

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 755

By: Senator J. Woods
By: Representative Neal

For An Act To Be Entitled

AN ACT TO IMPROVE INTRASTATE COMMERCE; TO REGULATE
THE PRACTICES OF THE MOTOR CARRIER INDUSTRY; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO IMPROVE INTRASTATE COMMERCE; TO
REGULATE THE PRACTICES OF THE MOTOR
CARRIER INDUSTRY; TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code Title 23, Chapter 13, Subchapter 1, is amended to add an additional section to read as follows:

23-13-105. Certain indemnity provisions void – Definitions.

(a) As used in this section:

(1) "Gas" means all natural gas, including casing-head gas and all other hydrocarbons not defined as oil in this section;

(2) "Motor carrier" means:

(A) An individual or entity that is engaged in the transportation of property for compensation by motor vehicle; and

(B) An agent, employee, servant, or independent contractor of the individual or entity described in subdivision (a)(2)(A) of this section;

(3) "Motor carrier transportation contract" means an express or implied contract, agreement, or understanding entered into, renewed,



modified, or extended on or after the effective date of this act that covers:

(A) Transportation of property for compensation or hire by a motor carrier;

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

(C) Services that are incidental to an activity described in subdivision (a)(3)(A) or subdivision (a)(3)(B) of this section, including without limitation brokerage services or the storage of property;

(4) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir;

(5) "Operator" means the person who has the right as an owner or by agreement with an owner to enter upon the lands of another for the purposes of exploring, drilling, and developing for the production of brine, oil, gas, and all other petroleum hydrocarbons;

(6) "Person" means an individual, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, federal agency, or representative of any kind; and

(7) "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.

(b) 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 the State of Arkansas and is void and unenforceable.

(c) This section does not apply to:

(1) 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;

(2) A contract of insurance between a motor carrier and its insurance carrier;

(3) An indemnity clause entered into as part of a settlement agreement in which a motor carrier and any of its agents, employees, contractors, affiliates, assigns, and insurers are to be indemnified, defended, or otherwise held harmless as to any pending or future claim of:

(A) Another party to or a third-party beneficiary of the settlement agreement; or

(B) A lienholder, alleged tortfeasor, or other allegedly responsible party; or

(4)(A) Except as provided in subdivision (c)(4)(B) of this section, the provision of work or services of any kind to an operator or other person directly related to activities or operations stemming from the exploration, production, processing, gathering, or movement of oil or gas, including without limitation the hauling, movement, or transportation of people, oil, gas, goods, supplies, equipment, facilities, structures, water, fluids, chemicals, waste, or other materials on or off one (1) or more sites where any exploration or production operations have been, are, or will be occurring.

(B) The activities and operations described in subdivision (c)(4)(A) of this section shall not include the transportation by motor carrier of refined petroleum products for purposes unrelated to the exploration, drilling, or production of oil or gas.

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

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that motor carriers are often required to sign or accept transportation contracts that require motor carriers or their insurers to indemnify one (1) or more 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; that while indemnity agreements involving motor carriers are compatible with public policy in many contexts,

clarification of the law by this act is necessary to ensure that motor carriers are not forced to assume liabilities for actions over which they have little or no control; that the indemnity provisions prohibited by this act 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; and that this act is immediately necessary because these indemnity provisions are causing hardship to the motor carrier industry and threatening the safety of workers associated with or affected by the motor carrier industry by forcing motor carriers to assume contractual responsibility for acts or omissions over which they have little or no control and by discouraging safe practices by the entities that contract with motor carriers. Therefore, an emergency is 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.