

ASSEMBLY BILL

No. 2406

Introduced by Assembly Member Aguiar-Curry

February 17, 2022

An act to amend Section 22928 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, as introduced, Aguiar-Curry. Intermodal marine terminals.

Existing law prohibits an intermodal marine equipment provider or intermodal marine terminal operator, as defined, from imposing per diem, detention, or demurrage charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances, including when an intermodal marine terminal decides to divert equipment without 48 hours' notice.

This bill would also prohibit an intermodal marine equipment provider from imposing those charges, or extended dwell or congestion charges, on an intermodal motor carrier, beneficial cargo owner, or other intermediary relative to transactions involving cargo shipped by intermodal transport under certain circumstances. The bill would instead specify that those circumstances include when the intermodal equipment provider decides to divert equipment without notice, as described above, and also include when the intermodal carrier documents an unsuccessful attempt to make an appointment for either a loaded or empty container and when a booked vessel cancels, booking is moved to a later vessel, or when early return dates are otherwise unilaterally delayed after equipment has been picked up, as specified. The bill would revise the definition of "intermodal marine terminal" to include a satellite facility, within the same local commercial territory that supports operations of

an intermodal marine equipment provider, for the location from which equipment was originally received, that engages in discharging or receiving equipment owned, operated, or controlled by an equipment provider.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22928 of the Business and Professions
 2 Code is amended to read:
 3 22928. (a) The Legislature finds and declares that unilateral
 4 termination, suspension, or restriction of equipment interchange
 5 rights of an intermodal motor carrier shall not result from
 6 intermodal marine terminal *or intermodal marine equipment*
 7 *provider* actions as specified in subdivision (b).
 8 (b) An intermodal marine equipment provider or intermodal
 9 marine terminal operator shall not impose per diem, detention, ~~or~~
 10 ~~demurrage charges~~ *demurrage, extended dwell, congestion charges,*
 11 *or charges of a similar kind or character* on an intermodal motor
 12 ~~carrier~~ *carrier, beneficial cargo owner, or other intermediary*
 13 relative to transactions involving cargo shipped by intermodal
 14 transport under any of the following circumstances:
 15 (1) When the intermodal marine or terminal truck gate is closed
 16 during posted normal working hours. No per diem, detention, or
 17 demurrage charges shall be imposed on a weekend or holiday, or
 18 during a labor disruption period, or during any other period
 19 involving an act of God or any other planned or unplanned action
 20 that closes the truck gate.
 21 (2) When the intermodal ~~marine terminal~~ *equipment provider*
 22 decides to divert equipment *from the original interchange location*
 23 without 48 hours' electronic or written notification to the motor
 24 carrier.
 25 (3) When the intermodal marine terminal is assessed a fine
 26 pursuant to Section 40720 of the Health and Safety Code.
 27 (4) When the intermodal marine ~~terminal~~ equipment is out of
 28 compliance pursuant to Section 34505.9 of the Vehicle Code or
 29 the equipment is placed out of service.
 30 (5) When a loaded container is not available for pickup when
 31 the motor carrier arrives at the intermodal marine terminal.

1 (6) When the intermodal marine terminal is too congested to
2 accept the container and turns away the motor carrier.

3 (7) *When the intermodal carrier documents an unsuccessful*
4 *attempt to make an appointment for either a loaded or empty*
5 *container, including unilaterally imposed transaction restrictions,*
6 *such as dual transaction or empty container requirements and*
7 *failure to provide a return location or other conditions that impede*
8 *the motor carrier's ability to pick up or terminate intermodal*
9 *marine equipment.*

10 (8) *When a booked vessel cancels, booking is moved to a later*
11 *vessel, or when early return dates are otherwise unilaterally*
12 *delayed after equipment has been picked up.*

13 (c) An intermodal marine equipment provider shall not take any
14 of the following actions:

15 (1) Charge back, deduct, or offset per diem charges, maintenance
16 and repair charges, or peak hour pricing from a motor carrier's
17 freight bill.

18 (2) Unilaterally terminate, suspend, or restrict the equipment
19 interchange rights of a motor carrier or driver that uses the dispute
20 resolution process contained in the Uniform Intermodal Interchange
21 and Facilities Access Agreement to contest a charge, fee, or fine,
22 including a charge for maintenance and repairs imposed by the
23 intermodal marine ~~terminal~~, *equipment provider*, while the dispute
24 resolution process is ongoing.

25 (3) Unilaterally terminate, suspend, or restrict the equipment
26 interchange rights of a motor carrier for late payment of an
27 undisputed invoice from the intermodal marine ~~terminal~~, *equipment*
28 *provider*, provided that the payment is no more than 60 days late.

29 (4) Unilaterally terminate, suspend, or restrict the equipment
30 interchange rights of a motor carrier or driver for parking tickets
31 issued by the *intermodal* marine terminal unless the tickets remain
32 unpaid more than 60 days after being in receipt of the driver or
33 motor carrier. No parking tickets shall be issued by the *intermodal*
34 marine terminal to a driver or motor carrier for a parking violation
35 if the assigned spot was occupied and the trouble window or
36 terminal administration was unable to immediately provide a place
37 to park, or if the driver was instructed to park the equipment in a
38 different spot by *intermodal* marine terminal personnel or security.

39 (5) Willfully attempt to circumvent any provisions of this section
40 or to fail, for any reason other than what is specified in the

1 governing port tariff, to collect demurrage when due and payable
2 and when consistent with this section. An intermodal motor carrier
3 shall not be liable for any portion of demurrage when an intermodal
4 container is not picked up during free time, which is the time period
5 before demurrage charges are to be applied.

6 (d) As used in this chapter:

7 (1) “Per diem,” “detention,” or “demurrage” means a charge
8 imposed by an *intermodal* equipment provider or marine terminal
9 operator for late return or pickup of an empty or a loaded
10 intermodal container and chassis.

11 (2) “Closed” means *that the terminal or the area within the*
12 *marine terminal containing the cargo or equipment is not open or*
13 *available to receive equipment. The marine terminal shall have*
14 *posted working hours, and “closed” shall mean that the terminal*
15 *is not open to release or accept equipment during those posted*
16 *working hours.*

17 (3) “Divert equipment” means the motor carrier has been
18 directed to return the equipment to a location different from the
19 location where the equipment was picked up by the motor carrier.

20 (4) “Shall not impose per diem, detention, or demurrage charges
21 on an intermodal carrier” shall apply to the day or days in question
22 that an occurrence referenced in subdivision (b) took place.

23 (5) “Intermodal marine terminal” means a marine terminal
24 location or ~~facility~~ *satellite facility, within the same local*
25 *commercial territory that supports operations of an intermodal*
26 *marine equipment provider, for the location from which equipment*
27 *was originally received, that engages in discharging or receiving*
28 *equipment owned, operated, or controlled by an equipment*
29 *provider.*

30 (6) “Written or electronic notification” means any
31 communication by postal letter, facsimile, electronic mail, or other
32 electronic notification.

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