

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

338T0401

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1073** - 1/23/2012

Introduced by: Representatives Gosch, Abdallah, Dennert, Fargen, Feinstein, Gibson, Hunt, Lust, Schrempp, Sly, Turbiville, Van Gerpen, Vanneman, Verchio, and Willadsen and Senators Johnston, Cutler, Fryslie, Hundstad, Krebs, Lederman, Olson (Russell), Putnam, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to prohibit certain indemnity provisions in motor carrier  
2 transportation contracts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Affiliate," any employee or agent of a promisee, or any independent contractor who  
6 is directly responsible to a promisee other than a motor carrier that is a party to a  
7 motor carrier transportation contract with the promisee or an employee or agent of  
8 such motor carrier or an independent contractor directly responsible to such motor  
9 carrier;
- 10 (2) "Motor carrier transportation contract," a contract or agreement between a motor  
11 carrier and a promisee covering the transportation of property for hire by the motor  
12 carrier; the motor carrier's entrance on property for the purpose of loading, unloading,  
13 or transporting property for hire; or any service of the motor carrier that is incidental



1 to these activities, including the storage of property;

2 (3) "Promisee," any person who enters into a motor carrier transportation contract with  
3 a motor carrier.

4 Section 2. Notwithstanding any other law, no provision of a motor carrier transportation  
5 contract, and no covenant or agreement collateral to or affecting a motor carrier transportation  
6 contract, may require the motor carrier to indemnify, hold harmless, or defend the promisee or  
7 affiliate, or have the effect of indemnifying, holding harmless, or defending the promisee or  
8 affiliate from or against any liability for loss or damage resulting from the negligence,  
9 intentional acts, or omissions of the promisee or affiliate. Any provision of any contract or  
10 agreement entered into after the effective date of this Act that violates this Act is void and  
11 unenforceable.

12 Section 3. This Act does not apply to the Uniform Intermodal Interchange and Facilities  
13 Access Agreement administered by the Intermodal Association of North America or any other  
14 agreement providing for the interchange, use, or possession of intermodal chassis, containers,  
15 or other intermodal equipment.