

CHAPTER 22-02

INDEMNITY

22-02-01. Indemnity defined. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.

22-02-02. When indemnity against unlawful act void. An agreement to indemnify a person against an act thereafter to be done is void if the act is known by such person at the time of doing it to be unlawful.

22-02-03. Indemnity against wrongful act done is valid - Exception. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

22-02-04. Indemnity against acts of certain person includes agents. An agreement to indemnify against the acts of a certain person applies not only to that person's acts and their consequences, but also to those of that person's agents.

22-02-05. Indemnification of several persons includes each person. An agreement to indemnify several persons applies to each unless a contrary intention appears.

22-02-06. Indemnitor jointly and separately liable. One who indemnifies another person against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act.

22-02-07. Rules applied in interpretation of a contract of indemnity. In the interpretation of a contract of indemnity, unless a contrary intention appears, the following rules are to be applied:

1. Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.
2. Upon an indemnity against claims, demands, damages, or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.
3. An indemnity against claims, demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith and in the exercise of reasonable discretion.
4. The person indemnifying is bound, on the request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defense if that person chooses to do so.
5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by the latter in good faith, is conclusive in the latter's favor against the former.
6. If the person indemnifying, whether that person is a principal or a surety in the agreement, has not had reasonable notice of action or proceedings against the person indemnified or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.
7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying is inapplicable if the person indemnifying had a good defense upon the merits which, by want of ordinary care, the person indemnifying failed to establish in the action.

22-02-08. Engagement to answer for violation of duty of another - Reimbursement.

When one person at the request of another person engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, the former is entitled to be reimbursed in the same manner as a surety for whatever the former may pay.

22-02-09. When sureties in indemnity contracts called bail - Provisions governing bail. Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals and known as undertakings or recognizances, the sureties are called bail.

22-02-10. Indemnity agreement in motor carrier transportation contracts void.

1. As used in this section:

- a. "Motor carrier transportation contract" means a contract, agreement, or understanding covering the transportation of property for compensation or hire by the motor carrier; entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or a service incidental to activity described in this subdivision, including storage of property. The term does not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or any other agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.
- b. "Promisee" includes any agent, employee, servant, or independent contractor who is directly responsible to the promisee. The term does not include a motor carrier that is party to a motor carrier transportation contract with the promisee, and does not include that motor carrier's agent, employee, servant, or independent contractor directly responsible to that motor carrier.

2. Notwithstanding any provision of law to the contrary, any portion of a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier contract which purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is void and unenforceable to the extent that the loss or damage:

- a. Occurs during the motor carrier's presence on the promisee's premises and is caused by or results from the negligent or intentional acts or omissions of the promisee; or
- b. Is caused by or results from defects of the equipment used to transport the promisee's property, unless the defects:
 - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
 - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.

3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment as listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008.