
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 has the effect of
16 indemnifying, defending, or holding harmless the indemnitee
17 under the contract or agreement from any claim or liability
18 arising from the negligence or intentional acts or omissions of
19 the indemnitee, shall be deemed void and unenforceable as a
20 matter of law.

21 (b) For purposes of this section:

22 "Indemnitee" means:

1 (1) A person who enters into a transportation services
2 contract or agreement to use the services of a motor
3 carrier, or to permit a motor carrier to enter the
4 person's premises;

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

10 (3) Includes an agent, employee, servant, or independent
11 contractor of the person in paragraph (1) or (2) of
12 this definition.

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

15 "Transportation services" means:

16 (1) The transportation of persons or property;

17 (2) Entry upon property to load, unload, or transport
18 persons or property; or

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



1 SECTION 3. Any insurer authorized to do business in Hawaii
2 pursuant to title 24, Hawaii Revised Statutes, that has issued
3 an insurance contract or policy of insurance that is in
4 existence as of the date of the effective date of this Act for
5 general liability or casualty insurance, property insurance, or
6 other insurance that insures a motor carrier, as defined in
7 section 2 of this Act, all or a portion of which insures the
8 motor carrier for the indemnification described in section 2 of
9 this Act, shall within fifteen calendar days refund to the motor
10 carrier that portion of any prepaid insurance premium for the
11 coverage that insures the motor carrier for the indemnification
12 described in section 2 of this Act for all transportation
13 services contracts subject to section 2 of this Act. Any
14 coverage for the indemnification described in section 2 of this
15 Act within a policy of insurance or insurance contract in
16 existence as of the effective date of this Act shall be deemed
17 to terminate as to any transportation services contracts subject
18 to section 2 of this Act, and the motor carrier shall not be
19 liable to the insurer for such terminated coverage; provided
20 that all other portions of the policy or contract shall remain
21 valid and binding upon the parties. Notwithstanding the
22 foregoing, an insurer that has insured a motor carrier for the



1 indemnification described in section 2 of this Act that is not
2 subject to section 2 of this Act shall remain liable for
3 coverage of the indemnification described in section 2 in
4 accordance with the terms and conditions of the insurance
5 contract or policy.

6 SECTION 4. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2050.

8



Report Title:

Motor Carriers; Transportation Services; Indemnification

Description:

Makes 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 from any liability for that party's negligence or intentional acts or omissions and requires insurance companies insuring the indemnification for a motor carrier to refund the portion of premiums applicable to such indemnification for affected transportation service contracts. Effective 7/1/2050. (SD2)

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