

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 303

(Senator Forehand)

Judicial Proceedings

Judiciary

Motor Carrier Transportation Contracts - Indemnity Agreements Void

This bill provides that a provision, clause, covenant, or agreement contained in, collateral to, or affecting a “motor carrier transportation contract” that indemnifies, defends, or holds harmless the promisee against liability for loss or damage resulting from negligence or intentional acts or omissions of the promisee is against public policy and is void and unenforceable.

The bill does not cover the Uniform Intermodal Interchange and Facilities Access Agreement, or other agreements for the interchange, use, or possession of intermodal equipment.

Fiscal Summary

State Effect: Any increase in workload for the Judiciary resulting from actions to void contract provisions could be handled with existing resources.

Local Effect: None – see above.

Small Business Effect: Potentially meaningful. The bill could result in shifting the burden of liability for damages caused by the negligence or intentional acts of shippers away from motor carriers who qualify as small businesses and onto the shippers who committed the negligence or intentional acts.

Analysis

Current Law: A motor carrier is liable for compliance with the federal motor carrier safety regulations, in addition to any common law or State statutory duty relating to safety, while transporting goods.

At common law, a contract can be unenforceable if it has an illegal purpose, is contrary to public policy, or is unconscionable, among other reasons. Under § 5-401 of the Courts Article, construction industry agreements indemnifying the promisee against liability for damages resulting from the sole negligence of the promisee, or the promisee's agents or employees, is against public policy and is unenforceable.

Background: Motor carriers report that they are increasingly being pressured by shippers to provide transportation under contracts by which the motor carrier agrees to indemnify the shipper for the shipper's failure to meet its duties and responsibilities, at risk of losing the contract if such terms are refused. The bill would void such contractual provisions.

Similar legislation has recently been enacted by several other states. Among nearby states, North Carolina and South Carolina enacted legislation declaring this type of indemnification provision to be unenforceable in 2005, and Virginia enacted this proposal in 2006.

The Uniform Intermodal Interchange and Facilities Access Agreement was negotiated by ocean carriers, railroad companies, and motor carriers involved in the "intermodal" transportation of cargo, and is administered by the Intermodal Association of North America. The agreement includes indemnity provisions that cover a shipper's container and chassis that is interchanged to a trucking company for highway transportation. It is a standard industry contract used for a majority of intermodal exchanges of equipment under private interchange agreements and avoids the paperwork burden of all parties by eliminating the need to sign individual interchange contracts with each equipment provider for each of millions of shipments.

Additional Information

Prior Introductions: None.

Cross File: HB 898 (Delegates Simmons and Vallario) – Judiciary.

Information Source(s): Maryland Department of Transportation, Office of the Attorney General, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Nicholas M. Goedert

Direct Inquiries to:
(410) 946-5510
(301) 970-5510