

SENATE, No. 289

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

“Port Authority of New York and New Jersey Cargo Facility Charge Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning collection of cargo facility charges by the Port
2 Authority of New York and New Jersey and supplementing Title
3 32 of the Revised Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. This act shall be known and may be cited as the “Port
9 Authority of New York and New Jersey Cargo Facility Charge
10 Act.”

11

12 2. As used in P.L. , c. (C.) (pending before the Legislature
13 as this bill):

14 “Bill of lading” means a document evidencing the receipt of
15 goods for shipment issued by a person engaged in the business of
16 transporting or forwarding goods.

17 “Cargo facility charge” means a fee applicable to all cargo and
18 cargo containers discharged from, or loaded onto, vessels at any
19 marine facility owned or operated by the port authority.

20 “Container” means any receptacle, box, carton, or crate which is
21 specifically designed and constructed so that it may be repeatedly
22 used for the carriage of freight by an ocean common carrier.

23 “Marine terminal operator” means any person, corporation,
24 partnership, or any business organization which shall operate and
25 maintain any of the marine terminals established, acquired,
26 constructed, rehabilitated, or improved by the port authority by
27 means of and through leasing agreements entered into by any such
28 person, corporation, partnership, or any business organization with
29 the port authority.

30 “Ocean common carrier” means an ocean common carrier as that
31 term is defined in 46 U.S.C. s.40102.

32 “Tariff” means a marine terminal operator schedule as that term
33 is defined in 46 C.F.R. 525.2.

34 “Third party collection agency” means an company, agency, or
35 law firm engaged in collecting debts with which the port authority
36 contracts to assist in collection of cargo facility charges.

37 “User” means:

38 a. any person, company, or other entity that is named as the
39 shipper or consignee on the ocean common carrier bill of lading
40 issued for export or import cargo, or any person owning or entitled
41 to the possession, or having a past or future interest in, the export or
42 import cargo;

43 b. in the case of negotiable bills of lading, any other person,
44 company, or other entity that is a bona fide holder of the bill of
45 lading or who is entitled to receive delivery of export cargo or
46 import cargo; or

47 c. any other bailor of export or import cargo.

1 3. Notwithstanding any law, rule, regulation, or existing tariff
2 to the contrary, the port authority shall:

3 a. require all users to pay a cargo facility charge on all import
4 and export cargo before a container leaves any marine facility
5 owned or operated by the port authority;

6 b. enter into an agreement with a marine terminal operator, to
7 be filed with the Federal Maritime Commission, that provides that
8 the marine terminal operator shall provide the port authority with
9 information concerning a user’s cargo for the purpose of collecting
10 a cargo facility charge; and

11 c. contract with a third party collection agency to collect cargo
12 facility chargers from users.

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14 4. The port authority shall not require an ocean common carrier
15 or a marine terminal operator to pay a cargo facility charge.

16
17 5. a. The port authority may refuse service to a user’s cargo
18 and impose liens on the cargo of users delinquent in payment of a
19 cargo facility charge.

20 b. (1) All users shall waive their right to any damages
21 resulting from the enforcement of any lien or a refusal to provide
22 service related to the imposition of the cargo facility charge, except
23 that if it is determined that the port authority incorrectly enforced a
24 lien or refused service, the user’s cargo facility charge may be
25 waived.

26 (2) A marine terminal operator or an ocean common carrier
27 shall be immune from any claim for damages resulting from the
28 enforcement of any lien or a refusal to provide service by the port
29 authority related to the imposition of the cargo facility charge.

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31 6. This act shall take effect immediately, but shall remain
32 inoperative until the enactment into law of legislation substantially
33 similar to P.L. , c. (C.) (pending before the Legislature as this
34 bill) by the State of New York, but if such legislation shall have
35 been enacted prior to the enactment of this act, this act shall take
36 effect immediately.

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39 STATEMENT

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41 This bill establishes the “Port Authority of New York and New
42 Jersey Cargo Facility Charge Act.” This bill requires the Port
43 Authority of New York and New Jersey (port authority) to contract
44 with an independent third party collection agency to collect cargo
45 facility charges from all users, but prohibits the imposition of such
46 a charge on ocean common carriers and marine terminal operators.
47 The bill defines a user as: any person, company, or other entity that

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1 is named as the shipper or consignee on the ocean common carrier
2 bill of lading; any other person, company, or entity that is a bona
3 fide holder of the bill of lading or who is entitled to receive delivery
4 of export cargo or import cargo; or any other bailor of export or
5 import cargo. A cargo facility charge is defined as a fee applicable
6 to all cargo and cargo containers discharged from, or loaded onto,
7 vessels at any marine facility owned or operated by the port
8 authority.

9 In addition, the bill requires the port authority to enter into an
10 agreement, with a marine terminal operator, to be filed with the
11 Federal Maritime Commission, that requires the marine terminal
12 operator to provide the port authority with information concerning a
13 user's cargo for the purpose of collecting a cargo facility charge.
14 The port authority is authorized to refuse service to a user's cargo
15 and impose liens on the cargo of users who are delinquent in paying
16 a cargo facility charge.

17 Finally, the bill provides that users are to waive their right to any
18 damages resulting from the enforcement of any lien or a refusal to
19 provide service related to the imposition of the cargo facility
20 charge, except that if it is determined that the port authority
21 incorrectly enforced a lien or refused service, the user's cargo
22 facility charge may be waived. A marine terminal operator or an
23 ocean common carrier is immune from any claim for damages
24 resulting from the enforcement of any lien or a refusal to provide
25 service by the port authority related to the imposition of the cargo
26 facility charge.

27 The bill will not take effect until the enactment into law of
28 substantially similar legislation by the State of New York.