

SB 824



January 28, 2011

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

Thank you Chair English 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.

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Re: *Senate Bill 824*
Related To Motor Carriers

Chair English & Committee Members,

I am Eugene "Bucky" Yee, Board of Director of Hawaii Transportation Association.

The Hawaii Transportation Association would like to be placed on record supporting Senate Bill 824 relating to the amendment of Section 2 Chapter 271, Hawaii Revised Statutes prohibiting motor carrier indemnification agreement.

I'm an owner of a small transportation company that signed a contract to secure a hotel business which includes an indemnification clause.

I had a case in which I had to defend the hotel regarding indemnification, this incident happen in 1995 at approximately at 8:30 pm. My driver was stabbed 10 or 11 times with a small hand knife at Ala Moana Beach Park. A ambulance was dispatch to the scene, the driver wasz stabilized and sent to Queens Hospital. The assailant were later apprehended by HPD.

The incident originated from an hotel front lobby where two African American who just returned from the beach approached the doorman and asked for a taxi to take them to Ala Moana Beach Park. The first driver up refused the run cause of the destination and that that the passenger were belligerent and obnoxious. But the doorman insisted that the driver take the passenger but the driver refused to do it. A second driver was asked to take the passenger to their destination.

As a result of this incident a lawsuit was filed by the victim directly with the hotel, who then turn the lawsuit over to me because of the indemnification clause.

The assailant were not a register guest of the hotel but because of an employee of the hotel was involved in ordering the driver to take the passenger. So I had defend and pay any and all damages that the lawsuit required.

I strongly believe that the hotel should have defended and paid restitution to the victim because of their employee indiscretion, which they later revised that a driver has the right to refuse service to a passenger who is drunk, disorderly, belligerent, obnoxious and feels that his/her final destination is dangerous or unsafe.

As a small business owner this is unfair, all I want is fairness. I would gladly pay for any incident cause by my employee as any other company would do.