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DIGEST

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Martiny

SB No. 625

Proposed law defines a "motor carrier transportation contract" to mean any contract, agreement, or understanding covering the transportation of property, other than agricultural products as defined in present law and timber, for compensation or hire by a motor carrier, entrance upon property by the motor carrier for the purpose of loading, unloading, or transporting property, other than agricultural products as defined in present law and timber, for compensation or hire, or a service incidental to any such activity, including but not limited to storage or property, other than agricultural products as defined in present law and timber, except the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

Proposed law defines a "construction contract" to mean any agreement for the design, construction, alteration, renovation, repair, or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance, or other improvement to real property, including any moving, demolition or excavation, except that no deed, lease, easement, license, or other instrument granting an interest in or the right to possess property shall be deemed to be a construction contract even if the instrument includes the right to design, construct, alter, renovate, repair, or maintain improvements on such real property.

Proposed law further provides that a "construction contract" shall not include any design, construction, alteration, renovation, repair, or maintenance of (i) dirt or gravel roads, used to access oil and gas wells and associated facilities, or (ii) oil flow lines or gas gathering lines used in association with the transportation of production from oil and gas wells from the point that oil and gas becomes co-mingled for transportation to oil storage facilities or gas transmission lines.

Proposed law defines an "indemnitee" to mean any named party in the contract to whom indemnification is owed pursuant to the terms of the contract.

Proposed law defines an "indemnitor" to mean any party to the contract who obligates himself to provide indemnification pursuant to the terms of the contract.

Proposed law provides that any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or a construction contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the indemnitee from or against any liability for loss or damage where there is negligence or fault (strict liability) on the part of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor over which the indemnitor has no control.

Proposed law provides any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or construction contract which purports to require an indemnitor to procure liability insurance covering the acts or omissions or both of the indemnitee, its employees or agents, or the acts or omissions of a third party over whom the indemnitor has no control is null, void, and unenforceable. However, nothing in this Section shall be construed to prevent the indemnitee from requiring the indemnitor to provide proof of insurance for obligations covered by the contract.

Proposed law provides that Louisiana law applies to construction contracts performed in this state or motor carrier transportation contracts relative to loading or unloading activities, or any services incidental thereto, which occur in this state. Proposed law further provides that

any provision, covenant, or clause in such contracts which conflicts with the provisions of proposed law shall be null, void, and unenforceable.

Proposed law is not intended to, nor shall it be judicially interpreted, to alter, add to, subtract from, amend, overlap, or affect the provisions of certain oil field contracts or certain public contracts.

Proposed law shall not apply to prohibited clauses in any motor carrier transportation contract and any construction contract entered into prior to January 1, 2011.

Effective January 1, 2011.

(Adds R.S. 9:2780.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill.

1. Excludes agreements which provide for the interchange, use or possession of intermodal chassis, containers, or other intermodal equipment.
2. Defines "indemnitee."
3. Changes the terms "intentional acts" and "acts of omission of the indemnitee" to "fault (strict liability)."
4. Removes exemption for indemnification agreements that are part of compromise offers or settlements.
5. Makes the provisions to apply prospectively, only, to contracts entered into after January 1, 2011.

##### Senate Floor Amendments to reengrossed bill.

1. Excludes agricultural products from the definition of "motor carrier transportation contract".
2. Redefines "indemnitee".
3. Provides for the definition of "indemnitor" and "third party".
4. Provides for the procurement of liability insurance by indemnitors.

#### Summary of Amendments Adopted by House

##### Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill.

1. Made technical changes.