

HOUSE BILL NO. 1195
with Senate Amendments

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1195

Introduced by

Representatives Keiser, Ruby, Wald

1 A BILL for an Act to create and enact a new section to chapter 22-02 of the North Dakota
2 Century Code, relating to indemnity agreements in motor carrier transportation contracts.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 22-02 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Indemnity agreement in motor carrier transportation contracts void.**

7 1. As used in this section:

8 a. "Motor carrier transportation contract" means a contract, agreement, or
9 understanding covering the transportation of property for compensation or
10 hire by the motor carrier; entrance on property by the motor carrier for the
11 purpose of loading, unloading, or transporting property for compensation or
12 hire; or a service incidental to activity described in this subdivision, including
13 storage of property. The term does not include the uniform intermodal
14 interchange and facilities access agreement administered by the intermodal
15 association of North America or any other agreement providing for the
16 interchange, use, or possession of intermodal chassis, containers, or other
17 intermodal equipment.

18 b. "Promisee" includes any agent, employee, servant, or independent contractor
19 who is directly responsible to the promisee. The term does not include a
20 motor carrier that is party to a motor carrier transportation contract with the
21 promisee, and does not include that motor carrier's agent, employee, servant,
22 or independent contractor directly responsible to that motor carrier.

23 2. Notwithstanding any provision of law to the contrary, any portion of a provision,
24 clause, covenant, or agreement contained in, collateral to, or affecting a motor

- 1 carrier contract which purports to indemnify, defend, or hold harmless, or has the
2 effect of indemnifying, defending, or holding harmless, the promisee from or
3 against any liability for loss or damage resulting from the negligence or intentional
4 acts or omissions of the promisee is void and unenforceable to the extent that the
5 loss or damage:
- 6 a. Occurs during the motor carrier's presence on the promisee's premises and is
7 caused by or results from the negligent or intentional acts or omissions of the
8 promisee; or
- 9 b. Is caused by or results from defects of the equipment used to transport the
10 promisee's property, unless the defects:
- 11 (1) Relate to equipment owned by the motor carrier or as to which the
12 motor carrier has the responsibility to visually and audibly check before
13 use; or
- 14 (2) Were caused by or resulted from the negligent or intentional acts or
15 omissions of the motor carrier or the motor carrier's agency, employee,
16 vendor, or subcontractor.
- 17 3. Under subsection 2, the motor carrier is responsible to visually and audibly check
18 before use of equipment as listed in exhibit A of the uniform intermodal
19 interchange and facilities access agreement that was in effect on November 4,
20 2008.