

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 755

4
5 By: Senator J. Woods
6 By: Representative Neal

For An Act To Be Entitled

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

Subtitle

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14 TO IMPROVE INTRASTATE COMMERCE; TO
15 REGULATE THE PRACTICES OF THE MOTOR
16 CARRIER INDUSTRY; TO DECLARE AN
17 EMERGENCY.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

25 23-13-105. Certain indemnity provisions void – Definitions.

26 (a) As used in this section:

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

29 (2) "Motor carrier" means:

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

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

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



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

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

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

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

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

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

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

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

24 (b) A provision, clause, covenant, or agreement contained in,
25 collateral to, or affecting a motor carrier transportation contract to be
26 performed all or in part in Arkansas that purports to indemnify, defend, or
27 hold harmless, or that has the effect of indemnifying, defending, or holding
28 harmless, the promisee from or against any liability for loss or damage
29 resulting from the negligent, reckless, intentional, malicious, willful, or
30 wanton acts or omissions of the promisee is against the public policy of the
31 State of Arkansas and is void and unenforceable.

32 (c) This section does not apply to:

33 (1) The Uniform Intermodal Interchange and Facilities Access
34 Agreement administered by the Intermodal Association of North America or
35 other agreements providing for the interchange, use, or possession of
36 intermodal chassis or other intermodal equipment;

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

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

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

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

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

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

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

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29 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General
30 Assembly of the State of Arkansas that motor carriers are often required to
31 sign or accept transportation contracts that require motor carriers or their
32 insurers to indemnify one (1) or more parties or third-party beneficiaries to
33 the transportation contract for negligent, reckless, intentional, malicious,
34 willful, or wanton acts or omissions regardless of which entity is actually
35 at fault or otherwise responsible; that while indemnity agreements involving
36 motor carriers are compatible with public policy in many contexts,

1 clarification of the law by this act is necessary to ensure that motor
2 carriers are not forced to assume liabilities for actions over which they
3 have little or no control; that the indemnity provisions prohibited by this
4 act violate public policy because they eliminate the incentive for the
5 indemnatee to take reasonable precautions to avert risky behavior that may
6 lead to accidents or other losses; and that this act is immediately necessary
7 because these indemnity provisions are causing hardship to the motor carrier
8 industry and threatening the safety of workers associated with or affected by
9 the motor carrier industry by forcing motor carriers to assume contractual
10 responsibility for acts or omissions over which they have little or no
11 control and by discouraging safe practices by the entities that contract with
12 motor carriers. Therefore, an emergency is declared to exist, and this act
13 being immediately necessary for the preservation of the public peace, health,
14 and safety shall become effective on:

- 15 (1) The date of its approval by the Governor;
- 16 (2) If the bill is neither approved nor vetoed by the Governor,
17 the expiration of the period of time during which the Governor may veto the
18 bill; or
- 19 (3) If the bill is vetoed by the Governor and the veto is
20 overridden, the date the last house overrides the veto.

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