

ACT 298

S.B. NO. 824

A Bill for an Act Relating to Motor Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

While motor carriers should be held responsible for liability to the extent that the carrier is at fault, indemnification provisions can be unreasonable conditions of a transportation services agreement that carriers are often unable to refuse. In addition, indemnification provisions may eliminate the incentive for the other party to take precautions at their facilities to protect the persons and property being transported.

The purpose of this Act is to prohibit 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.

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

“§271- Motor carrier indemnification agreements prohibited. (a) Any provision in a transportation services contract or agreement that requires a motor carrier to indemnify, defend, or hold harmless or that purports to indemnify, defend, or hold harmless, whether in whole or in part, the indemnitee under the contract or agreement from any claim or liability arising from the negligence or intentional acts or omissions of the indemnitee, shall be deemed void and unenforceable as a matter of law to the extent that the provision seeks to indemnify, defend, or hold harmless the indemnitee for the negligent or intentional acts or omissions of the indemnitee.

(b) For purposes of this section:

“Indemnitee” means a person who:

- (1) Enters into a transportation services contract or agreement to use the services of a motor carrier, or to permit a motor carrier to enter the person’s premises; and
- (2) In the contract or agreement, is being, or has the effect of being indemnified, defended, or held harmless from claims or liabilities for that person’s negligence or intentional acts or omissions.

“Indemnitee” includes an agent, employee, servant, or independent contractor of the person described in paragraphs (1) and (2) of this definition.

“Motor carrier” includes an agent, employee, servant, or independent contractor of the motor carrier.

“Transportation services” means:

- (1) The transportation of persons or property;
- (2) Entry upon property to load, unload, or transport persons or property; or
- (3) Providing a service, including the storage of property, incidental to paragraph (1) or (2) of this definition.”

SECTION 3. New statutory material is underscored.¹

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

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.