

Union Calendar No. 432

104TH CONGRESS
2^D Session

H. R. 4040

[Report No. 104-794]

A BILL

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

SEPTEMBER 17, 1996

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 1996

Mr. SHUSTER (for himself, Mr. OBERSTAR, Mr. PETRI, and Mr. RAHALL) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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A BILL

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 warehouse, 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 inserting “Sec-
9 tion 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.”.