

Date of Hearing: April 25, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 2406 (Aguiar-Curry) – As Amended April 7, 2022

**SUBJECT:** Intermodal marine terminals

**SUMMARY:** Prohibits an intermodal marine equipment provider or terminal operator from imposing, in addition to already prohibited charges, 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. Specifically, **this bill:**

- 1) Prohibits an intermodal marine equipment provider or intermodal marine terminal operator from commencing or continuing free time under specified circumstances.
- 2) Adds the following to the type of fees an intermodal marine equipment provider or intermodal marine terminal operator is prohibited from imposing on an intermodal motor carrier, beneficial cargo owner, or other intermediary, under specified circumstances:
  - a) Extended dwell;
  - b) Congestion charges; or,
  - c) Charges of a similar kind or character.
- 3) Adds beneficial cargo owners, or other intermediary, as entities upon which intermodal marine equipment providers or terminal operators are prohibited from imposing specified fees.
- 4) Adds to the circumstances under which an intermodal marine equipment provider or intermodal marine terminal operation is prohibited from imposing fees:
  - a) When the intermodal equipment provider decides to divert equipment from the original interchange location without 48 hours' electronic or written notification to the motor carrier
  - b) When the intermodal motor carrier documents an unsuccessful attempt to make an appointment for either a loaded or empty container, including unilaterally imposed transaction restrictions, such as single or dual transaction, chassis matching, or empty container requirements and failure to provide a return location or other conditions that impede the motor carrier's ability to pick up or terminate intermodal marine equipment.
  - c) 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.
  - d) When the obstacle to the cargo retrieval or return of equipment is within the scope of responsibility of the carrier or their agent and beyond the control of the invoiced or contracting party.

- 5) Prohibits 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.
- 6) Defines “free time” as the time period offered by the intermodal marine equipment provider free of charge, beyond which additional charges are to be applied.
- 7) Defines “intermodal marine equipment provider” as the entity authorizing delivery or receipt of physical possession of the container with an intermodal motor carrier, beneficial cargo owner, or other intermediary.
- 8) Defines “per diem,” “detention,” or “demurrage” as a charge imposed by an intermodal equipment provider or marine terminal operator for late return or pickup of an empty or loaded intermodal container and chassis.
- 9) Expands 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.

**EXISTING LAW:**

- 1) Requires marine terminals to operate in a manner that does not cause trucks to idle or queue for more than 30 minutes while waiting to enter the gate into the marine terminal.
- 2) Prohibits an intermodal marine equipment provider or intermodal marine terminal operator from imposing per diem, detention, or demurrage charges on an intermodal carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:
  - a) When the intermodal marine or terminal truck gate is closed during posted normal working hours.
  - b) When the intermodal marine terminal decides to divert equipment without 48 hours’ electronic or written notification to the motor carrier.
  - c) When the intermodal marine terminal is assessed a fine related to truck idling.
  - d) When the intermodal marine terminal is out of compliance with safety inspection requirements or the equipment is placed out of service.
  - e) When a loaded container is not available for pickup when the motor carrier arrives at the intermodal marine terminal.
  - f) When the intermodal marine terminal is too congested to accept the container and turns away the motor carrier.
- 3) Prohibits an intermodal marine equipment provider from taking any of the following actions:

- a) Charge back, deduct, or offset per diem charges, maintenance and repair charges, or peak hour pricing from a motor carrier's freight bill.
- b) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier or driver that uses the dispute resolution process contained in the Uniform Intermodal Interchange and Facilities Access Agreement to contest a charge, fee, or fine, including a charge for maintenance and repairs imposed by the intermodal marine terminal, while the dispute resolution process is ongoing.
- c) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier for late payment of an undisputed invoice from the intermodal marine terminal, provided that the payment is no more than 60 days late.
- d) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier or driver for parking tickets issued by the marine terminal unless the tickets remain unpaid more than 60 days after being in receipt of the driver or motor carrier. No parking tickets shall be issued by the marine terminal to a driver or motor carrier for a parking violation if the assigned spot was occupied and the trouble window or terminal administration was unable to immediately provide a place to park, or if the driver was instructed to park the equipment in a different spot by marine terminal personnel or security.
- e) Willfully attempt to circumvent any provisions of this section or to fail, for any reason other than what is specified in the governing port tariff, to collect demurrage when due and payable and when consistent with this section. An intermodal carrier shall not be liable for any portion of demurrage when an intermodal container is not picked up during free time, which is the time period before demurrage charges are to be applied.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Agricultural export and port issues have been compounded by the COVID-19 pandemic and resulting supply chain disruptions. In 2020, California's farms and ranches received \$49.1 billion in cash receipts for their output. This represents a 3.3% decrease in cash receipts compared to the previous year. California agricultural exports totaled \$21.7 billion in 2019, an increase of 3.4% from 2018. In 2019, the top commodities for export included almonds, pistachios, dairy and dairy products, wine, and walnuts. California Agriculture's top five trading partners are the European Union, Canada, China/Hong Kong, Japan, South Korea, and Mexico.

A Giannini Foundation of Agricultural Economics at University of California Davis report analyzed the effects of the 2021 supply chain gridlock and resulting shipping container shortage on California agriculture. Due to exporters' difficulty obtaining empty shipping containers, the value of California's containerized agricultural exports fell by an estimated \$2.1 billion, about 17%, from May to September 2021. The financial damages suffered by California agriculture from the supply chain disruptions exceed the industry's losses from the 2018 U.S.-China trade war.

*Most exporters pay fees to borrow containers.* Standardization of shipping containers makes them intermodal and easily moveable using a truck, by rail, or shipped overseas on a container

ship. Most shipping containers are either owned by a shipping line or a container leasing company, also known as intermodal marine equipment providers. Exporters pay a fee to use these containers.

*Demurrage and detention fees:* Equipment providers generally offer three to five days of “free” storage, or container use, and will charge various fees when those days are exceeded. Equipment providers charge a demurrage fee when an importer does not move a full container out of the port/terminal for unpacking within the free days. Equipment providers may also charge a detention fee when the importer or exporter does not return a container to the nominated depot within the agreed free-time. The easiest way to discern between the two is to think of demurrage as fees assessed on laden containers inside a port, and detention as fees assessed on containers outside a port, whether they are laden or empty.

*The Federal Maritime Commission (FMC) is investigating the issue of container fees.* FMC is the independent federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer. In late January of 2022, FMC met in both open and closed session to be briefed on efforts to address detention and demurrage fees and improve supply chain data transparency, among other topics. While commissioners expressed concern about Audit Team data that showed carrier revenues from detention and demurrage fees were up sharply over 2021, Commission staff made clear this is not an unexpected development given record volumes of trade and congestion throughout the U.S. supply chain. Additionally, chassis shortages, insufficient warehouse space, and some shippers abandoning cargoes are contributing to the issuance of detention and demurrage charges.

FMC Chair Daniel B. Maffei stated, “The vast increase in detention and demurrage charges being billed by the carriers is certainly concerning but must be seen in the context of the overall congestion situation at U.S. ports and inland networks. [Equipment providers] are also waiving a much higher percentage of detention and demurrage charges, and that’s one indication that the 2020 interpretive rule and enhanced enforcement is changing some practices and reducing collections of unreasonable detention and demurrage charges. However, the audit findings also tell me that we have a long way to go and must not let up one bit either on our enforcement efforts or the additional rulemaking on detention and demurrage recommended by Commissioner Rebecca Dye.”

*Congressional action on container fees is underway.* Congressman Garamendi (D-CA-3) introduced H.R.4996, the Ocean Shipping Reform Act of 2021, in August of 2021. H.R.4996 revises provisions related to ocean shipping policies and is designed to support the growth and development of U.S. exports and promote reciprocal trade in the common carriage of goods by water in the foreign commerce of the United States. Among other provisions, the bill directs FMC to establish rules prohibiting ocean common carriers and marine terminal operators from adopting and applying unjust and unreasonable demurrage and detention fees and authorizes FMC to initiate investigations of an ocean common carrier’s fees or charges and apply enforcement measures, as appropriate.

At the time of H.R.4996’s introduction, the Congressional Record reflects Congressman Garamendi’s remarks. “Madam Speaker, I urge all members to cosponsor the Ocean Shipping Reform Act of 2021. As a member of the House Committee on Transportation and Infrastructure, where I serve with Congressman Johnson, and the former ranking member of the Maritime

Subcommittee from the 113th to the 115th Congresses, I plan to make this legislation a major priority. Specifically, I hope to include our bipartisan legislation in the maritime title of the next Coast Guard Authorization Act for fiscal years 2022 to 2023.” H.R.4996 has passed the house, been received in the Senate and Read twice, and referred to the Senate Committee on Commerce, Science, and Transportation.

*The federal government regulates interstate and international trade.* Shipping generally goes well beyond the borders of California and the U.S. Constitution, through the Commerce Clause, gives Congress exclusive power over trade activities between the states and with foreign countries. Trade within a state is regulated exclusively by the states themselves. The author of this bill may wish to consider supporting Congressional efforts which would more effectively address global trade issues.

*Is this an issue for the state to resolve?* SB 45 (Alarcon), Chapter 244, Statutes of 2005 prohibits, under certain circumstances, monetary charges imposed by marine terminals on a truck driver for the late return of specified equipment used for the transporting of cargo goods from California seaports. When this committee heard SB 45, the analysis stated, “Is the Legislature interceding into what is essentially a contractual matter involving two private parties? The Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), a national compact that sets forth the terms and conditions for the transfer and conditions for the transfer and operation of equipment under interchange between ocean and rail carriers and motor carriers, includes provisions exempting per diem charges for circumstances beyond the control of a motor carrier and establishes a procedure for resolving disputed charges.” Ultimately, the Legislature passed, and the Governor signed, SB 45. However, since that time legislative action at the state level has not been exercised to resolve disputes over these fees. The UIIA currently has over 10,000 Motor Carriers and 60 Equipment Provider signatories and is utilized for approximately 95% of all North American intermodal equipment interchanges.

*Committee amendments:* In acknowledgement that federal discussions are ongoing, the author has agreed to add the following amendment to the bill: “*Where provisions of this section are addressed by future federal law or regulation, the applicable provision shall conform to any federal standards where the standard is more stringent.*”

*According to the author,* “Agricultural exporters are losing customers around the globe while absorbing unfair fees. California manufacturers and retailers are already facing unprecedented cost increases for imports on top of paying the highest detention and demurrage rates in the world. These unfair fees ultimately increase the price of goods and services for all Californians. This bill will protect California businesses from being charged excessive and unfair fees (detention/demurrage) by intermodal marine equipment providers (equipment providers) for reasons outside the control of the business by clarifying and modernizing the protections set by SB 45 (Alarcon), Chapter 244, Statutes of 2005.”

In support, a coalition of organizations impacted by supply chain fees writes, “Under ordinary circumstances, these fees are designed to encourage the efficient use of containers. However, during our recent and ongoing port congestion crisis, late charges have been imposed on California businesses by international ocean carriers even when containers cannot be returned due to circumstances not within the control of the importer, exporter or trucker. While detention and demurrage fees have increased across the globe, ocean carriers are charging two to ten times the fees in Los Angeles and Long Beach versus other major ports worldwide. Agricultural

exporters are losing global market share while absorbing unfair fees. California manufacturers and retailers are already facing unprecedented cost increases for imports on top of paying the highest detention/demurrage rates in the world. All of these costs ultimately increase the price of goods and services for Californians.”

In opposition, the Pacific Merchant Shipping Association (PMSA) writes, “PMSA is acutely aware and sympathetic to many of the frustrations in the current international intermodal marketplace which have resulted in the introduction of AB [this bill]. However, these are nearly all commercial issues that should be addressed by contracts and negotiations between parties in the international and interstate marketplace. California law should not be used to supplant and substitute for the rights of parties to contract for services, and we disagree with any effort to take this approach to address these concerns. The State should not upset the intermodal contracts upon which our supply chain rests.

“PMSA would like to avoid the potential unintended effects of [this bill] to unintentionally further reductions of availability of scarce intermodal equipment in periods of high demand, increase container dwell times, exacerbate inefficient distribution of equipment, and ultimately build in higher costs to the supply chain. Instead, PMSA would like to maintain a workable contracting marketplace wherein parties can reach appropriate commercial agreements and solutions to these issues. PMSA would support amendments to this legislation which make California’s ports more competitive for all parties in the intermodal supply chain, and we appreciate the time and consideration of the author, her staff, and bill sponsors and stakeholders to address the issue that are sought to be addressed. We are committed to continue these discussions if the legislation is to continue past this Committee, however we are opposed to [this bill] in its current form.”

*Previous legislation:* SB 45 (Alarcon), Chapter 244, Statutes of 2005 prohibits, under certain circumstances, monetary charges imposed by marine terminals on a truck driver for the late return of specified equipment used for the transporting of cargo goods from California seaports.

SB 348 (Alarcon) of 2004 prohibits an intermodal marine equipment provider or marine terminal operator from imposing per diem or detention charges, as defined, or demurrage charges, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. This bill was vetoed by the Governor. In his veto message, the Governor stated, "I believe the issue of fees charged to truckers deserves a full airing through the legislative process. This bill was amended late in the legislative session with entirely new provisions and did not go through the public process. I encourage the Legislature and the proponents of this bill to reintroduce this bill next session and have a full public review on these critical issues."

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

African American Farmers of California  
Agricultural Council of California  
Agriculture Transportation Coalition – Agtc  
Air Conditioning, Heating and Refrigeration Institute  
Almond Alliance of California

American Chemistry Council  
American Forest & Paper Association  
American Home Furnishings Alliance  
American Lighting Association  
American Pistachio Growers  
American Trucking Associations' Agricultural Food Transporters Conference and Intermodal Motor Carrier Conference  
Association of Food Industries  
Association of Home Appliance Manufacturers  
Auto Care Association  
California Apple Commission  
California Blueberry Association  
California Blueberry Commission  
California Citrus Mutual  
California Cotton Ginners and Growers Association  
California Farm Bureau  
California Fresh Fruit Association  
California Manufacturers & Technology Association  
California Olive Oil Council  
California Retailers Association  
California Rice Commission  
California Trucking Association  
California Walnut Commission  
Capay Canyon Ranch  
Cawa - Representing the Automotive Parts Industry  
Far West Equipment Dealers Association  
Fashion Accessories Shippers Association  
Fashion Jewelry and Accessories Trade Association  
Foreign Trade Association  
Gemini Shippers Association  
Green Coffee Association  
Harbor Trucking Association  
International Housewares Association  
International Warehouse Logistics Association  
Leather and Hide Council of America  
Los Angeles Customs Brokers and Freight Forwarders Association  
Meat Import Council of America  
National Confectioners Association  
National Hay Association  
National Milk Producers Federation  
National Onion Association  
Nisei Farmers League  
North American Meat Institute  
Northern California Customs Brokers and Freight Forwarders Association  
Olive Growers Council of California  
Pacific Coast Council of Customs Brokers and Freight Forwarders Association  
Pet Food Institute  
Plumbing Manufacturers International  
Promotional Products Association International

Retail Industry Leaders Association (RILA)  
San Diego Customs Brokers and Forwarders Association  
Specialty Crop Trade Council  
Sports & Fitness Industry Association  
Truck and Engine Manufacturers Association  
U.S. Dairy Export Council  
U.S. Forage Export Council  
Western Agricultural Processors Association  
Western Growers Association  
Western Plant Health Association  
Western States Trucking Association

**Opposition**

Pacific Merchant Shipping Association

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