

Jeanne Ostnes

From: Steve Day [DayS@americanfast.com]
Sent: Tuesday, March 02, 2010 7:23 AM
To: Rep. Craig Johnson
Subject: HB 366 An Act relating to indemnification agreements

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to indemnification agreements

Dear Representative Johnson,

As a motor carrier, we must comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers and other transportation providers to perform transportation services under contracts in which the carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

HB 366 provides statutory language that voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. HB 366 does not void contractual provisions in which a motor carrier indemnifies a shipper for the motor carrier's own negligent or intentional acts or omissions. Further, HB366 does not establish any new duties or responsibilities for any party and It does not limit the parties' freedom to contract – except to improve safety.

We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

We would like you to consider expanding the bill to cover other transportation providers performing services as a carrier, such as domestic freight forwarders.

Thank you.

Sincerely,

Stephen L. Day

President

American Fast Freight

<http://www.americanfast.com>

450 Shattuck Avenue S., Suite 401

Renton, WA 98055

Phone (253) 926-5000 Fax (206) 624-8334



March 2, 2010

Representative Craig Johnson
Alaska State House of Representatives
State Capitol Room 126
Juneau AK, 99801

Subject: HB 366 – An Act Relating to Indemnification Agreement

Dear Representative Johnson:


As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,
Weaver Bros., Inc.


James C. Doyle
Vice-President

Cc: WBI – James H. Doyle, President; ATA – Aves Thomson, Executive Director

ANCHORAGE
2230 Spar Ave
Anchorage, AK 99501
(907) 778-1526

KENAI
P.O. Box 2220
Kenai, AK 99611
(907) 783-7057

FAIRBANKS
P.O. Box 60981
Fairbanks, AK 99706
(907) 456-7701

UNITED FREIGHT & TRANSPORT, INC.

1701 E. FIRST AVENUE
ANCHORAGE, ALASKA 99501
907-272-5700 FAX 907-272-4324

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to
indemnification agreements...

March 2, 2010

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely



Frank Monfrey



March 3, 2010

Alaska West Express, Inc.
1048 Whitney Road
Anchorage, AK 99501
(907) 279-9515
(800) 478-2855
Fax: (907) 272-8152

Representative Craig Johnson
716 West 4th Avenue
Anchorage, Alaska 99501

Dear Representative Johnson,

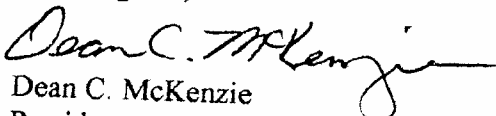
I have read both HB 366 and the comments by Aves Thompson regarding it and want to commend you for what I believe is a very good piece of legislation. In our previous discussions I have mentioned how some of the bigger carriers and contractors in the business have the ability to challenge and push back and end up with contracts that are fair to both parties while smaller ones do not have that same ability. Ideally you end up with a true Knock for Knock document with each party responsible for their own actions.

We have been very successful in getting that type of result over the last few years but there are still major companies operating with the goal of transferring all liability to the carrier regardless of who creates the situation. I am currently in negotiations with a major US based drilling contractor who operates internationally and is trying to do that very thing. Basically indemnify themselves for any and all actions even if caused by their personnel and make the carrier responsible.

I wish you well in your efforts and certainly hope for a successful outcome. If I can be of assistance in any way please don't hesitate to contact me directly at 907-339-5101 or e-mail at deanmc@awe.lynden.com.

Alaska West Express Inc.

Best Regards,


Dean C. McKenzie
President

Copy: Aves Thompson
Executive Director ATA



2812 70th Ave East
Fife, WA 98424
Tel (253) 926-3292 Fax (253) 926-3161

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to indemnification agreements...

Dear Representative Johnson,

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,

Wes Renfrew
Alaska Operations Manager
Pacific Alaska Freightways

**Midnight Sun
TRANSPORTATION SERVICES, INC.
2040 E 79TH
Anchorage, AK 99507**

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,

R C Onstott
General Manager

Wrightway Auto Carriers, Inc.

101 West Whitney Road
Anchorage, Alaska 99501
(907) 277-4549 Fax (907) 272-7570

MARCH 2, 2010

Representative Craig Johnson
Alaska state house of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
An Act relating to indemnification agreements

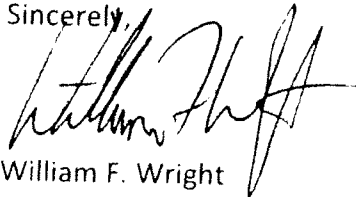
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We support HB366 and request that the bill be heard in committee at the earliest opportunity.

Sincerely,



William F. Wright

BIG STATE LOGISTICS, INC.

Big State Logistics, Inc.
P.O. Box 71540
Fairbanks, AK, 99707-1540

Telephone (907) 452-8600
1-800-478-8660
Fax (907) 452-8651

Big State Logistics, Inc.
P.O. Box 63007
Valdez, AK, 99686-3007

Telephone (907) 835-5600
1-800-478-5602
Fax (907) 835-5651

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
An Act relating to indemnification
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Dear Representative Johnson,

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,



Mervin Gilbertson
President
Big State Logistics, Inc.

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946

www.aktrucks.org

The authoritative voice of the trucking industry in Alaska

HB 366

Indemnification Agreements in Motor Carrier Contracts

House Transportation Committee Hearing

1:00 pm, March 11, 2010

Aves D. Thompson, Executive Director

Alaska Trucking Association

Thank you. Madame Chair and members of the committee, I am Aves Thompson, Executive Director of the Alaska Trucking Association. The Alaska Trucking Association is a state wide organization representing the interests of our nearly 200 member companies from Barrow to Ketchikan. Freight movement represents a large chunk of our economy and impacts all of us each and every day. The simple truth is that “if you got it, a truck brought it.”

One of the priorities of the Alaska Trucking Association is to achieve tort reform in the area of indemnification agreements in motor carrier transportation contracts.

Background: A motor carrier must generally comply with the Federal Motor Carrier Safety Regulations while it is transporting goods, and is also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier



If you got it, a truck brought it...

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946

www.aktrucks.org

The authoritative voice of the trucking industry in Alaska

What the legislation does not do:

- ☐ It does not void contractual provisions in which a shipper or motor carrier indemnifies the other party to the contract for their own negligent or intentional acts or omissions.
- ☐ It does not establish any new duties or responsibilities for any party.
- ☐ It does not limit the parties' freedom to contract – except to improve safety.

We have worked with industry groups and in particular, BP, who agree that the committee substitute constitutes an equitable condition where both parties to the motor carrier transportation contract are responsible for their own negligent actions or inactions that lead to claims.

The Alaska Trucking Association supports this bill.



Aves Thompson
Executive Director
March 11, 2010



If you got it, a truck brought it...

OCEMA

Ocean Carrier Equipment Management Association

c/o 1850 M Street, N.W., Suite 900, Washington, D.C. 20036

March 15, 2010

VIA E-MAIL

The Honorable Jay Ramras
State Capitol Room 120
Juneau, AK 99801

Re: URGENT – Alaska HB 366

Dear Chairman Ramras:

Please accept these comments regarding House Bill 366 which is now pending before the Judiciary Committee and is set to be considered on March 19, 2010. I am writing on behalf of the Ocean Carrier Equipment Management Association (OCEMA), an organization of 20 ocean-going common carriers that provide intermodal transportation of cargoes in the foreign commerce of the United States. OCEMA's members serve Alaska manufacturers, distribution centers, and retailers by way of rail and motor carriage of international intermodal shipping containers. Many thousands of OCEMA members' containers and chassis are interchanged to truckers annually for over-the-road transport to and from localities in Alaska.

We are concerned that HB 366, as written, could void the indemnity provisions in intermodal equipment interchange agreements and other intermodal transportation contracts which would severely disrupt transportation arrangements to and from Alaska businesses by jeopardizing insurance coverage. This would significantly impact intermodal transportation through and within Alaska. The insurance market for intermodal activity is very limited and coverage is often contingent upon effective risk management arrangements such as the indemnity provisions contained in interchange agreements.

The interchange of intermodal equipment between those who provide the equipment, notably ocean carriers or railroads, and motor carriers is typically achieved by way of private interchange agreements that have been negotiated by representatives of all the modes of transportation, as well as other interested parties such as terminal operators and equipment leasing companies. Currently, the majority, but not all, intermodal interchanges are conducted under the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) administered by the Intermodal Association of North America (IANA). The UIIA is a standard industry contract that was developed with the participation of ocean, motor, and rail carriers in order to achieve efficiencies and streamline the interchange process. This type of arrangement is essential to the free flow of US export and import containerized goods.

The UIIA covers liability and other issues related to the interchange of intermodal equipment (i.e. containers, chassis, etc.) between the parties. It drastically reduces the paperwork burden for all parties involved by eliminating having to sign individual interchange contracts with each equipment provider that is participating in this agreement. It eliminates repeating these arrangements for each of millions of shipments. It also reduces the number of insurance filings for the motor carrier to provide proof of insurance. Only one certificate must be issued to the UIIA and this information is then disseminated to the individual Equipment Providers by IANA.

While there are over 5000 members of the UIIA, including motor carriers, water carriers, and railroads, not all ocean carriers and not all motor carriers use this agreement. Consequently, there are other interchange agreements in use, similar to the UIIA, which would likewise not be exempted from the scope of the bill. Moreover, should the UIIA be terminated or replaced, there would be no available alternative for intermodal transportation. While we applaud your efforts to improve public policy regarding indemnification agreements, we do not believe this is the intent of HB 366.

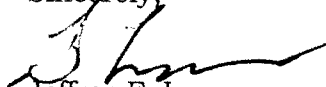
We support your efforts in Alaska as we have in other states. Most recently, we have supported similar legislation in Virginia, Maryland, Kansas, Colorado, Connecticut, Missouri, and Tennessee. By working with legislators in those states we were able to ensure that public policy in this area correctly protects all parties.

Accordingly, we would respectfully ask that you include an exception for intermodal transportation in HB 366 such as the following:

This section shall not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment."

We believe this is consistent with the objectives and purposes of the bill. Thank you for your consideration of this matter. If there is any way we can be of help in this effort, please do not hesitate to contact the undersigned or Mr. Rob Freeman at (202) 463-2515.

Sincerely,



Jeffrey F. Lawrence

Executive Director

Ocean Carrier Equipment Management
Association