

# HOUSE BILL REPORT

## SSB 6674

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to agreements to indemnify against liability for negligence involving motor carriers.

**Brief Description:** Regulating indemnification agreements involving motor carrier transportation contracts.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin and Hargrove).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/17/10, 2/22/10 [DP].

#### **Brief Summary of Substitute Bill**

- Adds "motor carrier transportation contracts" to the type of contracts for which indemnification is enforceable only to the extent of the indemnitor's negligence.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Brian Kilgore (786-7119) and Courtney Barnes (786-7194).

#### **Background:**

Indemnity provisions in contracts require one party (the indemnitor) to pay the other party (the indemnitee) for any losses the indemnitee may suffer during performance of a contract.

Currently, the law limits the enforcement of indemnification clauses in contracts relating to construction, maintenance, or other work on any structure, project, development, or

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improvement attached to real estate. In these contracts, a clause that indemnifies against liability for damages caused by or resulting from the sole negligence of the indemnitee is void. A clause that indemnifies against liability for damages caused by or resulting from the concurrent negligence of the indemnitee and indemnitor is enforceable only to the extent the indemnitor is negligent and only if specifically and expressly provided for in the agreement.

Inter-modal shipping involves the transportation of freight in a container that may be transferred between multiple modes of transportation (rail, ship, and truck) without unpacking the freight when changing modes.

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**Summary of Bill:**

"Motor carrier transportation contracts" are added to the type of contracts for which indemnification is enforceable only to the extent of the indemnitor's negligence.

A "motor carrier transportation contract" is defined as a contract, agreement, or understanding, for compensation or hire, covering:

1. the transportation of property by a motor carrier;
2. the entrance on property by a motor carrier for the purpose of loading, unloading, or transporting property; or
3. a service incidental to either (1) or (2), including, but not limited to, storage of property, moving equipment or trailers, loading or unloading, or monitoring loading or unloading.

Inter-modal shipping is exempt from the provisions of the bill.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill adds to the short list of contracts which are against public policy. Indemnity provisions require the indemnitor to take on the liability of the indemnitee and are included in contracts because of the economic leverage of one party. Shifting the cost of a shipper's negligence to truckers leaves the negligent party unaccountable and removes the incentive for responsible behavior. Shippers need incentives to do responsible work. Truckers should not be responsible for another party's negligence. More and more shipping contracts contain indemnification provisions. Trucking is a fragmented market. The largest 10 firms make up only 5 percent of the market, while shippers are some of the nation's largest companies. Small truckers have no bargaining power. The bill is a fair balance

between the interests of shippers and truckers. There are similar statutes in other states. The bill is consistent with the general policy of the state. There is no Commerce Clause issue because the bill regulates the tail end of the contractual relationship. Inter-modal transportation is exempt because it is regulated by contracts with the shipping lines.

(Opposed) None.

**Persons Testifying:** Senator Kline, prime sponsor; Larry Parsley, Washington Trucking Association; Steve Gordon, Gordon Trucking Inc.; and Phil Talmadge.

**Persons Signed In To Testify But Not Testifying:** None.