design (except Highway)	Ind. Code § 26-2-5-1 (construction & design) & § 26-2-5-2 (exception for construction and design contracts for projects that constitute dangerous instrumentalities and cannot be insured); *GKN Co. v. Starnes Trucking, Inc*. 798 N.E. 2d 548, 552 (Ind. Ct. App. 2003)	No	Yes	Yes

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Iowa	Construction & Design	Iowa Code 537A.5(2); (3)	No	No	Yes
Kansas	Construction & Design	Kan. Stat. Ann. § 16-121 (Applicable to contracts entered into on or after January 1, 2009)	No	No	Yes
Kentucky	Construction & Design entered on or after June 20 2005	Ky. Rev. Stat. § 371.180 (Applicable to contracts entered into on or after June 20, 2005)	No	No	Yes
Louisiana	Design & Construction	La. Rev. Stat. § 9:2780.1. Effective January 1, 2011. (prohibits indemnification for indemnitee's negligence over which indemnitor has no control)	No	No	Yes
Maine	Not Applicable	No statute. Agreements that indemnify a party for its own negligence are "looked upon with disfavor by the courts" and are only upheld where unequivocal language reflects an intention to provide such broad indemnification (*Emery v. Waterhouse Co.*, 467 A.2d 986, 993 (Me. 1983); *International Paper Co. v. A & A Brochu*, 899 F.Supp. 715, 719 (D.Me. 1995)	Not Applicable	Not Applicable	Yes
Maryland	Construction & Design	Md. Code Ann., Cts & Jud. Proc. § 5-401	No	Yes	Yes
Massachusetts	Construction	Mass. Gen. Laws Ch. 149 § 29C; *Rush v. Norfolk Elec. Co., Inc.* 70 Mass. App. Ct. 373 (2007) (indemnity for entire loss, even though subcontractor only partially responsible, is permissible)	No	Yes	Yes
Michigan	Construction	Mich. Comp. Laws § 691.991; .*Peeples v. Detroit*, 297 N.W.2d 839 (Mich. App. 1980)	No	Yes	Yes
Minnesota	Construction	Minn. Stat. Ann. §§ 337.01- 337.05 (exceptions stated for an owner, a responsible party, or a governmental entity that agrees to indemnify a contractor directly or through another contractor with respect to strict liability under environmental laws. §337.02(2))	No	No	Yes
Mississippi	Construction	Miss. Code Ann. § 31-5-41	No	No	Yes

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Missouri	Construction	Mo. Rev. Stat. § 434.100 (exceptions stated for contracts between state agencies and private persons and governmental entities) (Applicable to contracts entered into after August 28, 1999)	No	No	Yes
Montana	Construction	Montana Code Ann. § 28-2-2111 (private construction and design) (enacted 2003) & Montana Code Ann. § 18-2-124 (public construction) (enacted 2007)	No	No	Yes
Nebraska	Construction	Nebraska Rev. Stat. § 25-21, 187(1)	No	No	Yes
Nevada	Residential Contracts post February 24, 2015	Nev. Rev. Stat. Ann. § 40.693 (contracts requiring subcontractor to indemnify the general contractor/developer for the contractor's negligence (whether active, passive, or intentional) are unenforceable)	Limited	Limited	Yes
New Hampshire	Construction & Design	N.H. Rev. Stat. Ann. § 338-A:1 (design) N.H. Rev. Stat. Ann. § 338-A:2 (construction)	No	No	Yes
New Jersey	Construction & Design	N.J. Stat. Ann. § 2A:40A-1 (construction) & § 2A:40A-2 (design)	No	Yes	Yes
New Mexico	Construction & Design	N.M. Stat. Ann. § 56-7-1 (construction & design contracts) & § 56-7-2 (oil, gas, and water wells or mineral mines)	No	No	Yes
New York	Construction & Design	N.Y. Gen Oblig. Law § 5-322.1 (construction); N.Y. Gen. Oblig. Law § 5-324 (design professional seeking indemnity for defects in maps, plans, designs and specifications) (For construction contracts, applicable to contracts entered into after August 20, 1975)	No	No	Yes
North Carolina	Construction & Design	N.C. Gen. Stat. Ann. 22B-1	No	No	Yes

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North Dakota	Not Applicable	No specific anti-indemnity statute. N.D. Cent. Code § 9-08-02. (No indemnification for intentional conduct); N.D. Cent. Code § 9-08-02.1 (owner cannot be indemnified by contractor for design errors); N.D. Cent. Code § 22-02-02 (no indemnity for a future act if known to be unlawful); N.D. Cent. Code § 22-02-03 (indemnity for a past act valid even if know to be wrongful, unless felony)	Not Applicable	Not Applicable	Yes
Ohio	Construction & Design	Ohio Rev. Code Ann. § 2305.31	No	No	Yes
Oklahoma	Construction	Okla. Stat. Ann. Tit. 15, § 221	No	No	Yes
Oregon	Construction & Design	Or. Rev. Stat. § 30.140; *Walsh Construction Co. v. Mutual Enumclaw*, 338 Or. 1 (2005) (statute applies to additional insured claims)	No	No	Yes
Pennsylvania	Design Contracts - Design Professional is Indemnitee	Pa. Stat. Ann. Tit 68 § 491	No	In limited circumstances – see statute	Yes
Rhode Island	Construction & Design	R.I. Gen. Law § 6-34-1	No	No	Yes
South Carolina	Construction & Design	S.C. Code Ann. § 32-2-10	No	Yes	Yes
South Dakota	Construction & Design	S.D. Codified Laws § 56-3-16 (design) & § 56-3-18 (construction)	No	Yes	Yes
Tennessee	Construction	Tenn. Code Ann. § 62-6-123	No	Yes	Yes
Texas	Construction & Design	Tex. Ins. Code § 151.001 *et. seq.,* § 151.102 in particular. (Excluding residential construction and public works § 151.105(10); (Exception for indemnity for claim for bodily injury or death to indemnitor's employee or its agents or subcontractors § 151.103.); Civ. Prac. & Rem. Code Ann. § 130.002. (Construction contracts requiring an architect or engineer to indemnify for owner's sole negligence is void and unenforceable)	No	No	Yes

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Texas	Residential Construction	Texas imposes the fair notice requirement which includes the express-negligence test and the conspicuousness requirement. *Enserch Corp. v. Parker* ,794 S.W.2d 2, 8 (Tex. 1990); Indemnity provision must be clearly and unambiguously stated. *Houston Lighting & Power Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 890 S.W.2d 455, 458 (Tex. 1994)	If clearly stated	If clearly stated	Yes
Utah	Construction & Design	Utah Code Ann. § 13-8-1 (construction) (Applicable to contracts entered into on or after the statute's 1969 effective (specific date is not stated)	No	Yes, in limited circumstances (Utah Code Ann. § 13-8-1(3)	Yes
Vermont	Not Applicable	No statute. The courts have upheld indemnification provisions that indemnify a party for liabilities resulting from the indemnitee's sole negligence only where there is a clear expression of that intent (Tateosian v. State, 945 A.2d 833 (Vt. 2007))	Not Applicable	Yes	Not Applicable
Virginia	Construction & Design	Va. Code Ann. § 11-4.1 (construction) & § 11-4.4 (design) (For construction contracts, applicable to contracts entered into after July 1, 1973)	No	Yes	Yes
Washington	Construction & Design	Wash. Rev. Code Ann. § 4.24.115 (For concurrent negligence, applicable to contracts entered into after June 11, 1986)	No	No (Concurrent limited to the extent of indemnitor's negligence)	Yes
West Virginia	Construction	W. Va. Code § 55-8-14	No	Not Applicable	Yes
Wisconsin	Construction	Wis. Stat. § 895.447 Applicable to contracts entered into after July 1, 1978)	No	No	Yes
Wyoming	Not Applicable	No general anti-indemnity statute. Indemnification agreements allowed if clearly stated. *United Pacific Resources Co. v. Dolenc*, 86 P.3d 1287 (Wyo. 2004)	If clearly stated	If clearly stated	Yes

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