

New 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 prior law and timber without limitation, 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 prior law and timber without limitation, 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 prior law and timber without limitation, 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.

New 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.

New 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.

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

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

New 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 indeminitor has no control.

New 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 indeminitor 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 indeminitor has no control is null, void, and unenforceable. However, nothing is this new law shall be construed to prevent the indemnitee from requiring the indeminitor to provide proof of insurance for obligations covered by the contract.

New 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. New law further provides that any provision, covenant, or clause in such contracts which conflicts with the provisions of new law shall be null, void, and unenforceable.

New 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.

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

New law provides that Act shall not apply to a contract providing indemnity to the indemnitee when such contract was executed before the effective date of this Act and which contract governs a specific terminable performance of a specific job or activity.

Effective August 15, 2010.

(Adds R.S. 9:2780.1)