

Regular Session, 2012

SENATE BILL NO. 693

BY SENATOR MORRELL

CONTRACTS. Provides relative to motor carrier transportation contracts and construction contracts. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 9:2780.1(A)(2)(a), (A)(5), (B), (C), and (D), to enact R.S.
3 9:2780.1(G), and to repeal Section 2 of Act No. 492 of the 2010 Regular Session of
4 the Legislature, relative to construction contracts; to provide relative to definitions;
5 to exclude certain contracts; to provide relative to the enforcement of certain clauses
6 in construction contracts; to repeal a provision excluding certain contracts; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2780.1(A)(2)(a), (A)(5), (B), (C), and (D) are hereby amended and
10 reenacted and R.S. 9:2780.1(G) is hereby enacted to read as follows:

11 §2780.1. Certain contract provisions invalid; motor carrier transportation contracts;
12 construction contracts

13 A. For purposes of this Section, the following terms have the meanings
14 ascribed to them by this Subsection, except where the context clearly indicates
15 otherwise:

16 * * *

17 (2)(a) "Construction contract" shall mean any agreement for the ~~design,~~

1 construction, **major** alteration, **or major** renovation, ~~repair, or maintenance~~ of a
 2 building, structure, highway, road, bridge, water line, sewer line, oil line, gas line,
 3 appurtenance, or other **major** improvement to real property, including any moving,
 4 demolition, or excavation, except that no deed, lease, easement, license, or other
 5 instrument granting an interest in or the right to possess property will be deemed to
 6 be a construction contract even if the instrument includes the right to design,
 7 construct, alter, renovate, repair, or maintain improvements on such real property.

* * *

9 (5) "Third party" means any party not subject to the contractual obligations
 10 between the indemnities and indemnitor; **excluding, however, any party who has**
 11 **otherwise contracted with the indemnitor or is at the indemnities' facility at the**
 12 **invitation or direction of the indemnitor.**

13 B. Notwithstanding any provision of law to the contrary **and except as**
 14 **otherwise provided in this Section,** any provision, clause, covenant, or agreement
 15 contained in, collateral to, or affecting a motor carrier transportation contract or
 16 construction contract which purports to indemnify, defend, or hold harmless, or has
 17 the effect of indemnifying, defending, or holding harmless, the indemnities from or
 18 against any liability for loss or damage resulting from the negligence or intentional
 19 acts or omissions of the indemnities, an agent or employee of the indemnities, or a
 20 third party over which the indemnitor has no control is contrary to the public policy
 21 of this state and is null, void, and unenforceable.

22 C. Notwithstanding any provision of law to the contrary **and except as**
 23 **otherwise provided in this Section,** any provision, clause, covenant, or agreement
 24 contained in, collateral to, or affecting a motor carrier transportation contract or
 25 construction contract which purports to require an indemnitor to procure liability
 26 insurance covering the **negligent or intentional** acts or omissions or both of the
 27 indemnities, its employees or agents, or the acts or omissions of a third party over
 28 whom the indemnitor has no control is null, void, and unenforceable. However,
 29 nothing in this Section shall be construed to prevent the indemnities from requiring

1 the indemnitor to provide proof of insurance for obligations covered by the contract.

2 D.(1) Notwithstanding any contractual provision to the contrary, ~~the laws of~~
3 ~~the state of Louisiana~~ **this Section** shall apply to and govern any construction
4 contract to be performed in this state and any motor carrier transportation contract
5 relative to loading or unloading activities, or any services incidental thereto, which
6 occur in this state. Any provision, covenant, or clause in such contracts which
7 conflicts with the provisions of this Section shall be null, void, and unenforceable.

8 **(2) This Section shall not apply to any contract to which the state of**
9 **Louisiana or any of its political subdivisions is a party.**

10 * * *

11 **G. Nothing in this Section shall invalidate or prohibit the enforcement**
12 **of any of the following:**

13 **(1) Any clause in a construction contract in which the parties**
14 **reciprocally agree to indemnify, defend, or hold harmless each other and each**
15 **other's contractors, employees, and invitees against loss, liability, or damages**
16 **in connection with bodily injury, death, or property damage arising out of,**
17 **related to, or resulting from the performance of the contract.**

18 **(2) Any clause in a construction contract containing the indemnitor's**
19 **promise to indemnify, defend, or hold harmless the indemnties or an agent or**
20 **employee of the indemnties if the contract also requires the indemnitor to**
21 **obtain insurance to insure the obligation to indemnify, defend, or hold harmless**
22 **and there is evidence that the indemnitor recovered the cost of the required**
23 **insurance in the contract price.**

24 **(3) Any clause in a construction contract that requires the indemnitor**
25 **to procure insurance or name the indemnties as an additional insured on the**
26 **indemnitor's policy of insurance, but only to the extent that such additional**
27 **insurance coverage provides coverage for liability due to any of the following:**

28 **(a) An obligation to indemnify, defend, or hold harmless authorized**
29 **pursuant to Paragraph (1) of this Subsection.**

1 **(b) An obligation to indemnify, defend, or hold harmless authorized**
 2 **pursuant to Paragraph (2) of this Subsection.**

3 Section 2. Section 2 of Act No. 492 of the 2010 Regular Session of the Legislature
 4 is hereby repealed.

5 Section 3. This Act shall become effective upon signature by the governor or, if not
 6 signed by the governor, upon expiration of the time for bills to become law without signature
 7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 9 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Sharon F. Lyles.

DIGEST

Present law prohibits certain provisions requiring indemnification in certain motor carrier contracts and certain construction contracts.

Present 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 will 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 limits the definition of "construction contract" to agreements for construction, "major" alterations or renovations and other "major" improvements to real property, and specifically excludes from the definition repair and maintenance contracts.

Present law prohibits any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or construction contract which purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the indemnities from or against any liability for loss or damage resulting from the "negligence or intentional" acts or omissions of the indemnities, an agent or employee of the indemnities, or a "third party" over which the indemnitor has no control is contrary to the public policy of this state and is null, void, and unenforceable. Present law also prohibits any requirement in such contracts that require an indemnitor to procure liability insurance covering such acts or omissions.

Proposed law retains present law and clarifies that the prohibition requiring an indemnitor to procure liability insurance on acts or omissions applies to insuring "negligent or intentional" acts or omissions.

Present law defines a "third party" as any party not subject to the contractual obligations between the indemnities and indemnitor.

Proposed law retains present law but excludes any party who has otherwise contracted with the indemnitor or is at the indemnities' facility at the invitation or direction of the

indemnitor.

Proposed law excludes any contract to which the state of Louisiana or any of its political subdivisions is a party from the provisions of present law.

Proposed law provides that provisions of present law shall not invalidate or prohibit the enforcement of any of the following:

1. Any clause in a construction contract in which the parties reciprocally agree to indemnify, defend, or hold harmless each other and each other's contractors, employees, and invitees against loss, liability, or damages in connection with bodily injury, death, or property damage arising out of, related to, or resulting from the performance of the contract.
2. Any clause in a construction contract containing the indemnitor's promise to indemnify, defend, or hold harmless the indemnitees or an agent or employee of the indemnitees if the contract also requires the indemnitor to obtain insurance to insure the obligation to indemnify, defend, or hold harmless and there is evidence that the indemnitor recovered the cost of the required insurance in the contract price.
3. Any clause in a construction contract that requires the indemnitor to procure insurance or name the indemnitees as an additional insured on the indemnitor's policy of insurance, but only to the extent that such additional insurance coverage provides coverage for liability due to an obligation to indemnify, defend, or hold harmless authorized by proposed law in Paragraphs (1) and (2) above.

Present law excludes from present law both:

1. Prohibited clauses in any motor carrier transportation contract and any construction contract entered into prior to January 1, 2011.
2. Contracts providing indemnity to the indemnitees executed before August 15, 2010, if the contract governs a specific terminable performance of a specific job or activity.

Proposed law repeals the exclusion of contracts executed before August 15, 2010 in Paragraph (2) above.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 9:2780.1(A)(2)(a), (A)(5), (B), (C), and (D); adds R.S. 9:2780.1(G))