

Regular Session, 2011

HOUSE BILL NO. 447

BY REPRESENTATIVE MICHAEL JACKSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTS: Provides relative to motor carrier transportation contracts

1 AN ACT

2 To amend and reenact R.S. 9:2780.1(A)(5), (B), (C), (D), and (F), to enact R.S. 9:2780.1(G),  
3 and to repeal R.S. 9:2780.1(A)(2), relative to motor carrier transport contracts; to  
4 repeal provisions related to construction contracts; to define "reciprocal indemnity  
5 obligations"; to provide for enforcement of certain provisions in motor carrier  
6 transportation contracts; to provide for an effective date; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

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

11 §2780.1. Certain contract provisions invalid; motor carrier transportation contracts;  
12 ~~construction contracts~~

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

16 \* \* \*

17 (5) ~~"Third party" means any party not subject to the contractual obligations~~  
18 ~~between the indemnitee and indemnitor.~~ "Reciprocal indemnity obligations" means  
19 obligations in a contract by which the parties agree to indemnify, defend, and hold  
20 harmless each other, and, perhaps, each other's contractors, employees, and invitees



1 F. The provisions of this Section shall not apply to prohibited clauses in any  
2 motor carrier transportation contract ~~and any construction contract~~ entered into prior  
3 to January 1, 2011.

4 G. Notwithstanding any provision of law to the contrary, nothing in this  
5 Section shall invalidate or prohibit the enforcement of any of the following in any  
6 motor carrier transportation contract:

7 (1) Any reciprocal indemnity obligations.

8 (2) Any clause containing the indemnitor's promise to indemnify, defend, or  
9 hold harmless the indemnitee or an agent or employee of the indemnitee if the  
10 contract also requires the indemnitor to obtain insurance to insure the obligation to  
11 indemnify, defend, or hold harmless and the indemnitor had the opportunity to  
12 recover the cost of the required insurance in the contract price.

13 (3) Any clause that requires the indemnitor to procure insurance or name the  
14 indemnitee as an additional insured on the indemnitor's policy of insurance, but only  
15 to the extent that such additional insurance coverage provides coverage to the  
16 indemnitee for liability due to either of the following:

17 (a) Reciprocal indemnity obligations.

18 (b) An obligation to indemnify, defend, or hold harmless authorized pursuant  
19 to Paragraph (2) of this Subsection.

20 Section 2. R.S. 9:2870.1(A)(2) is hereby repealed in its entirety.

21 Section 3. This Act shall become effective upon signature by the governor or, if not  
22 signed by the governor, upon expiration of the time for bills to become law without signature  
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
25 effective on the day following such approval.

---

**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)]

---

Michael Jackson

HB No. 447

**Abstract:** Repeals provisions related to indemnification provisions in construction contracts; Provides for enforcement of certain provisions in motor carrier transportation contracts.

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

Proposed law repeals present law.

Proposed law defines "reciprocal indemnity obligations" as obligations in a contract by which the parties agree to indemnify, defend, and hold harmless each other, and, perhaps, each other's contractors, employees, and invitees or other such parties 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.

Present law provides that, notwithstanding any provision of law to the contrary 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 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 is contrary to the public policy of this state and is null, void, and unenforceable.

Proposed law provides that notwithstanding any provision of law to the contrary and except as otherwise provided in present law and proposed law, any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract which 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 or an agent or employee of the indemnitee is contrary to the public policy of this state and is null, void, and unenforceable.

Present law provides that, notwithstanding any provision of law to the contrary any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or construction contract which purports to require 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 is null, void, and unenforceable. However, nothing in present law shall be construed to prevent the indemnitee from requiring the indemnitor to provide proof of insurance for obligations covered by the contract.

Proposed law provides that, notwithstanding any provision of law to the contrary and except as otherwise provided in proposed law, any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract which purports to require an indemnitor to procure liability insurance covering the negligent or intentional acts or omissions or both of the indemnitee, its employees, or agents is null, void, and unenforceable. Otherwise retains present law.

Present law provides that, notwithstanding any contractual provision to the contrary, the laws of the state of La. shall apply to and govern any construction contract to be performed in this state and any motor carrier transportation contract relative to loading or unloading activities, or any services incidental thereto, which occur in this state. Any provision, covenant, or clause in such contracts which conflicts with the provisions of present law shall be null, void, and unenforceable.

Proposed law provides that, notwithstanding any contractual provision to the contrary, proposed law shall apply to and govern any motor carrier transportation contract relative to loading or unloading activities, or any services incidental thereto, which occur in this state. Otherwise retains present law.

Present law provides that the provisions of present law shall not apply to prohibited clauses in any motor carrier transportation contract and any construction contract entered into prior to Jan. 1, 2011.

Proposed law provides that the provisions of present law shall not apply to prohibited clauses in any motor carrier transportation contract entered into prior to Jan. 1, 2011.

Proposed law provides that, notwithstanding any provision of law to the contrary, nothing in proposed law shall invalidate or prohibit the enforcement of any of the following in any motor carrier transportation contract:

- (1) Any reciprocal indemnity obligations.
- (2) Any clause 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 the indemnitor had the opportunity to recover the cost of the required insurance in the contract price.
- (3) Any clause 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 to the indemnitee for liability due to either of the following:
  - (a) Reciprocal indemnity obligations.
  - (b) An obligation to indemnify, defend, or hold harmless authorized under proposed law.

Present law defines "construction contract" as 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 repeals present law.

Present law provides that a construction contract shall not include any design, construction, alteration, renovation, repair, or maintenance of the following:

- (1) Any dirt or gravel road used to access oil and gas wells and associated facilities.

- (2) Oil flow lines or gas gathering lines used in association with the transportation of production from oil and gas wells from the point that oil and gas becomes commingled for transportation to oil storage facilities or gas transmission lines.

Proposed law repeals present law.

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

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