

TRANSTRENDS

THE TRANSLAW GROUP, INC.

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OHIO LAWMAKERS IN THE FOREFRONT

An unfair clause in Ohio trucking contracts is one-step closer to being outlawed. The Senate voted 32-1 to advance a bill that would do away with clauses in trucking contracts that are set up to protect shippers or hold them harmless from anything that happens with a shipment.

The bill, HB71, now moves to Gov. John Kasich's desk. House lawmakers already approved it on a 92-2 vote. Speaking on the Senate floor, Sen. Kevin Bacon, R-Minerva Park, said the bill would outlaw provisions in contracts that provide for shippers to be indemnified for losses caused by their own negligence.

"Basically what (shippers) are saying is 'if you've done something wrong you're going to pay. If I've done something wrong, you're going to pay.'" "This practice has gotten out of control," Bacon said. "This bill would limit that practice."

Specifically, the bill would prohibit only those indemnification clauses that require the motor carrier to pay for the accidents, injuries, claims, damages, etc., that are caused by the negligent or wrongful acts of the shipper.

The bill will prevent all parties to a transportation contract from granting themselves blanket immunity. States lawmakers across the country have been active in recent years changing rules

on indemnity clauses. To date, 42 states have acted to forbid unfair provisions from contracts. And the 42 are listed below.

AK **AL** **AR** **AZ** **CA** **CO** **CT** **FL** **GA** **HI** **IA** **ID** **IL** **IN**
KS **KY** **LA** **MA** **MD** **ME** **MI** **MN** **MO** **MT** **NC** **ND** **NE** **NM**
NV **OK** **OR** **PA** **SC** **SD** **TN** **TX** **UT** **VA** **WA** **WI** **WV** **WY**

In addition to Ohio, states yet to adopt protections are Delaware, Mississippi, New Hampshire, New Jersey, New York, Rhode Island and Vermont.

OOIDA TAKES FMCSA BACK INTO COURT OVER ELECTRONIC LOGS

Just a day after the unveiling of a final rule that gives professional drivers no choice but to use electronic logs, the Owner-Operator Independent Drivers Association filed suit against the heavy-handed mandate.

The Federal Motor Carrier Safety Administration announced on Dec. 10 its final rule mandating the use of electronic logs in all 2000 and newer trucks in interstate commerce. The following day, December 11, OOIDA filed a Petition for Review with the U.S. Court of Appeals for the 7th Circuit.

“This rule has potential to have the single largest, most negative impact on the industry than anything else FMCSA has done,” OOIDA President Jim Johnston said. “We intend to fight this with all the resources we have available.”

Johnston challenged the justifications the agency and anti-trucking groups have used to promote the mandated use of the devices.

“This regulation is absolutely the most outrageous intrusion into the rights of professional truckers imaginable and will do nothing at all to improve highway safety. In fact, we firmly believe it will do exactly the opposite by placing even more pressure and stress on drivers than they already deal with,” Johnston said.

Another key issue OOIDA takes exception with on the final rule is a driver’s right to privacy. “While they choose to call it electronic logging systems, in reality it is an electronic monitoring system for law enforcement purposes. They can’t even do this to known criminals without a court issued warrant,” Johnston said.

It appears that this matter will not be settled any time soon. And, remember, it isn’t over until the fat lady sings.

FMCSA LOWERS CONTROLLED SUBSTANCES RANDOM TESTING RATE FOR 2016

The Federal Motor Carrier Safety Administration (FMCSA) today announced that it will lower the random testing rate for controlled substances from the current 50 percent to 25 percent for the upcoming calendar year, effective January 1, 2016.

FMCSA conducts a random survey to ensure compliance with the set testing rates, known as the Management Information System (MIS) or MIS survey. According to federal regulations, when the data received in the MIS for two consecutive calendar years indicate that the positive rate for controlled substances is less than one percent, the FMCSA Administrator has the discretion to lower the minimum annual testing rate.



Is your drug testing program
DOT-Compliant?

While the MIS survey resulted in a positive rate of less than one percent for the 2011 and 2012 testing years, the Acting Administrator chose to maintain the 50 percent rate for another year.

The 2013 testing year also showed a positive rate of less than one percent, so after three years, the Acting Administrator approved a lower testing rate. If at any time the positive rate for controlled substances exceeds one percent, the testing rate will revert to 50 percent.

LAND-AIR EXPRESS OF NEW ENGLAND, LTD TAKES A BIG HIT



There are conflicting reports as to exactly why Land-Air was put out of service for more than a week recently. No single responsible party has been able to state with clarity why the FEDS put them out of business right after Christmas.

Reports have stated that Land-Air had serious violations of the hazmat rules and regulations. While other reports indicated horrendous drug and alcohol testing procedures and compliance. Eventually the real story will come out.

Nevertheless, it safe to say that this was the biggest shutdown of a motor carrier by the Federal Motor Carrier Safety Administration. Generally, the FEDS have always used the out of service move on smaller motor carrier entities. A simple review of the press releases of the FMCSA will demonstrate that fact.

Melisa Adams a spokesperson for Land Air stated drivers were completely caught off guard the morning of December 29 by the enforcement action from the Federal Motor Carrier Safety Administration.

"They pulled out of the terminal onto Williston Road and didn't get very far up on Williston Road before the DMV and Williston Police pulled them over," she said.

The first company officials heard of the immediate shutdown is when they say drivers called them from the side of the road. Operations ground to a halt as drivers pulled over, in some cases leaving their rigs and their cargo at truck stops.

While company officials admit responsibility for the violations, they say they were working to correct them to try to avoid a shutdown. They also say they were unaware that the FEDS no longer allow an extension to let companies operate during an appeal.

"It is unprecedented though that they shut us down as they did and we couldn't have seen it coming. "Our consultant didn't see it coming, so from that standpoint, no, I don't think so. This was a change in procedure in how they operated," said Adams.

When can we expect to hear the FEDS on this matter? TRANSLAW is certain that eventually the FEDS will have to provide more information. The laundry has to be put on the line at some point.

LAND AIR EXPRESS SHUTS TERMINALS, LAYS OFF EMPLOYEES

Enforcement action by the Federal Motor Carrier Safety Administration temporarily shutting down Land Air Express has the company working to regain business while layoffs and shutdowns are announced.

Less than a month after being placed out of service by FMCSA and just days after being reinstated, Land Air Express has shut down two terminals and lay off employees, *The Wall Street Journal* reports.

Last week it was reported Land Air Express of New England, a carrier with more than 300 trucks, had been placed out of service by FMCSA on Dec. 29. Land Air Express failed to properly test drivers for drugs and alcohol. More than 300 drivers worked for Land-Air, according to FMCSA documents.

On Jan. 7, Land Air Express negotiated a Safety Management Plan with FMCSA and was placed back in service. As part of the negotiated agreement, FMCSA will closely monitor the carrier's safety performance for the next two years.

However, Land Air Express had already suffered the effects of being shut down by FMCSA as customers took their business elsewhere, according to *The Wall Street Journal*. Land Air Express had to shut down two of 14 terminals, Burlington, NJ. and Carlstadt, NJ, and lay off some employees.

Several employees told the newspaper they had not been paid since before Christmas and were told to apply for unemployment benefits. A belated Christmas present!

During the shutdown it was reported that Land Air management had instructed drivers to use their own personal vehicles to make some deliveries. This type of move is expressly prohibited under an out-of-service order and the FEDS look negatively on this behavior.

Bill Spencer, president of Land Air Express, is currently seeking financing to weather the storm. Although Spencer has not approached potential buyers, he told *The Wall Street Journal* that selling the company is not off the table.

Last October, Land-Air received a "proposed unsatisfactory" safety rating following a compliance review, according to FMCSA Spokesperson Duane DeBruyne. The Vermont-based carrier had 60 days to submit a FMCSA-approved corrective action plan or appeal the rating. Land-Air failed to do either and was placed out of service on Dec. 29.

FMCSA data reveal few negative marks with Land-Air inspections. Vehicle out-of-service averages are in sync with the national average, whereas driver out-of-service rates are below the national average. Nearly 20 percent of hazmat inspections ended in an out-of-service order, well above the national average of nearly 5 percent.

BIZARRE TRUCK PICTURES FOR NO SPECIAL REASON



OVERSIZE LOAD



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