

AMENDED IN SENATE AUGUST 17, 2022

AMENDED IN SENATE JUNE 28, 2022

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~~ *container* provider from imposing those charges, ~~or extended dwell or congestion~~ charges, or commencing or continuing free time, as defined,

on 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~~ *marine container* provider decides to divert equipment *from the original interchange location* without notice, as described above, and also include when the motor carrier documents an unsuccessful attempt to make an appointment for either a loaded or empty ~~container~~ *container transaction, as specified*. 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, *vessel's receiving date changes*, and when the ~~obstacles~~ *obstacle* 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 charges or certain other charges from the motor carrier's freight bill.

This bill would also prohibit an intermodal marine ~~equipment~~ *container* 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 container provider" to mean the entity authorizing delivery or receipt of physical possession of the container with a motor carrier, beneficial cargo owner, or other intermediary. The bill would also define "satellite facility" to mean an intermodal yard, that is not a marine terminal, within the same local commercial territory that supports operations of an intermodal marine container provider~~

or intermodal marine terminal, and would require any provisions related to acts at intermodal marine terminals to also be applied to acts at satellite facilities.

This bill would specify that where these provisions are addressed by future federal law or regulation, and the federal law or regulation permits states to exceed the requirements set forth in the federal law or regulation, the more stringent provision shall govern.

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 a motor carrier shall not result from intermodal marine
6 terminal or intermodal marine ~~equipment~~ container provider
7 actions as specified in subdivision (b).

8 (b) An intermodal marine ~~equipment~~ container provider or
9 intermodal marine terminal operator shall not commence or
10 continue free time or impose per diem, detention, demurrage,
11 extended dwell, ~~congestion charges~~, or charges of a similar kind
12 or character on 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~~ marine container 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 equipment~~ chassis is out of
28 compliance pursuant to Section 34505.9 of the Vehicle Code or

1 the equipment is placed out of ~~service~~. *service in such a manner*
2 *as to result in a per diem, detention, or demurrage charge.*

3 (5) When a loaded container is not available for pickup when
4 the motor carrier arrives at the intermodal marine ~~terminal~~.
5 *terminal, or the area within the marine terminal containing the*
6 *cargo or equipment is closed or otherwise inaccessible.*

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

9 (7) When the motor carrier documents an unsuccessful attempt
10 to make an appointment for either a loaded or empty ~~container~~,
11 ~~including~~ *container transaction at the intermodal marine terminal*
12 *and no other appointments were available for that transaction*
13 *within the following windows:*

14 (A) *For appointment attempts during an intermodal marine*
15 *terminal’s posted first shift hours, no other appointments were*
16 *available.*

17 (B) *For appointment attempts during an intermodal marine*
18 *terminal’s posted second shift hours, no other appointments were*
19 *available.*

20 (C) *If the intermodal marine terminal does not post shift hours,*
21 *then the window applicable to subparagraph (A) shall be 7:00*
22 *a.m. to 4:59 p.m., inclusive, and the window applicable to*
23 *subparagraph (B) shall be 5:00 p.m. to 3:00 a.m., inclusive.*

24 (8) *When an intermodal marine container provider or*
25 *intermodal marine terminal has unilaterally imposed transaction*
26 *restrictions, such as single or dual transaction, chassis matching,*
27 *or empty container requirements that prevent a transaction and*
28 ~~failure~~ *failed to provide a return location or other conditions that*
29 *impede the motor carrier’s ability to pick up or terminate*
30 *intermodal marine ~~equipment~~ containers.*

31 ~~(8)~~

32 (9) *When a return or delivery of an intermodal container is*
33 *delayed because a booked vessel cancels, booking is moved to a*
34 *later vessel, or when early return dates are otherwise unilaterally*
35 ~~advanced or delayed after equipment has been picked up~~. *vessel’s*
36 *receiving date changes.*

37 ~~(9)~~

38 (10) *When the obstacle to the cargo retrieval or return of*
39 *equipment is within the scope of responsibility of the carrier or*

1 their agent and beyond the control of the invoiced or contracting
2 party.

3 (c) An intermodal marine ~~equipment~~ *container* provider shall
4 not take any of the following actions:

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

8 (2) Unilaterally terminate, suspend, or restrict the equipment
9 interchange rights of a motor carrier or driver that uses the dispute
10 resolution process contained in the Uniform Intermodal Interchange
11 and Facilities Access Agreement to contest a charge, fee, or fine,
12 including a charge for maintenance and repairs imposed by the
13 intermodal marine ~~equipment~~ *container* provider, while the dispute
14 resolution process is ongoing.

15 (3) Unilaterally terminate, suspend, or restrict the equipment
16 interchange rights of a motor carrier for late payment of an
17 undisputed invoice from the intermodal marine ~~equipment~~
18 *container* provider, provided that the payment is no more than 60
19 days late.

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

30 (5) Willfully attempt to circumvent any provisions of this section
31 or to fail, for any reason other than what is specified in the
32 governing port tariff, to collect demurrage when due and payable
33 and when consistent with this section. A motor carrier shall not
34 be liable for any portion of demurrage when an intermodal
35 container is not picked up during free time.

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

39 (7) *If a loaded container is not made available for pickup when*
40 *a motor carrier arrives at the intermodal marine terminal, and all*

1 *current charges have been paid, the intermodal marine terminal*
 2 *operator or intermodal marine container provider shall not impose*
 3 *any further cargo demurrage charges on the motor carrier,*
 4 *beneficial cargo owner, or other intermediary.*

5 (d) *Any provisions in this section related to acts at intermodal*
 6 *marine terminals shall be applied to acts at satellite facilities.*

7 ~~(d)~~

8 (e) As used in this chapter:

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

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

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

23 (4) “Intermodal marine ~~equipment~~ *container* provider” means
 24 the entity authorizing delivery or receipt of physical possession of
 25 the container with a motor carrier, beneficial cargo owner, or other
 26 intermediary.

27 (5) “Intermodal marine terminal” means a marine terminal
 28 ~~location or satellite facility, within the same local commercial~~
 29 ~~territory that supports operations of an intermodal marine~~
 30 ~~equipment provider, for the location from which equipment was~~
 31 ~~originally received,~~ that engages in discharging or receiving
 32 equipment owned, operated, or controlled by an equipment
 33 provider. *“Intermodal marine terminal” shall not include a local,*
 34 *municipal, or special district public agency seaport.*

35 (6) “Motor carrier” has the same meaning as defined in Section
 36 408 of the Vehicle Code.

37 (7) “Per diem,” “detention,” or “demurrage” means a charge
 38 imposed by an intermodal ~~equipment~~ *marine container* provider
 39 or marine terminal operator for late return or pickup of an empty
 40 or a loaded intermodal ~~container and chassis.~~ *container.*

1 (8) “Satellite facility” means an intermodal yard, that is not a
2 marine terminal, within the same local commercial territory that
3 supports operations of an intermodal marine container provider
4 or intermodal marine terminal.

5 ~~(8)~~

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

12 ~~(9)~~

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

16 ~~(e)~~

17 (f) (1) Where provisions of this section are addressed by future
18 federal law or regulation, and the federal law or regulation permits
19 states to exceed the requirements set forth in the federal law or
20 regulation, the more stringent provision shall govern.

21 (2) *It is further not the intent of the Legislature to establish a*
22 *reasonableness test under Section 41102 of Title 46 of the United*
23 *States Code, as in effect on June 16, 2022, for the agreement by*
24 *commercial entities to rates, charges, or service requirements.*

25 ~~(f)~~

26 (g) The provisions of this section are severable. If any provision
27 of this section or its application is held invalid, that invalidity shall
28 not affect other provisions or applications that can be given effect
29 without the invalid provision or application.