

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

A Bill

SENATE BILL 762

4
5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

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

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13 TO PROHIBIT ENFORCEMENT OF CERTAIN
14 INDEMNITY CLAUSES IN MOTOR CARRIER
15 TRANSPORTATION CONTRACTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 4-7-309 is amended to add an additional
22 subsection to read as follows:

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

32 (2) In this subsection:

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



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

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

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

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

12 (3) This subsection does not apply to the Uniform Intermodal
13 Interchange and Facilities Access Agreement administered by the Intermodal
14 Association of North America or other agreements providing for the
15 interchange, use, or possession of intermodal chassis or other intermodal
16 equipment.

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

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22 SECTION 2. EMERGENCY. It is hereby found and determined by the Eighty-
23 Ninth General Assembly that motor carriers are sometimes required to sign or
24 accept transportation contracts that require them or their insurers to
25 indemnify one (1) or more other parties or third-party beneficiaries to the
26 transportation contract for negligent, reckless, intentional, malicious,
27 willful, or wanton acts or omissions regardless of which entity is actually
28 at fault or otherwise responsible. Those indemnity provisions violate public
29 policy because they eliminate the incentive for the indemnitee to take
30 reasonable precautions to avert risky behavior that may lead to accidents or
31 other losses. While indemnity agreements involving motor carriers are
32 compatible with public policy in many contexts, clarification of the law is
33 necessary to ensure that motor carriers are not forced to assume contractual
34 responsibility for acts or omissions over which they have little or no
35 control. Therefore, an emergency is hereby declared to exist, and this act
36 being immediately necessary for the preservation of the public peace, health,

1 and safety shall become effective on:

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

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

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