

AMENDED IN SENATE JUNE 16, 2022

AMENDED IN ASSEMBLY APRIL 27, 2022

AMENDED IN ASSEMBLY APRIL 7, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2406

Introduced by Assembly Member Aguiar-Curry
(Coauthors: Assembly Members Calderon, Cunningham, Daly,
Flora, Fong, Gallagher, Gipson, Medina, and Robert Rivas)
(Coauthor: Senator Dodd)

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 amended, 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, or commencing or continuing free time, as defined, ~~on an intermodal~~ *a* motor carrier, *as defined*, 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~~ motor carrier documents an unsuccessful attempt to make an appointment for either a loaded or empty container. The bill would also specify that those circumstances include when a booked vessel cancels, booking is moved to a later vessel, or when early return dates are otherwise unilaterally advanced or delayed after equipment has been picked up, as specified, and when the obstacles to the cargo retrieval or return of equipment are within the scope of responsibility of the carrier or their agent and beyond the control of the invoices or contracting party.

Existing law also prohibits an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem, detention, or demurrage charges or certain other charges from the motor carrier's freight bill.

This bill would also prohibit an intermodal marine equipment provider from commencing or continuing free time if cargo is unavailable for retrieval and timely notice of cargo availability has not been provided.

Existing law defines "intermodal marine terminal" to mean a marine terminal location or facility that engages in discharging or receiving equipment owned, operated, or controlled by an equipment provider.

This 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. The bill would also define "intermodal marine equipment provider" to mean the entity authorizing delivery or receipt of physical possession of the container with ~~an intermodal~~ a motor carrier, beneficial cargo owner, or other intermediary.

This bill would specify that where these provisions are addressed by future federal law or regulation, the applicable provision shall conform to any federal standards where the federal standard is more stringent.

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~~ a 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 commence or continue free time
10 or impose per diem, detention, demurrage, extended dwell,
11 congestion charges, or charges of a similar kind or character on
12 ~~an intermodal~~ a motor carrier, beneficial cargo owner, or other
13 intermediary relative to transactions involving cargo shipped by
14 intermodal 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 equipment provider decides to divert
22 equipment from the original interchange location without 48 hours'
23 electronic or written notification to the motor carrier.

24 (3) When the intermodal marine terminal is assessed a fine
25 pursuant to Section 40720 of the Health and Safety Code.

26 (4) When the intermodal marine equipment is out of compliance
27 pursuant to Section 34505.9 of the Vehicle Code or the equipment
28 is placed out of service.

29 (5) When a loaded container is not available for pickup when
30 the motor carrier arrives at the intermodal marine terminal.

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

33 (7) When the ~~intermodal~~ motor carrier documents an
34 unsuccessful attempt to make an appointment for either a loaded
35 or empty container, including unilaterally imposed transaction
36 restrictions, such as single or dual transaction, chassis matching,
37 or empty container requirements and failure to provide a return

1 location or other conditions that impede the motor carrier’s ability
2 to pick up or terminate intermodal marine equipment.

3 (8) When a booked vessel cancels, booking is moved to a later
4 vessel, or when early return dates are otherwise unilaterally
5 advanced or delayed after equipment has been picked up.

6 (9) When the obstacle to the cargo retrieval or return of
7 equipment is within the scope of responsibility of the carrier or
8 their agent and beyond the control of the invoiced or contracting
9 party.

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

12 (1) Charge back, deduct, or offset per diem charges, maintenance
13 and repair charges, or peak hour pricing from a motor carrier’s
14 freight bill.

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

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

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

36 (5) Willfully attempt to circumvent any provisions of this section
37 or to fail, for any reason other than what is specified in the
38 governing port tariff, to collect demurrage when due and payable
39 and when consistent with this section. ~~An intermodal A motor~~

1 carrier shall not be liable for any portion of demurrage when an
2 intermodal container is not picked up during free time.

3 (6) Commence or continue free time if cargo is unavailable for
4 retrieval and timely notice of cargo availability has not been
5 provided.

6 (d) As used in this chapter:

7 (1) "Closed" means that the terminal or the area within the
8 marine terminal containing the cargo or equipment is not open or
9 available to receive equipment. The marine terminal shall have
10 posted working hours, and "closed" shall mean that the terminal
11 is not open to release or accept equipment during those posted
12 working hours.

13 (2) "Divert equipment" means the motor carrier has been
14 directed to return the equipment to a location different from the
15 location where the equipment was picked up by the motor carrier.

16 (3) "Free time" means the time period offered by the intermodal
17 marine equipment provider free of charge, beyond which additional
18 charges, including per diem, detention, demurrage, extended dwell,
19 congestion charges, or charges of a similar kind or character, are
20 to be applied.

21 (4) "Intermodal marine equipment provider" means the entity
22 authorizing delivery or receipt of physical possession of the
23 container with ~~an intermodal~~ a motor carrier, beneficial cargo
24 owner, or other intermediary.

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

32 (6) "*Motor carrier*" has the same meaning as defined in Section
33 408 of the Vehicle Code.

34 ~~(6)~~

35 (7) "Per diem," "detention," or "demurrage" means a charge
36 imposed by an intermodal equipment provider or marine terminal
37 operator for late return or pickup of an empty or a loaded
38 intermodal container and chassis.

39 ~~(7)~~

1 (8) “Shall not commence or continue free time or impose per
2 diem, detention, demurrage, extended dwell, congestion charges,
3 or charges of a similar kind or character on ~~an intermodal~~ *a motor*
4 carrier, beneficial cargo owner, or other intermediary” shall apply
5 to the day or days in question that an occurrence referenced in
6 subdivision (b) took place.

7 ~~(8)~~

8 (9) “Written or electronic notification” means any
9 communication by postal letter, facsimile, electronic mail, or other
10 electronic notification.

11 (e) Where provisions of this section are addressed by future
12 federal law or regulation, the applicable provision shall conform
13 to any federal standards where the federal standard is more
14 stringent.