



February 23, 2011

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE, AND ON JUDICIARY
ON HB 392 RELATING TO TRANSPORTATION**

Thank you Chair Herkes, Chair Keith-Agaran and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

Hawaii Transportation Association supports this bill which seeks to correct an unfair situation where motor carriers are required to sign contracts / agreements indemnifying entities for claims or liabilities regardless of fault.

These entities are generally the motor carriers' customers, or facilities where the loading or unloading of cargo, or pick up or drop off of passengers, take place.

Motor carriers are primarily small, locally owned businesses who cannot afford to be barred from the facilities that require indemnification. No matter how one-sided or onerous, they must sign the agreements. However, it is very unfair that the motor carriers must defend and hold harmless these indemnitees in cases where the motor carriers are not at fault in the matter.

Motor carriers in essence becomes an insurer for the indemnitees. 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 another entity is at fault but is indemnified by the motor carrier, there is nothing the motor carrier can do to change its behavior and make things safer.

These types of provisions are against the common law tradition in the United States that each person is responsible for his or her own actions. It is simply unfair for motor carriers to be forced to cover the losses that arise through no fault of their own.

Unfortunately, motor carriers have no leverage in the matter making it next to impossible to negotiate these provisions without the assistance of state statute.

Hawaii's motor carriers are not alone in this suffrage as 25 other states have recognized the injustice and passed anti-indemnity legislation.

All we want is fairness. If the motor carrier is negligent, then the motor carrier should pay. If another party is negligent, that other party should pay and should not be shielded from their obligations or negligence.

Thank you.