



2009 ASSEMBLY BILL 736

February 11, 2010 - Introduced by Representatives NYGREN, GUNDERSON, MONTGOMERY, A. OTT, TOWNSEND, VOS and VAN ROY, cosponsored by Senators KEDZIE and A. LASEE. Referred to Committee on Transportation.

- 1 **AN ACT to create** 194.53 of the statutes; **relating to:** agreements relating to
2 motor carrier liability.

Analysis by the Legislative Reference Bureau

Under current law, a party shipping goods with a motor carrier and the motor carrier are generally free to agree to the terms under which the motor carrier will transport the goods and provide related shipping services. Where certain shipping documents are used, the law includes certain presumptions but these presumptions may generally be varied by agreement.

This bill prohibits, and renders void and unenforceable, any provision of a motor carrier transportation contract, or covenant or agreement collateral to or affecting a motor carrier transportation contract, from indemnifying, holding harmless, or requiring the motor carrier to provide a defense to the “promisee” or its employees or affiliates from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee or its employees or affiliates. A “promisee” is a person, including an individual or a business entity, that enters into a motor carrier transportation contract with a motor carrier (typically the shipper of goods). An “affiliate” of the promisee includes agents of the promisee and independent contractors directly responsible to the promisee. A “motor carrier transportation contract” means any agreement, regardless of whether it is written, oral, express, or implied, between a motor carrier and a promisee covering the transportation of property for hire by the motor carrier; the motor carrier’s entrance on property for the purpose of loading, unloading, or transporting property for hire;

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or any service of the motor carrier incidental to either of these activities, including the storage of property.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 194.53 of the statutes is created to read:

2 **194.53 Certain liability provisions in motor carrier transportation**
3 **contracts prohibited. (1)** In this section:

4 (a) “Affiliate” of a promisee means any agent of the promisee or any
5 independent contractor that is directly responsible to the promisee, but excludes a
6 motor carrier that is a party to a motor carrier transportation contract with the
7 promisee, any employee or agent of such a motor carrier, or any independent
8 contractor directly responsible to such a motor carrier.

9 (b) “Motor carrier” means a common motor carrier or contract motor carrier.

10 (c) “Motor carrier transportation contract” means any agreement, regardless
11 of whether it is written, oral, express, or implied, between a motor carrier and a
12 promisee covering any of the following:

13 1. The transportation of property for hire by the motor carrier.

14 2. The motor carrier’s entrance on property for the purpose of loading,
15 unloading, or transporting property for hire.

16 3. Any service of the motor carrier incidental to any activity under subd. 1. or
17 2., including the storage of property.

18 (d) “Promisee” means any person that enters into a motor carrier
19 transportation contract with a motor carrier.

20 **(2)** (a) Notwithstanding s. 401.102 (3) and (4), ch. 407, and any other provision
21 of law, no provision of a motor carrier transportation contract, and no covenant or

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1 agreement collateral to or affecting a motor carrier transportation contract, may
2 indemnify, hold harmless, or require the motor carrier to provide a defense to the
3 promisee or any employee or affiliate of the promisee, or have the effect of
4 indemnifying, holding harmless, or requiring the provision of a defense, from or
5 against any liability for loss or damage resulting from the negligence or intentional
6 acts or omissions of the promisee or any employee or affiliate of the promisee.

7 (b) Any provision, covenant, or agreement in violation of par. (a) is void and
8 unenforceable.

9 **SECTION 2. Initial applicability.**

10 (1) This act first applies to contracts that are entered into on the effective date
11 of this subsection.

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(END)