

STAND. COM. REP. NO.

608

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 824
S.D. 2

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 824, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MOTOR CARRIERS,"

begs leave to report as follows:

The purpose and intent of this measure is to make null and unenforceable any portion of a motor carrier transportation services contract or agreement that requires the carrier to indemnify, defend, or hold harmless the other party to the contract from any liability for that party's negligence or intentional acts or omissions.

Your Committee received testimony in support of this measure from the Hawaii Transportation Association and one individual.

Your Committee finds that this measure aims to protect innocent parties in transportation contracts that purport to make an innocent party indemnify a culpable party for the culpable party's own negligence or intentional acts or omissions. Under these indemnification provisions, motor carriers become an insurer for the indemnitees. Your Committee believes that these types of provisions are unconscionable and overly burdensome on motor carriers, which tend to be small, locally owned businesses that do not have sufficient bargaining power to negotiate these provisions out of their transportation services contracts.

Your Committee also observes that although a motor carrier may obtain insurance to cover this type of potential liability,

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the cost to insure the other party's own negligence or intentional acts or omissions still falls inequitably on the motor carrier.

Your Committee has amended this measure by:

- (1) Requiring insurance companies that provide insurance coverage to motor carriers covering the indemnification of the other party to refund any portion of a motor carrier's premiums applicable to the indemnification for any transportation services contract affected by this measure, thereby providing assurance that motor carriers are not paying for unnecessary insurance coverage;
- (2) Inserting an effective date of July 1, 2050, to allow for further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 824, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 824, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 824, SDI	Committee Referral: TIA, JDL	Date: 2/24/11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	5	0	0	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes