

104TH CONGRESS  
2D SESSION

# H. R. 4040

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1996

Received

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## AN ACT

To amend title 49, United States Code, relating to  
intermodal safe container transportation.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intermodal Safe Con-  
5 tainer Transportation Act Amendments of 1996”.

1 **SEC. 2. REFERENCES TO TITLE 49.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of title 49, United States Code.

7 **SEC. 3. DEFINITIONS.**

8 Section 5901 is amended—

9 (1) by striking paragraph (1) and inserting the  
10 following:

11 “(1) except as otherwise provided in this chap-  
12 ter, the definitions in sections 10102 and 13102 of  
13 this title apply.”;

14 (2) by redesignating paragraphs (6) and (7) as  
15 paragraphs (7) and (8), respectively; and

16 (3) by inserting after paragraph (5) the follow-  
17 ing new paragraph:

18 “(6) ‘gross cargo weight’ means the weight of  
19 the cargo, packaging materials (including ice), pal-  
20 lets, and dunnage.”.

21 **SEC. 4. NOTIFICATIONS AND CERTIFICATIONS.**

22 Section 5902 is amended to read as follows:

23 **“§ 5902. Notifications and certifications**

24 “(a) PRIOR NOTIFICATION.—

25 “(1) IN GENERAL.—If the first carrier to which  
26 any loaded container or trailer having a projected

1 gross cargo weight of more than 29,000 pounds is  
2 tendered for intermodal transportation is a motor  
3 carrier, the person tendering the container or trailer  
4 shall give the motor carrier a notification of the pro-  
5 jected gross cargo weight and a reasonable descrip-  
6 tion of the contents of the container or trailer before  
7 the tendering of the container or trailer. The notifi-  
8 cation may be transmitted electronically or by tele-  
9 phone.

10 “(2) APPLICABILITY.—This subsection applies  
11 to any person within the United States who tenders  
12 a container or trailer subject to this chapter for  
13 intermodal transportation if the first carrier is a  
14 motor carrier.

15 “(b) CERTIFICATION.—

16 “(1) IN GENERAL.—A person who tenders a  
17 loaded container or trailer with an actual gross  
18 cargo weight of more than 29,000 pounds, to a first  
19 carrier for intermodal transportation shall provide a  
20 certification of the contents of the container or trail-  
21 er in writing, or electronically, before or when the  
22 container or trailer is so tendered.

23 “(2) CONTENTS OF CERTIFICATION.—The cer-  
24 tification required by paragraph (1) shall include the  
25 following:

1           “(A) The actual gross cargo weight.

2           “(B) A reasonable description of the con-  
3           tents of the container or trailer.

4           “(C) The identity of the certifying party.

5           “(D) The container or trailer number.

6           “(E) The date of certification or transfer  
7           of data to another document, as provided for in  
8           paragraph (3).

9           “(3) TRANSFER OF CERTIFICATION DATA.—A  
10          carrier who receives a certification may transfer the  
11          information contained in the certification to another  
12          document or to electronic format for forwarding to  
13          a subsequent carrier. The person transferring the in-  
14          formation shall state on the forwarded document the  
15          date on which the data was transferred and the  
16          identity of the party who performed the transfer.

17          “(4) SHIPPING DOCUMENTS.—For purposes of  
18          this chapter, a shipping document, prepared by the  
19          person tendering a container or trailer to a first car-  
20          rier, that contains the information required by para-  
21          graph (2) meets the requirements of paragraph (1).

22          “(5) USE OF ‘FREIGHT ALL KINDS’ TERM.—  
23          The term ‘Freight All Kinds’ or ‘FAK’ may not be  
24          used for the purpose of certification under this sub-  
25          section after December 31, 2000, as a description

1 required under paragraph (2)(B) for a trailer or  
2 container if the weight of any commodity in the  
3 trailer or container equals or exceeds 20 percent of  
4 the total weight of the contents of the trailer or con-  
5 tainer. This subsection does not prohibit the use of  
6 such term after December 31, 2000, for rating pur-  
7 poses.

8 “(6) SEPARATE DOCUMENT MARKING.—If a  
9 separate document is used to meet the requirements  
10 of paragraph (1), it shall be conspicuously marked  
11 ‘INTERMODAL CERTIFICATION’.

12 “(7) APPLICABILITY.—This subsection applies  
13 to any person, domestic or foreign, who first tenders  
14 a container or trailer subject to this chapter for  
15 intermodal transportation within the United States.

16 “(c) FORWARDING CERTIFICATIONS TO SUBSEQUENT  
17 CARRIERS.—

18 “(1) GENERAL RULE.—A carrier, agent of a  
19 carrier, broker, customs broker, freight forwarder,  
20 warehouser, or terminal operator shall forward the  
21 certification provided under subsection (b) to a sub-  
22 sequent carrier transporting the container or trailer  
23 in intermodal transportation before or when the con-  
24 tainer or trailer is tendered to the subsequent car-  
25 rier.

1           “(2) PRESUMPTION OF NO CERTIFICATION RE-  
2           QUIRED.—If no certification is received by the sub-  
3           sequent carrier before or when the container or trail-  
4           er is being tendered to it, the subsequent carrier  
5           may presume that no certification is required.

6           “(3) LIMITATION ON CONSTRUCTION OF FOR-  
7           WARDING.—The act of forwarding the certification  
8           may not be construed as a verification or affirmation  
9           of the accuracy or completeness of the information  
10          in the certification.

11          “(4) LIABILITY.—

12                 “(A) IN GENERAL.—If a person inac-  
13                 curately transfers the information on the certifi-  
14                 cation or fails to forward the certification to a  
15                 subsequent carrier, then that person is liable to  
16                 any person who incurs any bond, fine, penalty,  
17                 cost (including storage), or interest charge in-  
18                 curred as a result of the inaccurate transfer of  
19                 information or failure to forward the certifi-  
20                 cation.

21                 “(B) LIEN.—A subsequent carrier incur-  
22                 ring a bond, fine, penalty, or cost (including  
23                 storage), or interest charge as a result of the  
24                 inaccurate transfer of the information or the  
25                 failure to forward the certification shall have a

1           lien against the contents of the container or  
2           trailer under section 5905 in the amount of the  
3           bond, fine, penalty, or cost (including storage),  
4           or interest charge and all court costs and legal  
5           fees incurred by the carrier as a result of such  
6           inaccurate transfer or failure.

7           “(5) NOTICE TO LEASED OPERATORS.—If a  
8           motor carrier knows that the gross cargo weight of  
9           an intermodal container or trailer subject to the cer-  
10          tification requirements of subsection (b) would result  
11          in a violation of applicable State gross vehicle weight  
12          laws—

13                   “(A) a motor carrier must inform the oper-  
14                   ator of a vehicle which is leased by the vehicle  
15                   operator to a motor carrier which transports an  
16                   intermodal container or trailer of the gross  
17                   cargo weight of the container or trailer as cer-  
18                   tified to the motor carrier pursuant to sub-  
19                   section (b);

20                   “(B) the notice must be provided to the  
21                   operator prior to the operator being tendered  
22                   the container or trailer;

23                   “(C) the notice required by this subsection  
24                   must be in writing, but may be transmitted  
25                   electronically;

1           “(D) the motor carrier shall bear the bur-  
2           den of proof to establish that it tendered the re-  
3           quired notice to the operator; and

4           “(E) if the operator of a leased vehicle  
5           transporting a container or trailer subject to  
6           this chapter should receive a fine because of a  
7           violation of a State’s gross vehicle weight laws  
8           or regulations and lessee motor carrier cannot  
9           establish that it tendered to the operator the  
10          notice required by this section, the operator  
11          shall be entitled to reimbursement from the  
12          motor carrier of the amount of any fine and  
13          court costs resulting from the failure of the  
14          motor carrier to tender the notice to the opera-  
15          tor.

16          “(d) LIABILITY TO OWNER OR BENEFICIAL  
17 OWNER.—If—

18           “(1) a person inaccurately transfers informa-  
19           tion on a certification required by subsection (b)(1)  
20           or fails to forward a certification to the subsequent  
21           carrier;

22           “(2) as a result of the inaccurate transfer of  
23           such information or a failure to forward a certifi-  
24           cation, the subsequent carrier incurs a bond, fine,

1 penalty, or cost (including storage), or interest  
2 charge; and

3 “(3) a subsequent carrier exercises its rights to  
4 a lien under section 5905,

5 then that person is liable to the owner or beneficial owner  
6 or to any other person paying the amount of the lien to  
7 the subsequent carrier for the amount of the lien and all  
8 costs related to the imposition of the lien, including court  
9 costs and legal fees incurred in connection with imposition  
10 of the lien.

11 “(e) NONAPPLICABILITY.—

12 “(1) CONSOLIDATED SHIPMENTS.—The notifi-  
13 cation and certification requirements of subsections  
14 (a) and (b) do not apply to any intermodal container  
15 or trailer containing consolidated shipments loaded  
16 by a motor carrier if that motor carrier—

17 “(A) performs the highway portion of the  
18 intermodal movement; or

19 “(B) assumes the responsibility for any  
20 weight-related fine or penalty incurred by any  
21 other motor carrier that performs a part of the  
22 highway transportation.

23 “(2) INTERMODAL TRANSPORTATION OF LOAD-  
24 ED CONTAINERS.—

1           “(A) IN GENERAL.—Subsections (a) and  
2           (b) and section 5903(c) do not apply to a car-  
3           rier when the carrier is transferring a loaded  
4           container or trailer to another carrier during  
5           intermodal transportation, unless the carrier is  
6           also the person tendering the loaded container  
7           or trailer to the first carrier.

8           “(B) SPECIAL RULE.—A carrier, agent of  
9           a carrier, broker, customs broker, freight for-  
10          warder, warehouse, or terminal operator is  
11          deemed not to be a person tendering a loaded  
12          container or trailer to a first carrier under this  
13          section, unless the carrier, agent, broker, cus-  
14          toms broker, freight forwarder, warehouse, or  
15          terminal operator assumes legal responsibility  
16          for loading property into the container or trail-  
17          er.”.

18 **SEC. 5. PROHIBITIONS.**

19          (a) PROVIDING ERRONEOUS INFORMATION.—Section  
20          5903(a) is amended by inserting “, to whom section  
21          5902(b) applies,” after “A person”.

22          (b) TRANSPORTING PRIOR TO RECEIVING CERTIFI-  
23          CATION.—Section 5903(b) is amended to read as follows:

24          “(b) TRANSPORTING PRIOR TO RECEIVING CERTIFI-  
25          CATION.—

1           “(1) PRESUMPTION.—If no certification is re-  
2           ceived by a motor carrier before or when a loaded  
3           intermodal container or trailer is tendered to it, the  
4           motor carrier may presume that the gross cargo  
5           weight of the container or trailer is less than 29,001  
6           pounds.

7           “(2) COPY OF CERTIFICATION NOT REQUIRED  
8           TO ACCOMPANY CONTAINER OR TRAILER.—Notwith-  
9           standing any other provision of this chapter, if a cer-  
10          tification is required by section 5902(b), a copy of  
11          the certification is not required to accompany the  
12          intermodal container or trailer.”.

13          (c) UNLAWFUL COERCION.—Section 5903(c)(1) is  
14          amended by striking “10,000 pounds (including packing  
15          materials and pallets)” and inserting “29,000 pounds”.

16          **SEC. 6. LIENS.**

17          (a) GENERAL RULE.—Section 5905(a) is amended to  
18          read as follows:

19          “(a) GENERAL RULE.—If a person involved in the  
20          intermodal transportation of a loaded container or trailer  
21          for which a certification is required by section 5902(b) of  
22          this title is required, because of a violation of a State’s  
23          gross vehicle weight laws or regulations, to post a bond  
24          or pay a fine, penalty, cost (including storage), or interest  
25          charge resulting from—

1           “(1) erroneous information provided by the cer-  
2           tifying party in the certification to the first carrier  
3           in violation of section 5903(a),

4           “(2) the failure of the party required to provide  
5           the certification to the first carrier to provide it,

6           “(3) the failure of a person required under sec-  
7           tion 5902(c) to forward the certification to forward  
8           it, or

9           “(4) an error occurring in the transfer of infor-  
10          mation on the certification to another document  
11          under section 5902(b)(3) or 5902(c),

12 then the person posting the bond, or paying any fine, pen-  
13 alty, cost (including storage), or interest charge has a lien  
14 against the contents equal to the amount of the bond, fine,  
15 penalty, cost (including storage), or interest charge in-  
16 curred, until the person receives a payment of that amount  
17 from the owner or beneficial owner of the contents or from  
18 the person responsible for making or forwarding the cer-  
19 tification or transferring the information from the certifi-  
20 cation to another document.”.

21          (b) LIMITATIONS.—Section 5905(b)(1) is amended—

22                 (1) by inserting after “the first carrier” the fol-  
23                 lowing: “or the owner or beneficial owner of the con-  
24                 tents”; and

1           (2) by striking “cost, or interest.” and inserting  
2           “cost (including storage), or interest charge. The  
3           lien shall remain in effect until the lien holder has  
4           received payment for all costs and expenses as de-  
5           scribed in subsection (a).”.

6 **SEC. 7. PERISHABLE AGRICULTURAL COMMODITIES.**

7           Section 5906 is amended by striking “Sections  
8           5904(a)(2) and 5905 of this title do” and insert “Section  
9           5905 does”.

10 **SEC. 8. EFFECTIVE DATE.**

11           Section 5907 is amended to read as follows:

12 **“§ 5907. Effective date**

13           “This chapter, as amended by the Intermodal Safe  
14           Container Transportation Act Amendments of 1996, is ef-  
15           fective on the date of the enactment of such Act. The pro-  
16           visions of this chapter shall be implemented 180 days after  
17           such date of enactment.”.

18 **SEC. 9. RELATIONSHIP TO OTHER LAWS.**

19           (a) IN GENERAL.—Chapter 59 is amended by adding  
20           at the end the following new section:

21 **“§ 5908. Relationship to other laws**

22           “Nothing in this chapter affects—

23                   “(1) chapter 51 (relating to transportation of  
24                   hazardous material) or the regulations issued under  
25                   that chapter; or

1           “(2) any State highway weight or size law or  
2 regulation applicable to tractor-trailer combina-  
3 tions.”.

4           (b) CONFORMING AMENDMENT.—The analysis for  
5 such chapter is amended by striking the item relating to  
6 section 5907 and inserting the following:

“5907. Effective date.

“5908. Relationship to other laws.”.

Passed the House of Representatives September 18,  
1996.

Attest:

ROBIN H. CARLE,

*Clerk.*