

**Statement of Michael J. Riley
President**

MICHAEL J. RILEY
PRESIDENT

Motor Transport Association of Connecticut

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**Before
The Joint Committee on Insurance And Real Estate**

February 23, 2010

Re: Senate Bill 5. S.B. No. 191 (RAISED) AN ACT CONCERNING MOTOR CARRIER INDEMNITY AGREEMENTS.

MTAC SUPPORTS THIS BILL

I would like to thank the Committee for raising this bill again this year. You will recall that this bill was raised by your committee last year. SSB 1023 AN ACT CONCERNING MOTOR CARRIER INDEMNITY AGREEMENTS, Senate File No. 1001, was unanimously JF'd by this committee, on March 12. It passed the Senate, (on the Consent Calendar) on April 22. On May 26, it took on two friendly amendments in the House which passed the bill as amended, unanimously. Unfortunately, it died on the Senate Calendar when the General Assembly adjourned in June. Last year both the Trial Lawyers and Insurance Association supported our bill.

Attached is a copy of File No. 1001, from last year. This is the language we would like to use, except of course that it would apply to contracts entered into after July 1, 2010.

Motor Transport Association of Connecticut requested this bill. On behalf of the almost 1,000 members of Motor Transport Association of Connecticut, I respectfully request your support for it again this year. The purpose of SB 191 is to promote safety in the carriage of goods by motor carriers by eliminating clauses from contracts that shield shippers and others who perform their obligations negligently or wrongfully. The bill does not shield a motor carrier from his or her own liability or negligence.



More and more frequently, shippers are pressuring motor carriers to provide transportation under contracts by which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's failure to meet its duties or responsibilities. These duties include properly labeling hazardous materials, loading trailers so that loads don't shift in transit, or not knowingly overloading a vehicle. Contracts, which transfer liability from a shipper to motor carrier, allow the shipper to avoid taking responsibility for his own negligent acts. The effect of these indemnification clauses is to eliminate the incentive for the shipper to meet its responsibilities in a prudent or reasonable manner. The motor carrier, in essence, becomes an insurer for the shipper. This shifting of liability through contract completely contradicts sound public policy

One of the primary reasons for assigning liability is to persuade the offending party to change its behavior. In these instances, where the shipper is at fault but is indemnified by the motor carrier, there is nothing the motor carrier can do to change the shipper's behavior.

What the proposed legislation does:

- It voids contractual provisions in motor carrier transportation contracts that purport to indemnify defend or hold harmless shippers from any liability for loss or damage resulting from their own negligence or intentional acts or omissions that lead to claims.
- It maintains the incentive for both parties engaged in motor carrier transportation contracts to perform their obligations or duties in a prudent reasonably safe manner.

What the legislation does not do:

- It does not void contractual provisions whereby a motor carrier indemnifies a shipper for the motor carrier's own negligent or intentional acts that lead to claims.
- It does not establish any new duties or responsibilities other than those already established by law.

- It does not prohibit the shipper from requiring certain levels of liability insurance or special safety equipment.

This indemnification situation has developed in recent years and seventeen states have dealt with it by passing legislation such as this.

Proposed Amendment

This year's draft does not include language which was added in the House last year.

The amendment, designated House B (LCO 5641) and filed by Representatives McCluskey and Olsen, made the effective date of this bill July1, 2009 and applicable only to contracts entered into after that date. We consider this to be a friendly amendment and we respectfully request that you send the bill out with a JFS incorporating this language, except of course that the bill should be effective July 1, 2010.

Thank you.

We look forward to working with you on this important legislation.



Senate

File No. 1001

General Assembly

January Session, 2009

(Reprint of File No. 303)

Substitute Senate Bill No. 1023
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 28, 2009

AN ACT CONCERNING MOTOR CARRIER INDEMNITY AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (Effective July 1, 2009, and applicable to motor carrier
2 transportation contracts entered, renewed, modified or extended on or after
3 July 1, 2009) (a) For the purposes of this section, "motor carrier
4 transportation contract" means a contract, agreement or understanding
5 concerning (1) the transportation of property for compensation or hire,
6 (2) the entry on public or private property for the purpose of loading,
7 unloading or transporting property for compensation or hire, or (3) a
8 service incidental to the activities set forth in subdivisions (1) and (2) of
9 this subsection. "Motor carrier transportation contract" does not
10 include the Uniform Intermodal Interchange and Facilities Access
11 Agreement administered by the Intermodal Association of North
12 America or other agreements providing for the interchange, use or
13 possession of intermodal chassis or containers or other intermodal
14 equipment.

15 (b) Notwithstanding any other provision of law, any provision,

16 clause, covenant or agreement contained in a motor carrier
17 transportation contract that purports to indemnify, defend or hold
18 harmless, or has the effect of indemnifying, defending or holding
19 harmless an indemnitee from or against any liability for loss or
20 damage resulting from such indemnitee's negligence or intentional acts
21 or omissions shall be void and unenforceable.

22 (c) This section shall not apply to a contract, agreement or
23 understanding that concerns or affects the transportation of household
24 goods, as defined in section 13b-387 of the general statutes.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>July 1, 2009, and applicable to motor carrier transportation contracts entered, renewed, modified or extended on or after July 1, 2009</i> | New section |

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill makes changes to motor carrier indemnity contracts and does not result in a fiscal impact.

House "A" clarifies the definition of "motor carrier transportation contract" and does not result in a fiscal impact.

House "B" changes the effective date of section 1 and does not result in a fiscal impact.

The Out Years

None

OLR Bill Analysis

sSB 1023 (as amended by House "A" and "B")*

AN ACT CONCERNING MOTOR CARRIER INDEMNITY AGREEMENTS.

SUMMARY:

This bill makes void and unenforceable any provision, clause, covenant, or agreement in a "motor carrier transportation contract" that indemnifies, defends, or holds harmless an "indemnitee" from or against liability for loss or damage his or her negligence or intentional acts or omissions caused. It specifies that it does not apply to contracts for moving household goods. (Though the bill does not define "indemnitee," it presumably means a shipper or other person that is not the motor carrier.)

*House Amendment "A" adopts the same change in the file made by Senate Amendment "A" (which the House rejected) but corrects a typographical error in Senate "A."

*House Amendment "B" applies the bill's requirements only to contracts entered, renewed, modified, or extended on or after July 1, 2009.

EFFECTIVE DATE: July 1, 2009, and applicable to contracts entered, renewed, modified, or extended on or after that date.

MOTOR CARRIER TRANSPORTATION CONTRACT

The bill defines "motor carrier transportation contract" as a contract, agreement, or understanding about (1) transporting property for compensation or hire; (2) entering public or private property to load, unload, or transport property for compensation or hire; or (3) a service incidental to either (1) or (2). The bill excludes from this definition the

Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America and any other agreements providing for the interchange, use or possession of intermodal chassis or containers or other intermodal equipment.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/12/2009)