

SENATE BILL 41 (LRB -1353)

An Act to create 194.53 of the statutes; relating to: agreements relating to motor carrier liability.

2011

03-22. S. Introduced by Senators **Lazich, Lasee, Galloway, Kedzie and Schultz**; cosponsored by Representatives **Nygren, Klenke, Bies, Brooks, A. Ott, Van Roy and Kaufert.**

03-22. S. Read first time and referred to committee on Transportation and Elections 192

05-03. S. Public hearing held.

05-11. S. Executive action taken.

05-11. S. Report passage recommended by committee on Transportation and Elections, Ayes 5, Noes 0 267

05-11. S. Available for scheduling.

05-16. S. Placed on calendar 5-17-2011 pursuant to Senate Rule 18(1) 280

05-17. S. Read a second time 285

05-17. S. Ordered to a third reading 285

05-17. S. Rules suspended 285

05-17. S. Read a third time and **passed** 285

05-17. S. Ordered immediately messaged 286

05-17. A. Received from Senate 339

05-17. A. Read first time and referred to committee on Transportation 339

05-24. A. Public hearing held.

06-02. A. Executive action taken.

06-02. A. Report concurrence recommended by committee on Transportation, Ayes 15, Noes 0 358

06-02. A. Referred to committee on Rules 358

06-02. A. Placed on calendar 6-8-2011 by committee on Rules.

06-07. A. **Assembly amendment 1** offered by Representative Nygren (**LRB a1183**) 364

06-08. A. Rules suspended to withdraw from calendar and take up 369

06-08. A. Read a second time 369

06-08. A. **Assembly amendment 1 adopted** 369

06-08. A. Ordered to a third reading 369

06-08. A. Rules suspended 369

06-08. A. Read a third time and **concurred in** as amended 369

06-08. A. Ordered immediately messaged 369

06-08. S. Received from Assembly amended and concurred in as amended, Assembly amendment 1 adopted.

06-08. S. Available for scheduling.

06-08. S. Rules suspended and taken up.

06-08. S. Assembly amendment 1 **concurred in**.

06-08. S. Action ordered immediately messaged.

**2011
ENROLLED BILL**

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ADOPTED DOCUMENTS:

Orig **Engr** **SubAmdt**

11 - 1353/1

Amendments to above (if none, write "NONE"): AA1 — a 1183/1

Corrections - show date (if none, write "NONE"): None

Topic Rel

6-9-11

Date

JRMilly

Enrolling Drafter



2011 SENATE BILL 41

March 22, 2011 - Introduced by Senators LAZICH, LASEE, GALLOWAY, KEDZIE and SCHULTZ, cosponsored by Representatives NYGREN, KLENKE, BIES, BROOKS, A. OTT, VAN ROY and KAUFERT. Referred to Committee on Transportation and Elections.

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. Under the bill, 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

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transporting property for hire; 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. 401.302, ch. 407, and any other provision of law, no
21 provision of a motor carrier transportation contract, and no covenant or agreement

INS. AA1-1

INS. AA1-2

INS AA1-3

INS AA1-4

INS. AA1-3

INS. AA1-6

INS. AA1-5

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

12 (END)



ASSEMBLY AMENDMENT 1,
TO 2011 SENATE BILL 41

June 7, 2011 – Offered by Representative NYGREN.

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 10: after “(c)” insert **(1.)**.

3 2. Page 2, line 13: delete “1.” and substitute **(a.)**.

4 3. Page 2, line 14: on lines 14 and 17, delete **“2.”** and substitute **(b.)**.

5 4. Page 2, line 16: delete “3.” and substitute **(c.)**.

6 5. Page 2, line 16: after “1.” insert **(a.)**.

7 6. Page 2, line 17: after that line insert:

8 **“2. “Motor carrier transportation contract” does not include the Uniform**
9 **Intermodal Interchange and Facilities Access Agreement administered by the**
10 **Intermodal Association of North America or other agreements providing for the**

AA1-1

AA1-2

AA1-3

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AA1-6

1 interchange, use, or possession of intermodal chassis, containers, or other
2 intermodal equipment.?"

3

(END)