

Indemnification Agreements: Why Risk Allocation is Crucial to a Free Market

Testimony before the Senate State Affairs Committee

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Mr. Chairman, members of the committee. Thank you for allowing me the opportunity to testify today. My name is Ryan Brannan and I am a policy analyst in the Center for Economic Freedom at the Texas Public Policy Foundation.

- Indemnification clauses in contracts between general contractors and their subcontractors are commonly used in the construction industry to allocate risk.
- Fixing risk at the time of the contract allows the parties to eliminate much uncertainty, anticipate the scope of responsibility, and plan for an accurate cost of the project.
- SB 361 bars voluntary contractual risk-shifting agreements between general contractors and subcontractors and therefore limits the ability of parties to freely contract with each other.
- Voluntary assumption of responsibility between parties is essential to a free market and has been used in the contracting industry to create efficiencies and lower costs to property owners, tenants, and consumers.
- Prohibiting free contracting in this case would result in more defendants to lawsuits.
- The costs of this result would eventually make their way to taxpayers and consumers in the form of higher taxes and higher construction costs.
- Indemnification agreements should continue to be allowed.

Thank you for the opportunity to testify. I'd be happy to answer any questions. ★

