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

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## 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 indemnitees from or against any liability for loss or damage resulting from the "negligence or intentional" acts or omissions of the indemnitees, an agent or employee of the indemnitees, 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 indemnitees and indemnitor.

Proposed law retains present law but excludes any party who has otherwise contracted with the indemnitor or is at the indemnitees' 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))