



EXHIBIT 5  
DATE 2/5/13  
HB 347



MOTOR CARRIERS of Montana

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## HB 347

The MCM and The Insurance Task Force of the American Trucking Associations has adopted state enactment of such statutes as a specific goal, because of the inequities these contractual provisions involve, their potential adverse effect on transportation safety, and the growing frequency with which such provisions are being forced on motor carriers by shippers and others.

As of September 1, 2012, thirty-five states had enacted statutes that prohibit or make unenforceable provisions in a contract for motor carrier transportation that require a motor carrier to indemnify another party to the contract for that party's own acts or omissions:

HB 347 uses the model language from ATA to use as a starting point for this provision. The provisions as a whole mean that the state will not enforce a provision of a contract that would require one party to a transportation contract (whether that party is a motor carrier or another entity) to assume liability for the acts of another party to the contract. The model language includes no exceptions to the rule. It might be emphasized that by the use of the neutral term "promise," the model language effectively prohibits contract clauses that serve to shift liability *away from* a motor carrier that is a party to a transportation contract, as well as those that would shift liability *to* a motor carrier.

Basically this legislation prohibits a shipper from making a carrier liable for the shippers own negligence. Motor carriers are seeking a level playing field; we have no issue with being responsible for our own negligence.

These indemnification provisions are becoming more often than not part of the contract that the shipper requires if you want to do business with them. While many larger companies are big enough to tell them they will not sign a contract with such a provision, smaller independents are being forced to sign them to stay in business, and many times just hoping that nothing happens and they do not become liable.

If the smaller carrier tries to insure the prospect of a loss many insurance companies will not look at them or the cost becomes prohibitive, and thus adds cost to the contract which in some cases can't be passed on.

MCM and its member companies would appreciate your favorable consideration of HB 347.