

Introduced by Senator Wolk

February 8, 2010

An act to amend Section 2778 of the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

SB 972, as introduced, Wolk. Indemnity.

Under existing law, specified rules are to be applied in the interpretation of a contract of indemnity, unless a contrary intention appears. Pursuant to these rules, the person indemnifying is bound, on 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 those defenses, if he or she chooses to do so.

This bill would expand that rule to provide that the person indemnifying has no obligation to defend actions or proceedings prior to a preliminary or final determination of liability, nor in any amount that exceeds the finally determined indemnification percentage of liability based upon the comparative fault of the indemnitor.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2778 of the Civil Code is amended to
- 2 read:
- 3 2778. In the interpretation of a contract of indemnity, the
- 4 following rules are to be applied, unless a contrary intention
- 5 appears:

1 ~~1.—~~

2 (a) Upon an indemnity against liability, expressly, or in other
3 equivalent terms, the person indemnified is entitled to recover
4 upon becoming liable;.

5 ~~2.—~~

6 (b) Upon an indemnity against claims, ~~or~~ demands, ~~or~~ damages,
7 or costs, expressly, or in other equivalent terms, the person
8 indemnified is not entitled to recover without payment thereof;.

9 ~~3.—~~

10 (c) An indemnity against claims, ~~or~~ demands, or liability,
11 expressly, or in other equivalent terms, embraces the costs of
12 defense against ~~such~~ *the* claims, demands, or liability incurred in
13 good faith, and in the exercise of a reasonable discretion;.

14 ~~4.—~~

15 (d) The person indemnifying is bound, on request of the person
16 indemnified, to defend actions or proceedings brought against the
17 latter in respect to the matters embraced by the indemnity, but the
18 person indemnified has the right to conduct ~~such~~ *those* defenses,
19 if he *or she* chooses to do so; *The person indemnifying has no*
20 *obligation to defend actions or proceedings prior to a preliminary*
21 *or final determination of liability, nor in any amount that exceeds*
22 *the finally determined indemnification percentage of liability based*
23 *upon the comparative fault of the indemnitor.*

24 ~~5.—~~

25 (e) If, after request, the person indemnifying neglects to defend
26 the person indemnified, a recovery against the latter suffered ~~by~~
27 ~~him~~ in good faith, is conclusive in his *or her* favor against the
28 former;.

29 ~~6.—~~

30 (f) If the person indemnifying, whether ~~he is~~ a principal or a
31 surety in the agreement, has not reasonable notice of the action or
32 proceeding against the person indemnified, or is not allowed to
33 control its defense, judgment against the latter is only presumptive
34 evidence against the former;.

35 ~~7.—~~

36 (g) A stipulation that a judgment against the person indemnified
37 shall be conclusive upon the person indemnifying, is inapplicable

- 1 if he *or she* had a good defense upon the merits, which by want of
- 2 ordinary care he *or she* failed to establish in the action.

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