

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

Testimony before the Senate State Affairs Committee

by Ryan Brannan, Policy Analyst, Center for Economic Freedom

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. ★