

## Texas Indemnity Laws Have Changed Who Bears The Responsibility?



On January 1, 2012, a new law went into effect that changed the way owners and general contractors are allowed to shift their risks to subcontractors under indemnity agreements. Texas is now among a minority of states that prohibit both indemnity and additional insured status for owners and general contractors in construction contracts for their own or partial negligence.

In the past, Texas courts have enforced these risk-shifting indemnity agreements so long as: 1) the indemnity language in the contract was conspicuous, or it was not hidden in the contract; and 2) the contract expressly / clearly stated in specific terms that the owner or general contractor was seeking indemnity for the owner's or general contractor's own or partial negligence.

Under HB2093 contracts on or after January 1, 2012, the owner and general contractor can no longer require the subcontractor to indemnify them for the owner or general contractor's negligence or partial negligence. In addition, the owner and general contractor can no longer require the subcontractor to purchase insurance coverage for the owner or general contractor's negligence.

Instead of transferring the risk to someone else, the new anti-indemnity law will require the property owner to incur the additional costs, purchase appropriate insurance coverage, and provide its own "defense" when an accident occurs.

However, the new anti-indemnity law will not apply to on-the-job employee bodily injury claims or death of an employee of the indemnitor, its agent, or its subcontractor of any tier. This means that the current indemnity laws which transfer risks to the subcontractor will still apply to bodily injury and wrongful death claims. The new legislation will also not apply to residential or public works construction projects, nor does it apply to named insured status under Owner Controlled Insurance Programs (OCIP) or Contractor Controlled Insurance Program (CCIP) policies, indemnities in loan agreements, copyright infringement indemnities, or joint defense agreements entered into after a claim is made.

Owners and contractors need to re-evaluate and revise their contracts and construction insurance programs to reflect the changes in the new law. Owners and contractors should remove the broad indemnity language in their contracts and include indemnity language to reflect the limitations identified in the carve-out exceptions. This article was taken in large part from <http://texasceomagazine.com/tag/indemnity-agreements/>. A copy of the full bill is available at <http://www.legis.state.tx.us/tlodocs/82R/billtext/html/hb02093F.htm>.



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