

# SENATE BILL REPORT

## SSB 6674

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As Passed Senate, February 13, 2010

**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: 1/27/10, 2/02/10 [DPS].

Passed Senate: 2/13/10, 46-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 6674 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

**Staff:** Juliana Roe (786-7438)

**Background:** Agreements or contracts relating to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition, that indemnify against liability for damages arising out of bodily injury to persons or damage to property that is: (1) caused by or resulting from the sole negligence of the indemnitee, the indemnitee's agents, or employees is void and unenforceable; or (2) caused by or resulting from concurrent negligence of (a) the indemnitee, or agent thereof, and (b) the indemnitor, or agent thereof, is valid and enforceable only to the extent of the indemnitor's negligence and only if it is specifically and expressly provided in the agreement. Furthermore, in scenario (b), the indemnitor may waive his or her immunity only if it is specifically and expressly provided in the agreement, and the waiver was mutually negotiated by the parties.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Substitute Bill:** A motor carrier transportation contract that indemnifies against liability for damages arising out of bodily injury to persons or damage to property that is: (1) caused by or resulting from the sole negligence of the indemnitee, the indemnitee's agents, or employees is void and unenforceable; or (2) caused by or resulting from concurrent negligence of (a) the indemnitee, or agent thereof, and (b) the indemnitor, or agent thereof, is valid and enforceable only to the extent of the indemnitor's negligence and only if it is specifically and expressly provided in the agreement. Furthermore, in scenario (b), the indemnitor may waive his or her immunity only if it is specifically and expressly provided in the agreement, and the waiver was mutually negotiated by the parties.

Motor carrier transportation contract is defined as a contract, agreement, or understanding covering: (1) the transportation of property for compensation or hire by the motor carrier; (2) entrance on property by the motor carrier for loading, unloading, or transporting property for compensation or hire; or (3) a service incidental to an activity described in (1) or (2) of this paragraph including, but not limited to, storage of property, moving equipment or trailers, loading or unloading, or monitoring loading or unloading.

Intermodal shipping is exempt from the provisions of the bill.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Contracts that trucking companies are currently being forced to sign shift liability to the trucking companies. This is a recurring problem. It happened in the 1980s with general contractors and subcontractors and it is bad policy. It is happening because the trucking companies have little to no negotiating power with large Fortune 500 shipping companies. This has been a problem for some time, but has been brought to a boil by the economy. There are an abundance of trucks, therefore rates have suffered. The top ten carriers make up less than 5 percent of the market share, so there is a huge disadvantage for the trucking companies.

The small trucking companies fail to understand what it means to sign an indemnification contract. They end up taking on all responsibility, sometimes lose immunity, and often do not have insurance. They end up facing horrendous consequences compared to the more sophisticated, big companies. Seventeen states have passed similar statutes. This bill gives them negotiating power. It also makes things fair and consistent with the tort reform act. Truckers should only be responsible for their share of the fault.

OTHER: Washington State should follow the precedent set in other states and include a provision in the bill for merchant shippers.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Larry Pursley, Washington Trucking Association; Steve Gordon, citizen; Phil Talmadge, attorney for Washington Trucking Association.

OTHER: Scott Hazelgrove, Pacific Merchant Shipping Association.