

PUBLICATION

New Tennessee Law: Indemnity Provisions in Motor Carrier Transportation Contracts

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On March 18, 2008, Governor Bredesen signed Public Chapter No. 636 - Senate Bill No. 2970 passed by the Legislature on March 10, 2008. The Act declares **void and unenforceable** all provisions in a motor carrier transportation contract that purport to grant indemnity to a party against liability for damages resulting from the negligence of that party, its agents or employees against public policy. There is one exception for indemnity provisions contained in the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or in other agreements relating to intermodal chassis, containers or other intermodal equipment.

The Act took effect on March 18, 2008. Depending upon the particular transaction involved and the motor carrier's role in that transaction, this statute will either assist or hinder the motor carrier's objectives in drafting the contract. For example, a shipper entering into a contract governed by Tennessee law will no longer be able to demand indemnity against its own negligence in loading or securing cargo. Note that shippers typically demand not only indemnity, but also require the motor carrier to defend negligence actions brought against the shipper alleging such claims. It will be important to ensure that the motor carrier's defense obligation does not exceed its indemnity obligation in drafting future contracts governed by Tennessee law.