
DIGEST

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Morrell

SB No. 693

Present law prohibits as null and void any provision, clause, covenant, or agreement contained in, collateral to, or affecting a "motor carrier transportation contract" as defined in present law or a "construction contract" as defined in present law which:

- (1) 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 resulting from the negligence or intentional acts or omissions of the indemnitee, an agent or employee of the indemnitee, or a "third party" over which the indemnitor has no control.
- (2) Requires 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.

Present law among other definitions, includes in the definition of "construction contract" an agreement for the design of, or the 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.

Proposed law excludes from such definition of "construction contract" the design of the items above, and limits the repair and maintenance agreements in such definition to agreements for the repair or maintenance of a highway, road, or bridge.

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

Proposed law excludes from such definition any party who has otherwise contracted with the indemnitor or is at the indemnitee's facility at the invitation or direction of the indemnitor.

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 containing the indemnitor's promise to indemnify, defend, or hold harmless the indemnitee or an agent or employee of the indemnitee 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, but the indemnitor's liability under such a clause is limited to the amount of the proceeds that were payable under the insurance policy or policies that the indemnitor was required to obtain.
- (2) Any clause in a construction contract that requires the indemnitor to procure insurance or name the indemnitee 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 and if such insurance coverage is only provided where the indemnitor is at least partially at fault or otherwise liable for damages ex delicto or quasi ex delicto.

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

Proposed law changes the application of law to such contracts from "Louisiana law" to the provisions of present law in R.S. 9:2780.1.

Present law provides that it does not apply to prohibited clauses in any "motor carrier transportation contract" or "construction contract" entered into prior to January 1, 2011, but also does not apply to a contract providing indemnity when the contract was executed before the effective date of the proposed law (August 15, 2010) if the contract governs a specific terminable performance of a specific job or activity.

Proposed law repeals the provision providing that the present law does not apply to a contract executed before August 15, 2010, if the contract governs a specific terminable performance of a specific job or activity.

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

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Limits the repair and maintenance agreements in the definition of "construction contract" subject to the present law above to agreements for the repair or maintenance of a highway, road, or bridge.
2. Removes the adjective "major" in the definition of "construction contract" limiting the application of present law to contracts for the "major" alteration, renovation, or improvements to real property projects.
3. Removes a limitation on the prohibition of any contract provision which requires an indemnitor to procure liability insurance, that such provision cover "negligent or intentional" acts or omissions.
4. Removes an exemption from the law for any contract to which the state of Louisiana or any of its political subdivisions is a party.
5. Provides that the provision in proposed law allowing any clause in "construction contracts" in which each party assumes responsibility for its own personnel and property and agrees to indemnify, the other party against loss in connection with bodily injury, death, or damage to the indemnitor's personnel or property arising out of, related to, or resulting from the performance of the contract, does not apply to the intentional acts of any party, or any party's contractors, employees, and invitees.
6. Limits the provision in proposed law allowing any clause in "construction contracts" that requires the indemnitor to procure insurance or name the indemnitee as an additional insured on the indemnitor's policy of insurance to the extent that the additional insurance coverage provides coverage for liability permitted by the proposed law, by requiring that such insurance coverage is only provided where the indemnitor is at least partially at fault or otherwise liable for damages ex delicto or quasi ex delicto.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical changes recommended by the Legislative Bureau.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Deleted provision which stated that nothing in present law shall invalidate or prohibit the enforcement of any clause in a construction contract wherein the parties assume responsibility for their own personnel and property and agree to indemnify, defend, or hold harmless the other party against loss in connection with damages to the indemnitor's personnel or property related to the performance of the contract.
2. Deleted provision which stated that nothing in present law shall invalidate or prohibit the enforcement of any clause that requires the indemnitor to procure insurance to provide additional insurance coverage for liability pursuant to proposed law.