

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S4/3/13
A Bill

SENATE BILL 762

By: Senator J. Hutchinson

For An Act To Be Entitled

AN ACT TO PROHIBIT ENFORCEMENT OF CERTAIN INDEMNITY
CLAUSES IN MOTOR CARRIER TRANSPORTATION CONTRACTS; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT ENFORCEMENT OF CERTAIN
INDEMNITY CLAUSES IN MOTOR CARRIER
TRANSPORTATION CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-7-309 is amended to add an additional subsection to read as follows:

(d)(1) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract to be performed all or in part in Arkansas that purports to indemnify, defend or hold harmless, or that has the effect of indemnifying, defending or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligent, reckless, intentional, malicious, willful or wanton acts or omissions, of the promisee is against the public policy of Arkansas and is void and unenforceable.

(2) In this subsection:

(A) "Motor carrier transportation contract" means a contract, agreement or understanding whether express or implied entered into, renewed, modified or extended on or after passage and approval of this Act that covers:



(i) Transportation of property for compensation or hire by the motor carrier;

(ii) Entrance on property by the motor carrier for the purpose of loading, unloading, delivering, or transporting property for compensation or hire; or

(iii) Service incidental to activity described in subsection (a) or (b) of this section, including, but not limited to, storage of property.

(B) "Promisee" means the promisee specified in the motor carrier transportation contract and each agent, employee, servant, and independent contractor directly responsible to the specified promisee.

(3) This subsection does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis or other intermodal equipment, nor shall it apply to any contract of insurance between a motor carrier and its insurance carrier.

(4) Notwithstanding any choice-of-law provision to the contrary, the law of Arkansas relating to indemnity as embodied in this subsection shall apply to and govern every motor carrier transportation contract to be performed all or in part within the State of Arkansas.

(5) This subsection does not apply to a contract of insurance.

SECTION 2. EMERGENCY. It is hereby found and determined by the Eighty-Ninth General Assembly that motor carriers are sometimes required to sign or accept transportation contracts that require them or their insurers to indemnify one (1) or more other parties or third-party beneficiaries to the transportation contract for negligent, reckless, intentional, malicious, willful, or wanton acts or omissions regardless of which entity is actually at fault or otherwise responsible. Those indemnity provisions violate public policy because they eliminate the incentive for the indemnitee to take reasonable precautions to avert risky behavior that may lead to accidents or other losses. While indemnity agreements involving motor carriers are compatible with public policy in many contexts, clarification of the law is necessary to ensure that motor carriers are not forced to assume contractual responsibility for acts or omissions over which they have little or no

control. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/J. Hutchinson