HB 1065

The Colorado Petroleum Association is **opposed** to House Bill 1065, and requests your "no" vote.

1. THERE IS NO NEED FOR THIS LEGISLATION

The Bill's proponent, the CO Motor Carriers Association (CMCA), has not articulated any need for this legislation. Motor Carriers are not being restricted from conducting their trade, and this Bill is not needed to protect Colorado consumers.

The real reason for this Bill is that Motor Carriers want to reduce their insurance costs. Motor Carriers are fully able to obtain insurance coverage. There is no reason for special legislation solely to benefit Motor Carriers over other Colorado businesses.

2. FREEDOM OF CONTRACT – THE LEGISLATURE SHOULD REFRAIN FROM DICTATING HOW BUSINESSES CAN CONTRACT WITH ONE ANOTHER AND ALLOCATE RISKS

The Legislature should not restrict how businesses can contract and allocate risks between them, absent a compelling need. Indemnification provisions in contracts, which are widely permitted under Colorado law, do not eliminate the liability of any party. Instead, they merely allocate what party will be financially responsible for such liability and for litigating disputes regarding allocations of fault. The party granting an indemnity can then obtain insurance to cover these risks – which ensures that the Colorado public and both parties are financially protected in the event of an accident.

3. PROPERTY RIGHTS – THE BILL PREVENTS LANDOWNERS FROM SETTING THE TERMS ON WHICH CARRIERS CAN ENTER THEIR PRIVATE PROPERTY, EVEN WHEN THE LANDOWNER IS NOT CONTRACTING WITH THE CARRIER TO PROVIDE SHIPPING SERVICES.

The Bill is deceptive; it is <u>not</u> limited to contracts for the transportation of goods. As written, the Bill also applies to agreements between Carriers and landowners regarding their own land, including leases, easements, and access agreements. In particular, this Bill ***SHOULD NOT*** apply to separate contracts to enter or access one's land.

Many of the CPA's members have terminals for loading and unloading fuel and crude oil. Carriers (including out-of-state carriers) are required to enter into a separate contract to access a CPA member's land and terminal in Colorado. Under an access agreement, the landowner is not contracting with the Carrier to provide shipping services. Rather, that contract just governs the rules and allocation of risks that apply when a Carrier is allowed to enter a terminal.

As landowners are free to deny access or limit who they allow on their property, they ***SHOULD NOT*** be prevented from imposing conditions on those who they permit to come on their land, such as allocating risks or requiring insurance. This is consistent with Colorado law, which allows landowners, such as landlords and ski resorts, to require a person to release, defend, and indemnify the landowner from liability for injury to persons or damage to property arising from that person's entering onto the property, including those caused by the landowner's negligence. One of the main reasons for such provisions is to make the dividing line as to who is responsible very clear, which limits landowners' exposure to lawsuits and other costs resulting from someone coming onto their property.

To allow HB 1065 to apply to access and other property agreements would set an unwelcome and dangerous precedent for ***all*** landowners. Indeed, given that the Bill is not limited to terminals for crude oil and fuel, there is a high risk that it would have ***unintended consequences*** on other landowners and industries that contract with Motor Carriers, including manufacturing, retail, and agriculture.