

JAN 21 2011

A BILL FOR AN ACT

RELATING TO MOTOR CARRIERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that motor carriers,
2 including trucking and tour bus companies, are often required to
3 sign transportation service contracts or agreements requiring
4 them to indemnify the other party to a motor carrier
5 transportation services contract for acts of negligence or
6 intentional acts or omissions, regardless of who is actually at
7 fault.

8 Although unfair and onerous, motor carriers often agree to
9 indemnify the other party to secure work. Many motor carriers
10 are small, locally owned businesses that cannot afford to shun
11 service agreements requiring indemnification. These businesses
12 typically lack the leverage to negotiate indemnification
13 provisions out of contracts.

14 While motor carriers should be held responsible for
15 liability to the extent that the carrier is at fault,
16 indemnification provisions can be unreasonable conditions of a
17 transportation services agreement that carriers are often unable
18 to refuse. In addition, indemnification provisions may



1 eliminate the incentive for the other party to take precautions
2 at their facilities to protect the persons and property being
3 transported.

4 The purpose of this Act is to prohibit any portion of a
5 motor carrier transportation services contract or agreement that
6 requires the carrier to indemnify, defend, or hold harmless the
7 other party from any liability for that party's negligence or
8 intentional acts or omissions.

9 SECTION 2. Chapter 271, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§271- Motor carrier indemnification agreements
13 prohibited. (a) With regard to a transportation services
14 contract or agreement, a motor carrier and an indemnitee shall
15 not:

16 (1) Agree that the motor carrier shall indemnify, defend,
17 or hold the indemnitee harmless; or

18 (2) Agree to a provision that has the effect of
19 indemnifying, defending, or holding the indemnitee
20 harmless,

21 from any claims or liability for the negligence or intentional
22 acts or omissions of the indemnitee.



1 (b) The portion of any contract or agreement that violates
2 subsection (a) shall be void and unenforceable.

3 (c) For purposes of this section:

4 "Indemnitee" means:

5 (1) A person who enters into a transportation services
6 contract or agreement to use the services of a motor
7 carrier, or to permit a motor carrier to enter the
8 person's premises;

9 (2) In the contract or agreement, is the person who is
10 being, or has the effect of being, indemnified,
11 defended, or held harmless from claims or liabilities
12 for that person's negligence or intentional acts or
13 omissions; and

14 (3) Includes an agent, employee, servant, or independent
15 contractor of the person in paragraph (1) or (2) of
16 this definition.

17 "Motor carrier" includes an agent, employee, servant, or
18 independent contractor of the motor carrier.

19 "Transportation services" means:

20 (1) The transportation of persons or property;

21 (2) Entry upon property to load, unload, or transport
22 persons or property; or



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1 (3) Providing a service, including the storage of
2 property, incidental to paragraph (1) or (2) of this
3 definition."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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Report Title:

Motor Carriers; Transportation Services; Indemnification

Description:

Prohibits any portion of a motor carrier transportation services contract or agreement that requires the carrier to indemnify, defend, or hold harmless the other party from any liability for that party's negligence or intentional acts or omissions.

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