

SB824,SD1

Testimony



February 24, 2011

**TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON SB 824 SD1 RELATING TO MOTOR CARRIERS**

Thank you Chair Hee 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.

February 15, 2011

TESTIMONY BEFORE THE SENATE COMMITTEE ON
TRANSPORTATION & INTERNATIONAL AFFAIRS
ON SB 824 RELATING TO MOTOR CARRIERS

Aloha. I am Jowell Rivera, Vice President of Hawaii Logistic Services and Second Vice President of The Hawaii Transportation Association Board of Directors.

I am in total support of this bill as it would correct a long and unfair practice of not finding fault to the offending party in reference to claims or liabilities even when that party is clearly at fault.

The transportation industry is the life blood of Hawaii. If transportation stops, so does Hawaii. This includes tourism, food, medical, housing, military, communications and any other product or service that requires motor carriers to service the public.

Many motor carriers are operating on a budget with very little profit margin and cannot afford to turn away business. Like me, these carriers feel an obligation to keep their employees working and allowing for revenue flow to pay the bills and make payroll.

At present, motor carriers on many occasions need to sign an agreement (even if it goes against practical common sense) to get business; keep our businesses open and our personnel employed. In essence, we are held hostage by these indemnities unless we defend or hold them harmless if we choose to do business with them in the State of Hawaii. It leaves us little or next to no negotiating power. Why, in essence should the motor carrier become an insurer for the shipper?

Please weigh as a rhetorical question. Would you sign an agreement that you cannot hold your business neighbor liable for burning down your home or business just because he stores petroleum products in his building and you choose to be next door? What if he has a vicious dog? Would you sign a waiver that he is not liable if his dog mauls your child or employee because you choose to live or do business next door? Of course not, he is still responsible for his actions or lack of.

This archaic practice needs to stop if the State of Hawaii wants to be small business friendly, attract more business and create more revenue for the state. Also, this current practice creates a culture that stops men and women (public or private) from taking personal responsibility for their actions and allows for the "it's not our fault" business culture.

As you may know, 25 other states have passed anti-indemnity legislation and understood the unfairness of this practice. They corrected the obvious.

Many laws has been changed and departments created such as the FAA, EPA, OSHA, DOT etc. as to keep companies or entities liable for their own actions, thus allowing a safer, equitable and some well defined responsibility.

Allowing **SB 824** would surely create an environment that keeps individuals within a company personally and morally responsible for action or inactions that they did or did not take. It would also allow businesses to thrive and know they are protected with an even playing field. For the most part, this would change behaviors that would save hundreds millions of dollars, cut back on unnecessary law suits and even save lives.

I humbly ask for your support of this bill that allows for the offending party (motor carriers or a third party) to be held liable in wrong doing and not remove them from obligation of responsibility.

As we all would expect from any reasonable person. Do the right thing.

Thank you for your time and consideration.

Jowell Rivera
Vice President
Hawaii Logistic Services