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# 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 the 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 these 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) Any provision in a transportation services  
14 contract or agreement that requires a motor carrier to  
15 indemnify, defend, or hold harmless or that purports to  
16 indemnify, defend, or hold harmless, whether in whole or in  
17 part, the indemnitee under the contract or agreement from any  
18 claim or liability arising from the negligence or intentional  
19 acts or omissions of the indemnitee, shall be deemed void and  
20 unenforceable as a matter of law to the extent that the  
21 provision seeks to indemnify, defend, or hold harmless the



1 indemnatee for the negligent or intentional acts or omissions of  
2 the indemnatee.

3 (b) For purposes of this section:

4 "Indemnatee" means a person who:

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

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

13 "Indemnatee" includes an agent, employee, servant, or  
14 independent contractor of the person described in paragraphs (1)  
15 and (2) of this definition.

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

18 "Transportation services" means:

19 (1) The transportation of persons or property;

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



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.



**Report Title:**

Motor Carriers; Transportation Services; Indemnification

**Description:**

Deems void and unenforceable any provision of a motor carrier transportation services contract or agreement that requires a motor carrier to indemnify, defend, or hold harmless the indemnitee from any liability for the indemnitee's negligence or intentional acts or omissions. (CD1)

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