

SENATE BILL NO. 693

BY SENATOR MORRELL

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

* * *

(2)(a) "Construction contract" shall mean any agreement for the ~~design,~~ construction, alteration, **or** renovation, ~~repair, or maintenance~~ of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line,

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

7 * * *

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

12 B. Notwithstanding any provision of law to the contrary **and except as**
13 **otherwise provided in this Section**, any provision, clause, covenant, or agreement
14 contained in, collateral to, or affecting a motor carrier transportation contract or
15 construction contract which purports to indemnify, defend, or hold harmless, or has
16 the effect of indemnifying, defending, or holding harmless, the indemnities
17 **indemnatee** from or against any liability for loss or damage resulting from the
18 negligence or intentional acts or omissions of the indemnities **indemnatee**, an agent
19 or employee of the indemnities **indemnatee**, or a third party over which the
20 indemnitor has no control is contrary to the public policy of this state and is null,
21 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 acts or omissions or both of the indemnities **indemnatee**, its
27 employees or agents, or the acts or omissions of a third party over whom the
28 indemnitor has no control is null, void, and unenforceable. However, nothing in this
29 Section shall be construed to prevent the indemnities **indemnatee** from requiring the
30 indemnitor to provide proof of insurance for obligations covered by the contract.

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

7 * * *

8 **G. Nothing in this Section shall invalidate or prohibit the enforcement**
9 **of the following:**

10 **(1) Any clause in a construction contract containing the indemnitor's**
11 **promise to indemnify, defend, or hold harmless the indemnitee or an agent or**
12 **employee of the indemnitee if the contract also requires the indemnitor to**
13 **obtain insurance to insure the obligation to indemnify, defend, or hold harmless**
14 **and there is evidence that the indemnitor recovered the cost of the required**
15 **insurance in the contract price. However, the indemnitor's liability under such**
16 **clause shall be limited to the amount of the proceeds that were payable under**
17 **the insurance policy or policies that the indemnitor was required to obtain.**

18 **(2) Any clause in a construction contract that requires the indemnitor**
19 **to procure insurance or name the indemnitee as an additional insured on the**
20 **indemnitor's policy of insurance, but only to the extent that such additional**
21 **insurance coverage provides coverage for liability due to an obligation to**
22 **indemnify, defend, or hold harmless authorized pursuant to Paragraph (1) of**
23 **this Subsection, provided that such insurance coverage is provided only when**
24 **the indemnitor is at least partially at fault or otherwise liable for damages ex**
25 **delicto or quasi ex delicto.**

26 Section 2. Section 2 of Act No. 492 of the 2010 Regular Session of the Legislature
27 is hereby repealed.

28 Section 3. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____