

# GUARANTY, INDEMNITY, AND SURETYSHIP

## CHAPTER 211

### HOUSE BILL NO. 1195

(Representatives Keiser, Ruby, Wald)

AN ACT to create and enact a new section to chapter 22-02 of the North Dakota Century Code, relating to indemnity agreements in motor carrier transportation contracts.

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

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

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

**1. As used in this section:**

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

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

**2. Notwithstanding any provision of law to the contrary, any portion of a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier contract which purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is void and unenforceable to the extent that the loss or damage:**

- a. Occurs during the motor carrier's presence on the promisee's premises and is caused by or results from the negligent or intentional acts or omissions of the promisee; or
- b. Is caused by or results from defects of the equipment used to transport the promisee's property, unless the defects:
  - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
  - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.
3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment as listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008.

Approved April 21, 2009  
Filed April 22, 2009