

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

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

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14 A BILL
15 TO BE ENTITLED
16 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§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.