

1 HB773  
2 120693-1  
3 By Representative Johnson  
4 RFD: Commerce  
5 First Read: 25-MAR-10

SYNOPSIS:           This bill would prohibit the enforcement in the state of any contract provision requiring a motor carrier to indemnify any entity against loss or damage caused by that entity's own negligence, intentional acts, or omissions.

A BILL  
TO BE ENTITLED  
AN ACT

To amend Section 37-2-21, Code of Alabama 1975, relating to motor carriers; to make unenforceable any contract provision requiring any motor carrier to indemnify any entity against loss or damage caused by that entity's own negligence, intentional acts, or omissions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 37-2-21, Code of Alabama 1975, is amended to read as follows:

"§37-2-21.

1           "(a) Every transportation company receiving property  
2     for transportation, originating and terminating in this state,  
3     shall issue to the shipper a receipt or bill of lading  
4     therefor in which shall be stated the class or classes of  
5     freight shipped and the rate to the point of destination and  
6     aggregate charge made for the transportation and shall be  
7     liable to the lawful holder thereof for any loss, damage or  
8     injury to such property negligently caused by it or by any  
9     transportation company to which said property may be  
10    delivered, or over whose lines such property may pass; and no  
11    contract, stipulation, receipt, rule or regulation contained  
12    in said receipt or bill of lading, or otherwise, shall exempt  
13    such transportation company from the liability hereby imposed;  
14    but nothing in this subsection shall deprive any holder of  
15    such receipt or bill of lading of any remedy or right of  
16    action which he has under existing laws.

17           "(b) A transportation company receiving things or  
18    property of any kind for carriage, hire or reward must, on  
19    delivery to said company of such thing or property, give the  
20    person from whom received a receipt or bill of lading, stating  
21    the order or condition in which such things or property may  
22    be, and if cotton in bales is received, stating expressly the  
23    condition of the bagging, ropes, or ties, and of the cotton,  
24    whether dry, damp, wet, or very wet; and such transportation  
25    company is bound to deliver in like order and condition as  
26    when received; and if such receipt or bill of lading be not  
27    given, such things or property must be deemed and taken to

1 have been in good order or condition at the time of delivery  
2 to such carrier, and he is bound to deliver in like good order  
3 and condition; and the carrier, neglecting or failing to give  
4 such receipt or bill of lading, is liable for all loss or  
5 damage the owner of such things or property may sustain in  
6 consequence of such neglect or failure, but nothing in this  
7 subsection contained must be construed as affecting the  
8 common-law liability of a common carrier for an injury to or  
9 for the loss of such things or property.

10 "(c) (1) Notwithstanding any provision of law to the  
11 contrary, a provision, clause, covenant, or agreement  
12 contained in, collateral to, or affecting a motor carrier  
13 transportation contract that purports to indemnify, defend, or  
14 hold harmless, or has the effect of indemnifying, defending,  
15 or holding harmless, the promisee from or against any  
16 liability for loss or damage resulting from the negligence or  
17 intentional acts or omissions of the promisee is against the  
18 public policy of this state and is void and unenforceable.

19 "(2) This subsection does not apply to the Uniform  
20 Intermodal Interchange and Facilities Access Agreement  
21 administered by the Intermodal Association of North America or  
22 other agreements providing for the interchange, use, or  
23 possession of intermodal chassis, containers, or other  
24 intermodal equipment.

25 "(3) As used in this subsection, the following words  
26 have the following meanings:

1           "a. MOTOR CARRIER. The meaning ascribed in Section  
2           40-19-1(2) or any successor provision.

3           "b. MOTOR CARRIER TRANSPORTATION CONTRACT. A bill of  
4           lading, contract, agreement, or other understanding covering:  
5           (i) the transportation of property for compensation or hire by  
6           the motor carrier; (ii) entrance on property by the motor  
7           carrier for the purpose of loading, unloading, or transporting  
8           property for compensation or hire; or (iii) a service  
9           incidental to, or activity described in (i) or (ii) above,  
10          including, but not limited to, storage of property.

11          "c. PROMISEE. The entity to which the promise to  
12          indemnify, defend, or hold harmless is made as well as its  
13          agents, employees, servants, or independent contractors who  
14          are directly responsible to the promisee except for a motor  
15          carrier who is a party to a motor carrier transportation  
16          contract with the promisee, and the motor carrier's agents,  
17          employees, servants, or independent contractors directly  
18          responsible to the motor carrier.

19          "(4) The protections of this subsection extend to  
20          every bill of lading, contract, agreement, or other  
21          understanding made in this state or to be performed in whole  
22          or in part in this state notwithstanding any choice-of-law  
23          provision or provision of similar import therein."

24               Section 2. The provisions of this act are severable.  
25               If any part of this act is declared invalid or  
26               unconstitutional, that declaration shall not affect the part  
27               which remains.

1                   Section 3. This act shall become effective  
2       immediately following its passage and approval by the  
3       Governor, or its otherwise becoming law.