

---

## Anti-Indemnity Statutes in the 50 States

*Published by:*

**Foundation of the American Subcontractors Association, Inc.**

1004 Duke Street

Alexandria, VA 22314-3588

Telephone: (888) 374-3133

Fax: (888) 374-3133

e-mail: [ASAOffice@asa-hq.com](mailto:ASAOffice@asa-hq.com)

Web site: [www.fasaonline.com](http://www.fasaonline.com)

*part of the*



# KEGLER BROWN & RITTER

A LEGAL PROFESSIONAL ASSOCIATION

Capitol Square, Suite 1800

65 E. State Street

Columbus, Ohio 43215-4294

Donald W. Gregory, Esq.

General Counsel to the American Subcontractors Association

Copyright © 2009 American Subcontractors Association, Inc. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without obtaining prior written permission from the copyright owner.

**DISCLAIMER:** *This publication does not contain legal advice. Individual circumstances vary widely, so readers should consult legal counsel before acting on the information provided herein.*

---

## **Acknowledgments**

---

Thank you to the construction law attorneys who contributed to the state updates for the 2009 Subcontractors Chart of Anti-Indemnity Statutes. We appreciate the efforts of these attorneys in providing this important reference for subcontractors and suppliers. We also want to recognize the contributions of Kegler, Brown, Hill & Ritter attorneys Donald W. Gregory and Rebecca Roderer Price in authoring this publication.

## **About ASA and FASA**

---



The American Subcontractors Association amplifies the voice of and leads trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, integrity and membership diversity.



The Foundation of the American Subcontractors Association, Inc., a section 501(c)(3) organization under the U.S. Internal Revenue Code, is the educational arm of ASA. FASA is an independent entity devoted to development of quality educational information, providing financial support to develop manuals, videotapes, CD-ROMs, seminars and other materials.

## Preface

---

Anti-Indemnity legislation is important to subcontractors because too often contractors and owners shift their own liability and risk to the subcontractors. Specifically, “hold harmless” and “additional insured” provisions in a construction subcontract seek to hold the subcontractor accountable for worksite accidents or other losses that are not the fault of the subcontractor.

These “hold harmless” and “additional insured” provisions are problematic to subcontractors because they may unfairly shift the financial responsibility for claims to the subcontractor or its insurance company. As a result, a party who is indemnified by the subcontractor may use less care to avoid injury or loss because the indemnified party is not liable for its own actions. This carelessness may result in more accidents on the worksite that could have been avoided.

When a subcontractor is required to purchase insurance naming the contractor, owner or others as an "additional insured," it is the subcontractor who ultimately pays higher insurance premiums when a loss is covered under the policy, even when the subcontractor was not negligent. The party who is truly responsible for the loss suffers no increased cost, while the subcontractor bears all of the burden.

Many states have enacted legislation that address at least some of the issues in shifting the burden of liability to a subcontractor. Forty-one states have some form of law which prohibits a construction contract that requires a subcontractor to indemnify another party for its negligence (but some of these states limit the application of the law, for example, only to public projects). Only twenty-seven of those states prohibit a subcontractor from

indemnifying another party for its sole or *partial* fault, meaning fourteen of the states with some form of anti-indemnity legislation only prohibit a subcontractor from indemnifying another party for its *sole* fault.

Even fewer states have addressed the additional insured dilemma so far. Only six of the states prohibit a party from requiring another party to name it as an additional insured under a policy of insurance, but the trend is moving in this direction.

The Subcontractors Chart of Anti-Indemnity Statutes is intended to serve as a resource for identifying which states have anti-indemnity legislation. The Chart indicates which states prohibit indemnity for partial fault or sole fault of the indemnified party. The Chart also indicates in which states a party is prohibited from requiring a subcontractor to name it as an additional insured, thereby closing the additional insured loophole.

The Chart is not intended to provide legal advice, and should an issue arise, the subcontractor should contact its legal counsel before acting on the information provided in the Chart.

 Copyright © 2009 American Subcontractors Association, Inc.  
**SUBCONTRACTORS CHART OF ANTI-INDEMNITY STATUTES**

State	Bars Indemnity for Sole Fault	Bars Indemnity for Sole or Partial Fault	Closes Additional Insured Loophole	Comments
Alabama				No statute.
Alaska	✓			Alaska Stat. § 45.45.900. Exception for hazardous substances.
Arizona	✓ (private work)	✓ (public work)		Ariz. Rev. Stat. §§ 32-1159, 34-226, 41-2586. Exception for entry onto adjacent land.
Arkansas	✓			Ark. Code § 4-56-104, 22-9-214
California	✓	✓ (residential construction defect only)		Civ. Code §§ 2782 [AB 758 (2005)], 2783. Exception for entry onto adjacent land.
Colorado		✓	✓	Colo. Rev. Stat. §§ 13-50.5-102, 13-21-111.5 [SB 87 (2007)].
Connecticut		✓		Conn. Gen. Stat. § 52-572k (P.A. 01-155).
Delaware		✓	See comments.	Del. Code, Title 6, § 2704. <u>See Chrysler v. Merrell &amp; Garaguso</u> , 796 A.2d 648 (Del. 2002) (a.i. requirement “may, under certain circumstances, be unenforceable,” but endorsement is enforceable).
D.C.				No statute.
Florida		✓ (public work)		For private work, Fla. Stat. § 725.06 [SB 428 (2001)] requires only a monetary limitation and reproduction in bid documents and specs.
Georgia	✓		✓	Ga. Code § 13-8-2 [HB 136 (2007)].
Hawaii	✓			Hawaii Rev. Stat. § 431:10-222.
Idaho	✓			Idaho Rev. Stat. § 29-114.
Illinois		✓		Ill. Compiled Stat., 740 ILCS 35/1-3.
Indiana	✓			Ind. Code § 26-2-5, “dangerous instrumentality” exception.
Iowa				No statute.
Kansas		✓		Kansas Stat. § 16-121 [HB 2154 (2004)]; Kansas Stat. § 16-1803(b)(3) (bars subrogation waivers on claims paid by liability or workers’ comp insurance).
Kentucky		✓		Kentucky Rev. Stat. § 371.180 [HB 449 (2005)].
Louisiana		✓ but see comments		La. Rev. Stat. § 38:2216.G only protects primes on public works. Compare the Louisiana Oilfield Indemnity Act, La. Rev. Stat. Ann. § 9:2780, applied in <u>Babineaux v. Reading &amp; Bates Drilling</u> , 806 F.2d 1282 (5 <sup>th</sup> Cir. 1987) (both “hold harmless” and “additional insured” void).
Maine				No statute.
Maryland	✓			Md. Code. Ann., Cts. & Jud. Proc. §5-401 (2008).
Massachusetts		✓		Mass. Gen. Laws, ch. 149, § 29C.
Michigan	✓			Mich. Comp. Laws § 691.991.
Minnesota		✓		Minn. Stat. §§ 337.01, 337.02. Exception permits owners to indemnify environmental liabilities. Allows contract provision requiring sub to insure general and owner for own fault.
Mississippi		✓		Miss. Code § 31-5-41.
Missouri		✓		Mo. Rev. Stat. § 434.100. Expressly allows additional insured.

**no warranty for accuracy; not legal advice**

This chart is intended for informational purposes only and should not be relied upon in the transaction of business.


 Copyright © 2009 American Subcontractors Association, Inc.  
**SUBCONTRACTORS CHART OF ANTI-INDEMNITY STATUTES**

State	Bars Indemnity for Sole Fault	Bars Indemnity for Sole or Partial Fault	Closes Additional Insured Loophole	Comments
Montana		✓	✓	Montana Rev. Code § 28-2-2111 [HB 482 (2003)] prohibits requirements to “insure or defend,” but authorizes OCP, PMPL.
Nebraska		✓		Neb. Rev. Stat. § 25-21,187.
Nevada				No statute; see, e.g. <i>Amer. FSB v. County of Washoe</i> , 802 P.2d 1270 (Nev. 1990).
New Hampshire		✓		N.H. Rev. Stat. § 338-A:1 (design professionals) and 338-A:2 (construction contracts generally)
New Jersey	✓			N.J. Stat. § 2A:40A-1.
New Mexico		✓	✓	N.M. Stat. § 56-7-1 [SB 280 (2003)] prohibits requirements to “insure or defend,” but authorizes OCP, PMPL.
New York		✓		N.Y. Gen. Oblig. Laws § 5-322.1 (but the promisee can require the promisor to indemnify a party other than the promisee, regardless of whether or not the promisor was negligent).
North Carolina		✓		N.C. Gen. Stat. § 22B-1.
North Dakota				N.D.Cent.Code 9-08-02.1 prevents owner shifting design risk.
Ohio		✓	See comments.	Ohio Rev. Code § 2305.31. Compare <i>Buckeye Union Ins. v. Zavarella Bros.</i> , 699 N.E.2d 127 (Ohio 8 <sup>th</sup> App. 1997) (a.i. barred) and <i>Stickovich v. Cleveland</i> , 757 N.E. 2d 50, 61 (Ohio 8 <sup>th</sup> App. 2001) (a.i. permitted).
Oklahoma		✓	✓	Okla. Stat. § 15-221 [S.B. 324 (2006)].
Oregon		✓	✓	Or. Rev. Stat. § 30.140 prohibits subcontractor’s “surety or insurer” from indemnifying another’s negligence. <i>Walsh Construction</i> , 104 P.3d 1146 (Or. 2005).
Pennsylvania				Pa. Stat., Title 68, § 491, prohibits indemnity of design professionals.
Rhode Island		✓		R.I. Gen. Laws § 6-34-1.
South Carolina	✓			S.C. Code § 32-2-10.
South Dakota	✓			S.D. Codified Laws § 56-3-18.
Tennessee	✓			Tenn. Code § 62-6-123.
Texas		✓ (public work)		Government Code § 2252.902. Civ. P&R Code § 130.002 only prohibits indemnity of design professionals.
Utah		✓		Utah Code § 13-8-1 exception permits indemnity of owner.
Vermont				No statute.
Virginia	✓			Va. Code § 11-4.1.
Washington		✓		Wash. Rev. Code § 4.24.115.
West Virginia	✓			W.Va. Code § 55-8-14.
Wisconsin				Wis. Stat. § 895.447 provides no protection; see <i>Gerdmann v. U.S. Fire Ins. Co.</i> , 350 N.W.2d 730 (Ct. App. 1984).
Wyoming				No statute.

no warranty for accuracy; not legal advice  
 This chart is intended for informational purposes only and should not be relied upon in the transaction of business.