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**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

**Resolution Opposing Anti-Indemnity And Anti-Additional Insured Legislation**

**PURPOSE:** Urging state legislatures not to adopt legislation that would prohibit or require the inclusion of indemnity and additional insured provisions in commercial contracts

**WHEREAS,** a number of state legislatures have passed laws prohibiting standard indemnity and additional insured contract provisions that have been in use for decades

**WHEREAS,** the freedom of contract is among the fundamental liberties guaranteed by the United States Constitution and is an essential element of a free-market economy

**WHEREAS,** the ability for businesses to contract freely and to consent voluntarily to commercial terms promotes prosperity and commerce by giving businesses tremendous flexibility in ordering their commercial relations with one another, including the ability to allocate risk appropriately to fit a particular transaction

**WHEREAS,** businesses are always free to decline contracts that contain commercial terms (including risk allocation and insurance requirements) they do not want to accept, and to negotiate alternative terms.

**WHEREAS,** government should be cognizant of leverage that may be exerted by larger entities against smaller entities with respect to risk allocation and insurance requirement

**WHEREAS,** contract terms should be bargained for during contract negotiations

**WHEREAS,** indemnity clauses and additional insured provisions are a legitimate means to allocate risk between contracting parties and customers have good reasons to seek risk allocation as part of the package of services they contract to obtain

**WHEREAS,** numerous contract terms involve contracting around the background tort rules and setting alternative arrangements for the assignment of liability, including contract provisions limiting punitive damages or excluding consequential damages

**WHEREAS,** blanket prohibition against indemnity and additional insured provisions penalizes companies who have a strong safety record, because safe contractors/operators/indemnitees will no longer be able to enjoy the benefits of being named as an additional insured at relatively little cost

**WHEREAS,** indemnity clauses and additional insured provisions allow parties to allocate liability between them in advance, thereby avoiding needless litigation over fault and who will defend liability claims when they arise

**WHEREAS,** the insurance market developed "additional insured" coverage (extending coverage to someone other than the named policyholder) in response to an identified need in the marketplace, and the cost (premium) of the coverage is generally known and can be included in the cost of a legitimately negotiated contract

**WHEREAS,** the common law has always permitted these provisions and courts have traditionally upheld them so long as there is no breach of duty to the public,

**WHEREAS,** there are other sound public policy reasons to permit both indemnity provisions and additional insured provisions in commercial contracts, including provisions that allow one party to indemnify or insure against another party's negligence. Inappropriate clauses, where a responsible party's sole fault and liability are shifted to a non-negligent party, should be discouraged as against public policy

**THEREFORE, BE IT RESOLVED,** that the American Legislative Exchange Council opposes legislation that would prohibit or require the inclusion of indemnity provisions in commercial contracts

**BE IT FURTHER RESOLVED,** that the American Legislative Exchange Council opposes legislation that would prohibit or require the inclusion of additional insured provisions in commercial contracts

Adopted by ALEC's Civil Justice Task Force February, 2008. Approved by full ALEC Board of Directors April, 2008.

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

**ALEC EXPOSED**  
"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

- ALEC's Corporate Board**  
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  - UPS
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- For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).