

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY JULY 5, 2011

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN SENATE MAY 24, 2011

AMENDED IN SENATE MAY 2, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 474

Introduced by Senator Evans

February 17, 2011

An act to amend Sections 2782 and 2783 of, and to add Section 2782.05 to, the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

SB 474, as amended, Evans. Commercial construction contracts: indemnity.

Existing law provides that provisions in construction contracts, as defined, that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss arising from the sole negligence or willful misconduct of the promisee or the promisee's agents who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable. Existing law provides that provisions in construction contracts with a public agency that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. Existing law excepts from these provisions

agreements to indemnify with professional engineers, among others. Existing law prescribes different requirements and prohibitions for residential construction contracts entered on and after January 1, 2009.

This bill would provide, for construction contracts and amendments executed on and after January 1, 2013, that are not for residential construction or a direct contract with a public agency or the owner of private property, *as specified*, that purport to insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor, by a subcontractor against liability for claims of death or bodily injury to persons, injury to property, or any other loss, damage, or expense are unenforceable to the extent the claims relate to the active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, as specified, or for defects in design furnished by those persons, or to the extent the claims do not arise out of the scope of work of the subcontractor in the written agreement between the parties. The bill would require that California law be applied to these contracts regardless of any choice-of-law rules that might otherwise apply. The bill would except certain contractual provisions and types of insurance from these provisions, including an agreement between a subcontractor and general contractor or construction manager as to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, as specified. The bill would provide that waiver of these provisions is contrary to public policy, void, and unenforceable.

This bill would provide, for construction contracts entered into on and after January 1, 2013, with a public agency, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. The bill also would provide, for construction contracts entered into on and after January 1, 2013, with the owner of privately ~~held~~ *owned* real property to be improved, *as specified*, and as to which the owner is not acting as a contractor, construction manager, or supplier of materials or equipment to the work, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the owner from, liability are unenforceable to the extent of the active negligence of the owner, including that of its employees. *The bill would except from these provisions a homeowner performing improvement projects on his or her own single family dwelling.*

This bill would expand the definition of “construction contract” for purposes of these provisions, to include agreements for renovations but exclude agreements for surveying, design, and specifications, and would include agreements respecting, among other things, utility, water, sewer, oil, and gas lines.

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. The Legislature finds and declares ~~all of the~~
2 ~~following:~~

3 ~~(a) It that it is in the best interests of this state and its citizens~~
4 ~~and consumers to ensure that every construction business in the~~
5 ~~state is financially responsible under the tort liability system for~~
6 ~~losses that it, as a business, may cause.~~

7 ~~(b) It is the duty of a business to be responsible for its own~~
8 ~~negligence.~~

9 ~~(c) Developers and construction businesses in recent years have~~
10 ~~begun to use contract provisions to shift the financial responsibility~~
11 ~~for their negligence to others, thereby circumventing one of the~~
12 ~~fundamental foundations of tort law.~~

13 ~~(d) If all businesses, large and small, are responsible for their~~
14 ~~own actions, then construction companies will be able to obtain~~
15 ~~adequate insurance, the quality of construction will be improved,~~
16 ~~and workplace safety will be enhanced.~~

17 ~~(e) Construction businesses must be able to obtain liability~~
18 ~~insurance in order to meet their responsibilities.~~

19 ~~(f) The provisions of this act will promote competition and~~
20 ~~safety in the construction industry, thereby benefiting California~~
21 ~~consumers.~~

22 ~~(g) The intent of this act is to create an economic climate that~~
23 ~~will promote safety in construction and ensure fairness among~~
24 ~~businesses.~~

25 SEC. 2. Section 2782 of the Civil Code is amended to read:

26 2782. (a) Except as provided in Sections 2782.1, 2782.2,
27 2782.5, and 2782.6, provisions, clauses, covenants, or agreements
28 contained in, collateral to, or affecting any construction contract
29 and that purport to indemnify the promisee against liability for
30 damages for death or bodily injury to persons, injury to property,

1 or any other loss, damage or expense arising from the sole
 2 negligence or willful misconduct of the promisee or the promisee’s
 3 agents, servants, or independent contractors who are directly
 4 responsible to the promisee, or for defects in design furnished by
 5 those persons, are against public policy and are void and
 6 unenforceable; provided, however, that this section shall not affect
 7 the validity of any insurance contract, workers’ compensation, or
 8 agreement issued by an admitted insurer as defined by the
 9 Insurance Code.

10 (b) (1) Except as provided in Sections 2782.1, 2782.2, and
 11 2782.5, provisions, clauses, covenants, or agreements contained
 12 in, collateral to, or affecting any construction contract with a public
 13 agency entered into before January 1, 2013, that purport to impose
 14 on the contractor, or relieve the public agency from, liability for
 15 the active negligence of the public agency are void and
 16 unenforceable.

17 (2) Except as provided in Sections 2782.1, 2782.2, and 2782.5,
 18 provisions, clauses, covenants, or agreements contained in,
 19 collateral to, or affecting any construction contract with a public
 20 agency entered into on or after January 1, 2013, that purport to
 21 impose on any contractor, subcontractor, or supplier of goods or
 22 services, or relieve the public agency from, liability for the active
 23 negligence of the public agency are void and unenforceable.

24 ~~(3) The following shall not constitute active negligence of the~~
 25 ~~public agency:~~

26 ~~(A) Except as provided in Section 2782.8, accepting or utilizing~~
 27 ~~plans or designs provided by a licensed design professional.~~

28 ~~(B) The hiring of a design professional, contractor,~~
 29 ~~subcontractor, or supplier of goods or services, or other~~
 30 ~~independent contractor.~~

31 ~~(C) To the extent the public agency is not managing the public~~
 32 ~~works project, the failure to supervise the work of a design~~
 33 ~~professional, contractor, subcontractor, or other independent~~
 34 ~~contractor.~~

35 (c) (1) Except as provided in subdivision (d) and Sections
 36 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or
 37 agreements contained in, collateral to, or affecting any construction
 38 contract entered into on or after January 1, 2013, with the owner
 39 of privately-held owned real property to be improved and as to
 40 which the owner is not acting as a contractor, construction manager,

1 or supplier of materials or equipment to the work, that purport to
2 impose on any contractor, subcontractor, or supplier of goods or
3 services, or relieve the owner from, liability are unenforceable to
4 the extent of the active negligence of the owner, including that of
5 its employees. For purposes of this subdivision, the following shall
6 not constitute active negligence of the owner or developer:

7 ~~(1) Accepting or utilizing plans or designs approved by a~~
8 ~~licensed design professional.~~

9 ~~(2) The hiring of a design professional, contractor, construction~~
10 ~~manager, or supplier of materials or equipment.~~

11 ~~(3) The failure to supervise the work of a contractor or~~
12 ~~subcontractor.~~

13 *(2) For purposes of this subdivision, an owner of privately*
14 *owned real property to be improved includes the owner of any*
15 *interest therein, other than a mortgage or other interest that is*
16 *held solely as security for performance of an obligation.*

17 *(3) This subdivision shall not apply to a homeowner performing*
18 *a home improvement project on his or her own single family*
19 *dwelling.*

20 (d) For all construction contracts, and amendments thereto,
21 entered into after January 1, 2009, for residential construction, as
22 used in Title 7 (commencing with Section 895) of Part 2 of
23 Division 2, all provisions, clauses, covenants, and agreements
24 contained in, collateral to, or affecting any construction contract,
25 and amendments thereto, that purport to insure or indemnify,
26 including the cost to defend, the builder, as defined in Section 911,
27 or the general contractor or contractor not affiliated with the
28 builder, as described in subdivision (b) of Section 911, by a
29 subcontractor against liability for claims of construction defects
30 are unenforceable to the extent the claims arise out of, pertain to,
31 or relate to the negligence of the builder or contractor or the
32 builder's or contractor's other agents, other servants, or other
33 independent contractors who are directly responsible to the builder,
34 or for defects in design furnished by those persons, or to the extent
35 the claims do not arise out of, pertain to, or relate to the scope of
36 work in the written agreement between the parties. This section
37 shall not be waived or modified by contractual agreement, act, or
38 omission of the parties. Contractual provisions, clauses, covenants,
39 or agreements not expressly prohibited herein are reserved to the
40 agreement of the parties. Nothing in this subdivision shall prevent

1 any party from exercising its rights under subdivision (a) of Section
2 910. This subdivision shall not affect the obligations of an
3 insurance carrier under the holding of *Presley Homes, Inc. v.*
4 *American States Insurance Company* (2001) 90 Cal.App.4th 571.
5 Nor shall this subdivision affect the obligations of a builder or
6 subcontractor pursuant to Title 7 (commencing with Section 895)
7 of Part 2 of Division 2.

8 (e) Subdivision (d) does not prohibit a subcontractor and builder
9 or general contractor from mutually agreeing to the timing or
10 immediacy of the defense and provisions for reimbursement of
11 defense fees and costs, so long as that agreement does not waive
12 or modify the provisions of subdivision (d) subject, however, to
13 paragraphs (1) and (2). A subcontractor shall owe no defense or
14 indemnity obligation to a builder or general contractor for a
15 construction defect claim unless and until the builder or general
16 contractor provides a written tender of the claim, or portion thereof,
17 to the subcontractor which includes all of the information provided
18 to the builder or general contractor by the claimant or claimants,
19 including, but not limited to, information provided pursuant to
20 subdivision (a) of Section 910, relating to claims caused by that
21 subcontractor's scope of work. This written tender shall have the
22 same force and effect as a notice of commencement of a legal
23 proceeding. If a builder or general contractor tenders a claim for
24 construction defects, or a portion thereof, to a subcontractor in the
25 manner specified by this provision, the subcontractor shall elect
26 to perform either of the following, the performance of which shall
27 be deemed to satisfy the subcontractor's defense obligation to the
28 builder or general contractor:

29 (1) Defend the claim with counsel of its choice, and the
30 subcontractor shall maintain control of the defense for any claim
31 or portion of claim to which the defense obligation applies. If a
32 subcontractor elects to defend under this paragraph, the
33 subcontractor shall provide written notice of the election to the
34 builder or general contractor within a reasonable time period
35 following receipt of the written tender, and in no event later than
36 90 days following that receipt. Consistent with subdivision (d),
37 the defense by the subcontractor shall be a complete defense of
38 the builder or general contractor of all claims or portions thereof
39 to the extent alleged to be caused by the subcontractor, including
40 any vicarious liability claims against the builder or general

1 contractor resulting from the subcontractor's scope of work, but
2 not including claims resulting from the scope of work, actions, or
3 omissions of the builder, general contractor, or any other party.
4 Any vicarious liability imposed upon a builder or general contractor
5 for claims caused by the subcontractor electing to defend under
6 this paragraph shall be directly enforceable against the
7 subcontractor by the builder, general contractor, or claimant.

8 (2) Pay, within 30 days of receipt of an invoice from the builder
9 or general contractor, no more than a reasonable allocated share
10 of the builder's or general contractor's defense fees and costs, on
11 an ongoing basis during the pendency of the claim, subject to
12 reallocation consistent with subdivision (d), and including any
13 amounts reallocated upon final resolution of the claim, either by
14 settlement or judgment. The builder or general contractor shall
15 allocate a share to itself to the extent a claim or claims are alleged
16 to be caused by its work, actions, or omissions, and a share to each
17 subcontractor to the extent a claim or claims are alleged to be
18 caused by the subcontractor's work, actions, or omissions,
19 regardless of whether the builder or general contractor actually
20 tenders the claim to any particular subcontractor, and regardless
21 of whether that subcontractor is participating in the defense. Any
22 amounts not collected from any particular subcontractor may not
23 be collected from any other subcontractor.

24 (f) Notwithstanding any other provision of law, if a
25 subcontractor fails to timely and adequately perform its obligations
26 under paragraph (1) of subdivision (e), the builder or general
27 contractor shall have the right to pursue a claim against the
28 subcontractor for any resulting compensatory damages,
29 consequential damages, and reasonable attorney's fees. If a
30 subcontractor fails to timely perform its obligations under
31 paragraph (2) of subdivision (e), the builder or general contractor
32 shall have the right to pursue a claim against the subcontractor for
33 any resulting compensatory and consequential damages, as well
34 as for interest on defense and indemnity costs, from the date
35 incurred, at the rate set forth in subdivision (g) of Section 3260,
36 and for the builder's or general contractor's reasonable attorney's
37 fees incurred to recover these amounts. The builder or general
38 contractor shall bear the burden of proof to establish both the
39 subcontractor's failure to perform under either paragraph (1) or
40 (2) of subdivision (e) and any resulting damages. If, upon request

1 by a subcontractor, a builder or general contractor does not
 2 reallocate defense fees to subcontractors within 30 days following
 3 final resolution of the claim as described above, the subcontractor
 4 shall have the right to pursue a claim against the builder or general
 5 contractor for any resulting compensatory and consequential
 6 damages, as well as for interest on the fees, from the date of final
 7 resolution of the claim, at the rate set forth in subdivision (g) of
 8 Section 3260, and the subcontractor’s reasonable attorney’s fees
 9 incurred in connection therewith. The subcontractor shall bear the
 10 burden of proof to establish both the failure to reallocate the fees
 11 and any resulting damages. Nothing in this section shall prohibit
 12 the parties from mutually agreeing to reasonable contractual
 13 provisions for damages if any party fails to elect for or perform
 14 its obligations as stated in this section.

15 (g) A builder, general contractor, or subcontractor shall have
 16 the right to seek equitable indemnity for any claim governed by
 17 this section.

18 (h) Nothing in this section limits, restricts, or prohibits the right
 19 of a builder, general contractor, or subcontractor to seek equitable
 20 indemnity against any supplier, design professional, or product
 21 manufacturer.

22 (i) As used in this section, “construction defect” means a
 23 violation of the standards set forth in Sections 896 and 897.

24 SEC. 3. Section 2782.05 is added to the Civil Code, to read:

25 2782.05. (a) Except as provided in subdivision (b), provisions,
 26 clauses, covenants, and agreements contained in, collateral to, or
 27 affecting any construction contract and amendments thereto entered
 28 into on or after January 1, 2013, that purport to insure or indemnify,
 29 including the cost to defend, a general contractor, construction
 30 manager, or other subcontractor, by a subcontractor against liability
 31 for claims of death or bodily injury to persons, injury to property,
 32 or any other loss, damage, or expense are *void and unenforceable*
 33 to the extent the claims arise out of, pertain to, or relate to the
 34 active negligence or willful misconduct of that general contractor,
 35 construction manager, or other subcontractor, or their other agents,
 36 other servants, or other independent contractors who are responsible
 37 to the general contractor, construction manager, or other
 38 subcontractor, or for defects in design furnished by those persons,
 39 or to the extent the claims do not arise out of the scope of work of
 40 the subcontractor ~~in the written agreement between the parties~~

1 *pursuant to the construction contract.* This section shall not be
2 waived or modified by contractual agreement, act, or omission of
3 the parties. Contractual provisions, clauses, covenants, or
4 agreements not expressly prohibited herein are reserved to the
5 agreement of the parties. ~~This subdivision~~ *section* shall not affect
6 the obligations of an insurance carrier under the holding of Presley
7 Homes, Inc. v. American States Insurance Company (2001) 90
8 Cal.App.4th 571, nor the rights of an insurance carrier under the
9 holding of Buss v. Superior Court (1997) 16 Cal.4th 35.

10 (b) This section does not apply to:

11 (1) Contracts for residential construction that are subject to any
12 part of Title 7 (commencing with Section 895) of Part 2 of Division
13 2.

14 (2) Direct contracts with a public agency that are governed by
15 subdivision (b) of Section 2782.

16 (3) Direct contracts with the owner of ~~private property~~ *privately*
17 *owned real property to be improved* that are governed by
18 subdivision (c) of Section 2782.

19 (4) Any wrap-up insurance policy or program.

20 (5) A cause of action for breach of contract or warranty that
21 exists independently of an indemnity obligation.

22 (6) A provision in a construction contract that requires the
23 promisor to purchase or maintain insurance *covering the acts or*
24 *omissions of the promisor, including additional insurance*
25 *endorsements covering the acts or omissions of the promisor during*
26 *ongoing and completed operations.*

27 (7) Indemnity provisions contained in loan and financing
28 documents, other than construction contracts to which the
29 contractor and a contracting project owner's lender are parties.

30 (8) General agreements of indemnity required by sureties as a
31 condition of execution of bonds for construction contracts.

32 (9) The benefits and protections provided by the workers'
33 compensation laws.

34 (10) The benefits or protections provided by the governmental
35 immunity laws.

36 (11) Provisions that require the purchase of any of the following:

37 (A) Owners and contractors protective liability insurance.

38 (B) Railroad protective liability insurance.

39 (C) Contractors all-risk insurance.

40 (D) Builders all-risk or named perils property insurance.

1 (12) Contracts with design professionals.

2 (13) *Any agreement between a promisor and an admitted surety*
3 *insurer regarding the promisor's obligations as a principal or*
4 *indemnitor on a bond.*

5 (c) Notwithstanding any choice-of-law rules that would apply
6 the laws of another jurisdiction, the law of California shall apply
7 to every contract to which this section applies.

8 (d) Any waiver of the provisions of this section is contrary to
9 public policy and is void and unenforceable.

10 (e) Subdivision (a) does not prohibit a subcontractor and a
11 general contractor or construction manager from mutually agreeing
12 to the timing or immediacy of the defense and provisions for
13 reimbursement of defense fees and costs, so long as that agreement
14 does not waive or modify the provisions of subdivision (a) subject,
15 however, to paragraphs (1) and (2). A subcontractor shall owe no
16 defense or indemnity obligation to a general contractor or
17 construction manager for a claim unless and until the general
18 contractor or construction manager provides a written tender of
19 the claim, or portion thereof, to the subcontractor that includes the
20 information provided by the claimant or claimants relating to
21 claims caused by that subcontractor's scope of work. In addition,
22 the general contractor or construction manager shall provide a
23 written statement regarding how the reasonable allocated share of
24 fees and costs was determined. The written tender shall have the
25 same force and effect as a notice of commencement of a legal
26 proceeding. If a general contractor or construction manager tenders
27 a claim, or portion thereof, to a subcontractor in the manner
28 specified by this subdivision, the subcontractor shall elect to
29 perform either of the following, the performance of which shall
30 be deemed to satisfy the subcontractor's defense obligation to the
31 general contractor or construction manager:

32 (1) Defend the claim with counsel of its choice, and the
33 subcontractor shall maintain control of the defense for any claim
34 or portion of claim to which the defense obligation applies. If a
35 subcontractor elects to defend under this paragraph, the
36 subcontractor shall provide written notice of the election to the
37 general contractor or construction manager within a reasonable
38 time period following receipt of the written tender, and in no event
39 later than 30 days following that receipt. Consistent with
40 subdivision (a), the defense by the subcontractor shall be a

1 complete defense of the general contractor or construction manager
2 of all claims or portions thereof to the extent alleged to be caused
3 by the subcontractor, including any vicarious liability claims
4 against the general contractor or construction manager resulting
5 from the subcontractor's scope of work, but not including claims
6 resulting from the scope of work, actions, or omissions of the
7 general contractor or construction manager, or any other party.
8 Any vicarious liability imposed upon a general contractor or
9 construction manager for claims caused by the subcontractor
10 electing to defend under this paragraph shall be directly enforceable
11 against the subcontractor by the ~~owner~~, general contractor,
12 construction manager, or claimant. *All information, documentation,*
13 *or evidence, if any, relating to a subcontractor's assertion that*
14 *another party is responsible for the claim shall be provided by*
15 *that subcontractor to the general contractor or construction*
16 *manager that tendered the claim.*

17 (2) Pay, within 30 days of receipt of an invoice from the general
18 contractor or construction manager, no more than a reasonable
19 allocated share of the general contractor's or construction
20 manager's defense fees and costs, on an ongoing basis during the
21 pendency of the claim, subject to reallocation consistent with
22 subdivision (a), and including any amounts reallocated upon final
23 resolution of the claim, either by settlement or judgment. The
24 general contractor or construction manager shall allocate a share
25 to itself to the extent a claim or claims are alleged to be caused by
26 its work, actions, or omissions, and a share to each subcontractor
27 to the extent a claim or claims are alleged to be caused by the
28 subcontractor's work, actions, or omissions, regardless of whether
29 the general contractor or construction manager actually tenders
30 the claim to any particular subcontractor, and regardless of whether
31 that subcontractor is participating in the defense. Any amounts not
32 collected from any particular subcontractor may not be collected
33 from any other subcontractor.

34 (f) Notwithstanding any other provision of law, if a
35 subcontractor fails to timely and adequately perform its obligations
36 under paragraph (1) of subdivision (e), the general contractor or
37 construction manager shall have the right to pursue a claim against
38 the subcontractor for any resulting compensatory damages,
39 consequential damages, and reasonable attorney's fees. If a
40 subcontractor fails to timely perform its obligations under

1 paragraph (2) of subdivision (e), the general contractor or
2 construction manager shall have the right to pursue a claim against
3 the subcontractor for any resulting compensatory damages, interest
4 on defense and indemnity costs, from the date incurred, at the rate
5 set forth in subdivision (g) of Section 3260, consequential damages,
6 and reasonable attorney's fees incurred to recover these amounts.
7 The general contractor or construction manager shall bear the
8 burden of proof to establish both the subcontractor's failure to
9 perform under either paragraph (1) or (2) of subdivision (e) and
10 any resulting damages. If, upon request by a subcontractor, a
11 general contractor or construction manager does not reallocate
12 defense fees to subcontractors within 30 days following final
13 resolution of the claim, the subcontractor shall have the right to
14 pursue a claim against the general contractor or construction
15 manager for any resulting compensatory damages with interest,
16 from the date of final resolution of the claim, at the rate set forth
17 in subdivision (g) of Section 3260. The subcontractor shall bear
18 the burden of proof to establish both the failure to reallocate the
19 fees and any resulting damages. Nothing in this section shall
20 prohibit the parties from mutually agreeing to reasonable
21 contractual provisions for damages if any party fails to elect for
22 or perform its obligations as stated in this section.

23 (g) For purposes of this section, "construction manager" means
24 a person *or entity*, other than a public agency or ~~owner, who directs,~~
25 ~~schedules, or coordinates~~ *owner of privately owned real property*
26 *to be improved, who is contracted by a public agency or the owner*
27 *of privately owned real property to be improved to direct, schedule,*
28 *or coordinate* the work of contractors for a work of improvement,
29 but does not itself perform the work.

30 (h) For purposes of this section, "general contractor," in relation
31 to a given subcontractor, means a person who has entered into a
32 construction contract and who has entered into a subcontract with
33 that subcontractor under which the subcontractor agrees to perform
34 a portion of that scope of work. Where a subcontractor has itself
35 subcontracted a portion of its work, that subcontractor, along with
36 its general contractor, shall be considered a general contractor as
37 to its subcontractors.

38 (i) For purposes of this section, "subcontractor" means a person
39 who has entered into a construction contract either with a contractor
40 to perform a portion of that contractor's work under a construction

1 contract or with any person to perform a construction contract
2 subject to the direction or control of a general contractor or
3 construction manager.

4 (j) A general contractor, construction manager, or subcontractor
5 shall have the right to seek equitable indemnity for any claim
6 governed by this section.

7 (k) Nothing in this section limits, restricts, or prohibits the right
8 of a general contractor, construction manager, or subcontractor to
9 seek equitable indemnity against any supplier, design professional,
10 ~~or~~ product manufacturer, *or other independent contractor or*
11 *subcontractor.*

12 (l) This section shall not affect the validity of any existing
13 insurance contract; *or agreement, including, but not limited to, a*
14 *contract or agreement for workers' compensation; or an agreement*
15 *issued on or before January 1, 2012, by an admitted insurer, as*
16 *defined in the Insurance Code.*

17 (m) *Nothing in this section shall be construed to affect the*
18 *obligation, if any, of either a contractor or construction manager*
19 *to indemnify, including defending or paying the costs to defend, a*
20 *public agency against any claim arising from the alleged active*
21 *negligence of the public agency under subdivision (b) of Section*
22 *2782 or to indemnify, including defending or paying the costs to*
23 *defend, an owner of privately owned real property to be improved*
24 *against any claim arising from the alleged active negligence of*
25 *the owner under subdivision (c) of Section 2782.*

26 (n) *Nothing in this section shall be construed to affect the*
27 *obligation, if any, of either a contractor or construction manager*
28 *to provide or maintain insurance covering the acts or omissions*
29 *of the promisor, including additional insurance endorsements*
30 *covering the acts or omissions of the promisor during ongoing*
31 *and completed operations pursuant to a construction contract with*
32 *a public agency under subdivision (b) of Section 2782 or an owner*
33 *of privately owned real property to be improved under subdivision*
34 *(c) of Section 2782.*

35 SEC. 4. Section 2783 of the Civil Code is amended to read:

36 2783. As used in Sections 2782 and 2782.5, “construction
37 contract” is defined as any agreement or understanding, written
38 or oral, respecting the construction, *surveying, design,*
39 *specifications,* alteration, repair, improvement, renovation,
40 maintenance, removal of or demolition of any building, highway,

1 road, parking facility, bridge, water line, sewer line, oil line, gas
2 line, electric utility transmission or distribution line, railroad,
3 airport, pier or dock, excavation or other structure, appurtenance,
4 development or other improvement to real or personal property,
5 or an agreement to perform any portion thereof or any act collateral
6 thereto, or to perform any service reasonably related thereto,
7 including, but not limited to, the erection of all structures or
8 performance of work in connection therewith, *electrical power*
9 *line clearing, tree trimming, vegetation maintenance*, the rental of
10 all equipment, all incidental transportation, moving, lifting, crane
11 and rigging service and other goods and services furnished in
12 connection therewith.

O