

Regular Session, 2012

HOUSE BILL NO. 444

BY REPRESENTATIVE ABRAMSON

CONTRACTS: Provides relative to motor carrier transportation contracts and construction contracts

1 AN ACT

2 To amend and reenact R.S. 9:2780.1(A)(2)(a) and (5), (B), (C), (D), and (F), 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 motor carrier transportation contracts and construction  
5 contracts; to provide for definitions; to provide exception for contracts to which the  
6 state or its political subdivisions is a party; to allow certain indemnity provisions;  
7 to repeal provision allowing indemnity to indemnitee in contracts prior to August 15,  
8 2010; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

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

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

17 \* \* \*

18 (2)(a) "Construction contract" shall mean any agreement for the ~~design,~~  
19 construction, major alteration, or major renovation, ~~repair, or maintenance~~ of a  
20 building, structure, highway, road, bridge, water line, sewer line, oil line, gas line,  
21 appurtenance, or other major improvement to real property, including any moving,  
22 demolition, or excavation, except that no deed, lease, easement, license, or other

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 instrument granting an interest in or the right to possess property will be deemed to  
2 be a construction contract even if the instrument includes the right to design,  
3 construct, alter, renovate, repair, or maintain improvements on such real property.

4 \* \* \*

5 (5) "Third party" means any party not subject to the contractual obligations  
6 between the indemnitee and indemnitor; excluding, any party who has otherwise  
7 contracted with the indemnitor or is at the indemnitee's facility at the invitation or  
8 direction of the indemnitor.

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

18 C. Notwithstanding any provision of law to the contrary and except as  
19 otherwise provided in this Section, any provision, clause, covenant, or agreement  
20 contained in, collateral to, or affecting a motor carrier transportation contract or  
21 construction contract which purports to require an indemnitor to procure liability  
22 insurance covering the acts or omissions or both of the indemnitee, its employees or  
23 agents, or the acts or omissions of a third party over whom the indemnitor has no  
24 control is null, void, and unenforceable. However, nothing in this Section shall be  
25 construed to prevent the indemnitee from requiring the indemnitor to provide proof  
26 of insurance for obligations covered by the contract.

27 D. Notwithstanding any contractual provision to the contrary, ~~the laws of the~~  
28 ~~state of Louisiana~~ this Section shall apply to and govern any construction contract  
29 to be performed in this state and any motor carrier transportation contract relative to

1 loading or unloading activities, or any services incidental thereto, which occur in this  
2 state. Any provision, covenant, or clause in such contracts which conflicts with the  
3 provisions of this Section shall be null, void, and unenforceable.

4 \* \* \*

5 F.(1) The provisions of this Section shall not apply to prohibited clauses in  
6 any motor carrier transportation contract and any construction contract entered into  
7 prior to January 1, 2011.

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 G. Nothing in this Section shall invalidate or prohibit the enforcement of any  
11 of the following in any motor carrier transportation contract or construction contract:

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

16 (2) Any clause containing the indemnitor's promise to indemnify, defend, or  
17 hold harmless the indemnitee or an agent or employee of the indemnitee if the  
18 contract also requires the indemnitor to procure insurance to insure the obligation to  
19 indemnify, defend, or hold harmless and there is evidence that the indemnitor  
20 recovered the cost of the required insurance in the contract price.

21 (3) Any clause containing the indemnitor's promise to indemnify, defend, or  
22 hold harmless the indemnitee or an agent or employee of the indemnitee from or  
23 against any liability for loss or damage resulting from the negligence or intentional  
24 act or omission of a third party occurring outside the boundaries of the indemnitee's  
25 facility.

26 (4) Any clause that requires the indemnitor to procure insurance or name the  
27 indemnitee as an additional insured on the indemnitor's policy of insurance, but only  
28 to the extent that such additional insurance coverage provides coverage for liability

1           due to an obligation to indemnify, defend, or hold harmless authorized pursuant to  
2           Paragraphs (1), (2), or (3) of this Subsection.

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

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.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abramson

HB No. 444

**Abstract:** Allows certain indemnity clauses in motor carrier transportation contracts and construction contracts.

Present law defines "construction contract" as any agreement for design, construction, alteration, renovation, repair, and 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 retains present law definition, but deletes design, repair, and maintenance and specifies that the definition applies to major alternation, major renovation, or major improvements to real property.

Present law defines "third party" as any party not subject to the contractual obligations between the indemnitee and indemnitor. Proposed law excludes any party who has otherwise contracted with the indemnitor or is at the indemnitee's facility at his invitation or direction.

Present law prohibits clauses in a motor carrier transportation contract or a construction contract that would indemnify, defend, or hold harmless an indemnitee from liability for loss from negligence or intentional acts or omissions.

Present law prohibits clauses in a motor carrier transportation contract or construction contract that would require an indemnitor to procure liability insurance coverage covering acts or omissions of parties over whom the indemnitor has no control.

Present law applies to any construction contract to be performed in the state and any motor carrier transportation contract relative to loading and unloading activities which occur in the state.

Proposed law provides that the requirements of present law do not apply to contracts to which the state or any of its political subdivisions is a party.

Proposed law specifies that present law does not prohibit the enforcement of clauses in any motor carrier transportation contract or construction contract as follows:

- (1) Any reciprocal indemnity clause where the parties agree to indemnify each other, and each other's contractors, employees, and invitees, against loss in connection with bodily injury, death, or property damage arising out of the performance of the contract.
- (2) Any indemnitor's promise to indemnify the indemnitee if the contract also requires the indemnitor to procure insurance to insure the obligation to indemnify and there is evidence that the indemnitor recovered the cost of the required insurance in the contract price.
- (3) Any indemnitor's promise to indemnify the indemnitee from liability for loss resulting from negligence or intentional acts or omissions of a third party occurring outside the boundaries of the indemnitee's facility.
- (4) Any requirement that the indemnitor procure insurance or name the indemnitee as an additional insured on the indemnitor's policy, but only to the extent that the additional coverage provides coverage for liability due to an obligation to indemnify authorized in (1), (2), or (3).

Proposed law repeals provision from Act No. 491 of 2010 R.S. that provides that present law does not apply to contracts providing indemnity to the indemnitee when the contract was executed before Aug. 15, 2010, and which governs a specific terminable performance of a specific job or activity.

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

(Amends R.S. 9:2780.1(A)(2)(a) and (5), (B), (C), (D), and (F); Adds R.S. 9:2780.1(G); Repeals §2 of Act No. 492 of the 2010 R.S.)