

Prior law prohibited as null and void any provision, clause, covenant, or agreement contained in, collateral to, or affecting a "motor carrier transportation contract" as defined in prior law or a "construction contract" as defined in prior 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.

Prior law among other definitions, included 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.

New 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.

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

New 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.

New law provides that prior 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 new 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.

Prior law provided 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.

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

Prior law provided 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 new law (August 15, 2010) if the contract governs a specific terminable performance of a specific job or activity.

New law repeals the provision providing that the prior 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 (June 7, 2012).

(Amends R.S. 9:2780.1(A)(2)(a) and (5), (B), (C), and (D); adds R.S. 9:2780.1(G); repeals Section 2 of Act 492 of 2010 RS)