

Indemnity provisions
vary state to state.

Indemnification for General Contractors from Subcontractors

This sample of indemnification wording is for contracts with subcontractors. If you are a general contractor or a subcontractor over another subcontractor, this wording attempts to secure indemnification from your sub- or sub-subcontractor as allowed by the various state laws.

MICHIGAN

The Michigan Legislature has enacted a statute that specifically prohibits an indemnitee from requiring an indemnitor to indemnify it for the indemnitee's sole negligence. *MCLA Section 691.991* is attached.

The Michigan Court of Appeals, in interpreting this statute, has held that the following language complies with the statute and obligates the indemnitor to indemnify the indemnitee for all claims that do not involve the indemnitee's sole negligence:

"To the fullest extent permitted by law, the Contractor shall secure, defend, protect, hold harmless and indemnify the Owner, the Construction Manager and the Architect and any of their respective agents, servants, and employees against any liability, loss, claims, demands, suits, costs, fees and expenses whatsoever, arising from bodily injury, sickness, disease (including death resulting therefrom), of any persons, or the damage or destruction of any property, including loss of use, arising out of or in connection with the performance of any work relating to this Contract including extra work assigned to the Contractor, based upon any act or omission, negligent or otherwise, of (a) the Contractor or any of its agents, employees or servants, (b) any Sub-Subcontractor, supplier or material men of the Contractor, or any agents, employees or servants thereof, (c) any other person or persons. The obligations of indemnification contained herein shall exclude only those matters in which the claim arises out of allegations of the sole negligence of the Owner, the Architect, the Construction Manager or any of their respective agents, servants and employees."

See Sherman v DeMaria Building Co., Inc., 203 Mich App 593, 513 NW2d 187 (1994).

Laws change daily.
This document is current as of 1/1/2015.

DISCLAIMER

The Sample Indemnification Clauses in this manual are provided for illustration only. All contractors must consult their own attorney as respects any language actually used in their contracts to be certain that such language is appropriate to the circumstances of their situation and meets the standards of the state involved. No warranty is made or implied as to the efficacy of the wording in meeting any such standard and no liability is assumed for the wording.

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Reps. Heise, Haugh, Potvin, Wayne Schmidt, Horn, Knollenberg, Pettalia,
Huuki and Haveman

ENROLLED HOUSE BILL No. 5466

AN ACT to amend 1966 PA 165, entitled "An act to invalidate certain requirements for indemnity in the construction industry," by amending section 1 (MCL 691.991).

The People of the State of Michigan enact:

Sec. 1. (1) In a contract for the design, construction, alteration, repair, or maintenance of a building, a structure, an appurtenance, an appliance, a highway, road, bridge, water line, sewer line, or other infrastructure, or any other improvement to real property, including moving, demolition, and excavating connected therewith, a provision purporting to indemnify the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee or indemnitee, his agents or employees, is against public policy and is void and unenforceable.

(2) When entering into a contract with a Michigan-licensed architect, professional engineer, landscape architect, or professional surveyor for the design of a building, a structure, an appurtenance, an appliance, a highway, road, bridge, water line, sewer line, or other infrastructure, or any other improvement to real property, or a contract with a contractor for the construction, alteration, repair, or maintenance of any such improvement, including moving, demolition, and excavating connected therewith, a public entity shall not require the Michigan-licensed architect, professional engineer, landscape architect, or professional surveyor or the contractor to defend the public entity or any other party from claims, or to assume any liability or indemnify the public entity or any other party for any amount greater than the degree of fault of the Michigan-licensed architect, professional engineer, landscape architect, or professional surveyor, or the contractor and that of his or her respective subconsultants or subcontractors. A contract provision executed in violation of this section is against public policy and is void and unenforceable.

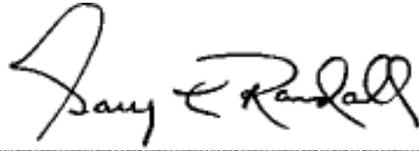
(3) For the purposes of this section, a contractor may be an individual, sole proprietorship, partnership, corporation, limited liability company, joint venture, construction manager, or other business arrangement.

(4) As used in this section, "public entity" means this state and all agencies thereof, any public body corporate within this state and all agencies thereof, and any nonincorporated public body within this state of whatever nature and all agencies thereof; including, but not limited to, cities, villages, townships, counties, school districts, intermediate school districts, authorities, and community and junior colleges as provided for in section 7 of article VIII of the state constitution of 1963, and their employees and agents, including, but not limited to, construction managers or other business arrangements retained by or contracting with the public entity to manage or administer the contract for the public entity. However, public entity does not include institutions of higher education as described or provided for in section 4 or 6 of article VIII of the state constitution of 1963, or their employees or agents.

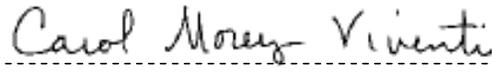
(5) Nothing in this act affects the application of 1964 PA 170, MCL 691.1401 to 691.1419.

Enacting section 1. This amendatory act takes effect March 1, 2013.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

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House Bill 5466 (Substitute S-5 as reported by the Committee of the Whole)
Sponsor: Representative Kurt Heise
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

The bill would amend Public Act 165 of 1966, which invalidates certain indemnity requirements in construction contracts, to do the following, effective March 1, 2013:

- Extend the Act to the design of a building, and include infrastructure and any improvement to real property.
- Prohibit a public entity from requiring an architect, engineer, landscape architect, surveyor, or contractor to defend the public entity or any other party from liability claims or to indemnify the public entity or other party for an amount greater than the degree of fault of the architect, engineer, landscape architect, surveyor, or contractor.
- Specify that the Act would not affect the application of the governmental immunity law.

"Public entity" would mean the State; any public body corporate or nonincorporated public body within the State; or any agency of the State or public body. The term would include cities, villages, townships, counties, school districts, intermediate school districts, authorities, and community and junior colleges, and their employees and agents, including construction managers or other business arrangements retained by or contracting with the public entity to manage or administer the contract for the public entity. "Public entity" would not include State institutions of higher education.

Under the Act, a covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, or maintenance of a building, structure, appurtenance, and appliance, that purports to indemnify the promisee against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of the promisee or indemnitee, is against public policy and is void and unenforceable.

MCL 691.991

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that public entities include indemnification clauses in their contracts with Michigan-licensed architects, professional engineers, landscape architects, or professional surveyors, the amount of indemnification owed to the public entities would be limited to only the degree of fault of the contractors (or their subcontractors). Under the status quo, a contract could legally require indemnification beyond the contractor's degree of fault and the contractor would be fully shielded from liability only if the damages resulted from the sole negligence of the indemnitee (the public entity). Therefore, by enacting a degree-of-fault principle in contracts with public entities, the bill could increase potential liabilities for public entities in cases in which the degree of fault is shared among the contractor and the public entity.

Date Completed: 12-4-12

Fiscal Analyst: Dan O'Connor

[floor/hb5466](#)

Bill Analysis @ www.senate.michigan.gov/sfa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.