

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: S4/3/13*

# A Bill

SENATE BILL 762

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.  
11  
12

### Subtitle

13 TO PROHIBIT ENFORCEMENT OF CERTAIN  
14 INDEMNITY CLAUSES IN MOTOR CARRIER  
15 TRANSPORTATION CONTRACTS.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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, nor shall it apply to any contract of insurance between a motor  
17 carrier and its insurance carrier.

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

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

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

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

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

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

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

*/s/J. Hutchinson*