

117TH CONGRESS
2D SESSION

S. 3580

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2022

Ms. KLOBUCHAR (for herself, Mr. THUNE, Ms. BALDWIN, Mr. HOEVEN, Ms. STABENOW, Mr. MARSHALL, Mr. PETERS, Mr. MORAN, Mr. BLUMENTHAL, Mr. YOUNG, Mr. KELLY, Mrs. BLACKBURN, Mr. BOOKER, and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, and for other purposes.

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 “Ocean Shipping Re-
5 form Act of 2022”.

6 **SEC. 2. PURPOSES.**

7 Section 40101 of title 46, United States Code, is
8 amended—

1 (1) by striking paragraph (2) and inserting the
2 following:

3 “(2) ensure an efficient, competitive, and eco-
4 nomical transportation system in the ocean com-
5 merce of the United States;”;

6 (2) in paragraph (3), by inserting “and sup-
7 porting commerce” before “needs”; and

8 (3) by striking paragraph (4) and inserting the
9 following:

10 “(4) promote the growth and development of
11 United States exports.”.

12 **SEC. 3. SERVICE CONTRACTS.**

13 Section 40502(c) of title 46, United States Code, is
14 amended—

15 (1) in paragraph (7) by striking “; and” and in-
16 serting a semicolon;

17 (2) in paragraph (8) by striking the period and
18 inserting “; and”; and

19 (3) by adding at the end the following:

20 “(9) any other essential terms that the Federal
21 Maritime Commission determines necessary or ap-
22 propriate.”.

1 **SEC. 4. SHIPPING EXCHANGE REGISTRY.**

2 (a) IN GENERAL.—Chapter 405 of title 46, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 40504. Shipping exchange registry**

6 “(a) IN GENERAL.—No person may operate a ship-
7 ping exchange involving ocean transportation in the for-
8 eign commerce of the United States unless the shipping
9 exchange is registered as a national shipping exchange
10 under the terms and conditions provided in this section
11 and the regulations issued pursuant to this section.

12 “(b) REGISTRATION.—A person shall register a ship-
13 ping exchange by filing with the Federal Maritime Com-
14 mission (referred to in this section as the ‘Commission’)
15 an application for registration in such form as the Com-
16 mission, by rule, may prescribe containing the rules of the
17 exchange and such other information and documents as
18 the Commission, by rule, may prescribe as necessary or
19 appropriate in the public interest.

20 “(c) EXEMPTION.—The Commission may exempt,
21 conditionally or unconditionally, a shipping exchange from
22 registration under this section if the Commission finds
23 that the shipping exchange is subject to comparable, com-
24 prehensive supervision and regulation by the appropriate
25 governmental authorities in a foreign country where the
26 shipping exchange is headquartered.

1 “(d) REGULATIONS.—Not later than 3 years after
2 the date of enactment of the Ocean Shipping Reform Act
3 of 2022, the Commission shall issue regulations pursuant
4 to subsection (a), which shall set standards necessary to
5 carry out subtitle IV of this title for registered national
6 shipping exchanges, including the minimum requirements
7 for service contracts established under section 40502 of
8 this title.

9 “(e) DEFINITION OF SHIPPING EXCHANGE.—In this
10 section, the term ‘shipping exchange’ means a service or
11 platform for shippers to communicate freight traffic and
12 capacity information to common carriers.”.

13 (b) APPLICABILITY.—The registration requirement
14 under section 40504 of title 46, United States Code (as
15 added by subsection (a)), shall take effect on the date on
16 which the Federal Maritime Commission states the rule
17 is effective in the regulations issued under such section.

18 (c) CLERICAL AMENDMENT.—The analysis for chap-
19 ter 405 of title 46, United States Code, is amended by
20 adding at the end the following:

“40504. Shipping exchange registry.”.

21 **SEC. 5. PROHIBITION ON RETALIATION.**

22 Section 41102 of title 46, United States Code, is
23 amended by adding at the end the following:

24 “(d) PROHIBITION ON RETALIATION.—

1 “(1) IN GENERAL.—A common carrier, marine
2 terminal operator, or ocean transportation inter-
3 mediary, either alone or in conjunction with any
4 other person, directly or indirectly, may not retaliate
5 against a shipper, a motor carrier, or an agent of
6 such a shipper or carrier by taking any action de-
7 scribed in paragraph (2) because the shipper or
8 motor carrier has patronized another common car-
9 rier, marine terminal operator, or ocean transpor-
10 tation intermediary, or has filed a complaint, or for
11 any other reason.

12 “(2) ACTIONS.—The actions described in this
13 paragraph are—

14 “(A) refusing, or threatening to refuse,
15 cargo space accommodations when available; or

16 “(B) resorting to any other prohibited ac-
17 tions under section 41104(a)(3).”.

18 **SEC. 6. PUBLIC DISCLOSURE.**

19 Section 46106 of title 46, United States Code, is
20 amended by adding at the end the following:

21 “(d) PUBLIC DISCLOSURES.—The Federal Maritime
22 Commission shall publish, and annually update, on the
23 website of the Commission—

24 “(1) all findings by the Commission of false
25 certifications by common carriers or marine terminal

1 operators under section 41104(a)(15) of this title;
2 and

3 “(2) all penalties imposed or assessed against
4 common carriers or marine terminal operators, as
5 applicable, under sections 41107, 41108, and 41109,
6 listed by each common carrier or marine terminal
7 operator.”.

8 **SEC. 7. COMMON CARRIERS.**

9 (a) IN GENERAL.—Section 41104 of title 46, United
10 States Code, is amended—

11 (1) in subsection (a)—

12 (A) in the matter preceding paragraph (1),
13 by striking “may not” and inserting “shall
14 not”;

15 (B) by striking paragraph (3) and insert-
16 ing the following:

17 “(3) with due regard being given to the proper
18 loading of the vessel and the available tonnage,
19 refuse cargo space accommodations when available,
20 or resort to other unfair or unjustly discriminatory
21 methods;”;

22 (C) in paragraph (5), by striking “in the
23 matter of rates or charges” and inserting
24 “against any commodity group or type of ship-
25 ment or in the matter of rates or charges”;

1 (D) in paragraph (9), by inserting
2 “against any commodity group or type of ship-
3 ment or in the matter of rates or charges” after
4 “disadvantage”;

5 (E) in paragraph (10), by adding “, in-
6 cluding with respect to vessel space accommoda-
7 tions” after “negotiate”;

8 (F) in paragraph (12) by striking “; or”
9 and inserting a semicolon;

10 (G) in paragraph (13) by striking the pe-
11 riod and inserting a semicolon; and

12 (H) by adding at the end the following:

13 “(14) assess any party for a charge that is in-
14 consistent or does not comply with all applicable pro-
15 visions of part 545 of title 46, Code of Federal Reg-
16 ulations (or successor regulations); or

17 “(15) invoice any party for demurrage or deten-
18 tion charges, unless accompanied by an accurate cer-
19 tification that such charges comply with—

20 “(A) all provisions of part 545 of title 46,
21 Code of Federal Regulations (or successor regu-
22 lations); and

23 “(B) the findings of the final rule pub-
24 lished on May 18, 2020, entitled ‘Interpretive

1 Rule on Demurrage and Detention Under the
2 Shipping Act' (85 Fed. Reg. 29638)."; and

3 (2) by adding at the end the following:

4 "(d) VIOLATION OF PROHIBITION.—If the Commis-
5 sion determines, after an investigation in response to a
6 submission under section 41310, that a certification under
7 subsection (a)(15) was inaccurate or false, penalties under
8 section 41107 shall be applied.

9 "(e) CERTIFICATION.—Failure to include a certifi-
10 cation under subsection (a)(15) alongside any demurrage
11 or detention charge shall eliminate any obligation of the
12 charged party to pay the applicable charge."

13 (b) RULEMAKING ON DEMURRAGE OR DETENTION.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this Act, the Federal Mari-
16 time Commission shall issue rulemaking further de-
17 fining prohibited practices by common carriers, ma-
18 rine terminal operators, shippers, and ocean trans-
19 portation intermediaries under section 41102(c) of
20 title 46, United States Code, regarding the assess-
21 ment of demurrage or detention charges.

22 (2) CONTENTS.—The rulemaking under para-
23 graph (1) shall seek to further clarify reasonable
24 rules and practices related to the assessment of de-
25 tention and demurrage charges to address the issues

1 identified in the final rule published on May 18,
2 2020, titled “Interpretive Rule on Demurrage and
3 Detention Under the Shipping Act” (85 Fed. Reg.
4 29638), including a determination of which parties
5 may be appropriately billed for any demurrage, de-
6 tention, or other similar per container charges.

7 (c) RULEMAKING ON UNFAIR OR UNJUSTLY DIS-
8 CRIMINATORY METHODS.—Not later than 1 year after the
9 date of enactment of this Act, the Federal Maritime Com-
10 mission shall issue rulemaking defining unfair or unjustly
11 discriminatory methods under section 41104(a)(3) of title
12 46, as amended by this section.

13 (d) RULEMAKING ON UNREASONABLY REFUSE TO
14 DEAL OR NEGOTIATE WITH RESPECT TO VESSEL SPACE
15 ACCOMMODATIONS.—Not later than 1 year after the date
16 of enactment of this Act, the Federal Maritime Commis-
17 sion shall issue rulemaking defining unreasonable refusal
18 to deal or negotiate with respect to vessel space under sec-
19 tion 41104(a)(10) of title 46, as amended by this section.

20 **SEC. 8. ASSESSMENT OF PENALTIES OR REFUNDS.**

21 (a) IN GENERAL.—Title 46, United States Code, is
22 amended—

23 (1) in section 41107—

24 (A) in the section heading, by inserting
25 “**or refunds**” after “**penalties**”;

1 (B) in subsection (a), by inserting “or, in
2 addition to or in lieu of a civil penalty, is liable
3 for the refund of a charge” after “civil pen-
4 alty”; and

5 (C) in subsection (b), by inserting “or, in
6 addition to or in lieu of a civil penalty, the re-
7 fund of a charge,” after “civil penalty”; and
8 (2) in section 41109—

9 (A) in the section heading, by inserting
10 “**or refunds**” after “**penalties**”;

11 (B) in subsection (a)—

12 (i) by inserting “or, in addition to or
13 in lieu of a civil penalty, order the refund
14 of a charge” after “this part”; and

15 (ii) by inserting “or refund of such
16 charge” after “conditions, a civil penalty”;

17 (C) by striking subsection (c);

18 (D) by redesignating subsections (d)
19 through (g) as subsections (c) through (f);

20 (E) in subsection (d), as redesignated by
21 subparagraph (D), by inserting “or order a re-
22 fund of a charge” after “civil penalty”;

23 (F) in subsection (e), as redesignated by
24 subparagraph (D), by inserting “or who is or-

1 dered to refund a charge” after “civil penalty is
2 assessed”; and

3 (G) in subsection (f), as redesignated by
4 subparagraph (D)—

5 (i) by inserting “or pay a refund of a
6 charge” after “of a civil penalty”; and

7 (ii) by inserting “or the amount or-
8 dered to be refunded” after “amount as-
9 sessed”.

10 (b) CLERICAL AMENDMENTS.—The analysis for
11 chapter 411 of title 46, United States Code, is amended—

12 (1) by striking the item relating to section
13 41107 and inserting the following:

“41107. Monetary penalties or refunds.”;

14 and

15 (2) by striking the item relating to section
16 41109 and inserting the following:

“41109. Assessment of penalties or refunds.”.

17 **SEC. 9. DATA COLLECTION.**

18 (a) IN GENERAL.—Chapter 411 of title 46, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“SEC. 41110. DATA COLLECTION.**

22 “(a) IN GENERAL.—Common carriers covered under
23 this chapter shall submit to the Federal Maritime Com-
24 mission a calendar quarterly report that describes the

1 total import and export tonnage and the total loaded and
 2 empty 20-foot equivalent units per vessel (making port in
 3 the United States, including any territory or possession
 4 of the United States) operated by such common carrier.

5 “(b) PROHIBITION ON DUPLICATION.—Data required
 6 to be reported under subsection (a) may not duplicate in-
 7 formation—

8 “(1) submitted to the Corps of Engineers pur-
 9 suant to section 11 of the Act entitled ‘An Act au-
 10 thorizing the construction, repair, and preservation
 11 of certain public works on rivers and harbors, and
 12 for other purposes’, approved September 22, 1922
 13 (33 U.S.C. 555), by an ocean common carrier acting
 14 as a vessel operator; or

15 “(2) submitted pursuant to section 481 of the
 16 Tariff Act of 1930 (19 U.S.C. 1481) to Customs
 17 and Border Protection by merchandise importers.”.

18 (b) CLERICAL AMENDMENT.—The analysis for chap-
 19 ter 411 of title 46, United States Code, is amended by
 20 adding at the end the following:

“41110. Data collection.”.

21 **SEC. 10. CHARGE COMPLAINTS.**

22 (a) IN GENERAL.—Chapter 413 of title 46, United
 23 States Code, is amended by adding at the end the fol-
 24 lowing:

1 **“§ 41310. Charge complaints**

2 “(a) IN GENERAL.—A person may submit to the
3 Federal Maritime Commission, and the Commission shall
4 accept, information concerning charges. The information
5 submitted to the Commission may include the bill of lading
6 numbers, certifications, or any other relevant information.

7 “(b) INVESTIGATION.—Upon receipt of a submission
8 under subsection (a), with respect to a charge assessed
9 by a common carrier, the Commission shall promptly in-
10 vestigate the charge with regard to compliance with sec-
11 tion 41104(a). The common carrier shall—

12 “(1) be provided an opportunity to submit addi-
13 tional information related to the charge in question;
14 and

15 “(2) bear the burden of establishing the reason-
16 ableness of any demurrage or detention charges
17 which are the subject of any complaint proceeding
18 challenging a common carrier or marine terminal op-
19 erator demurrage or detention charge pursuant to
20 section 545.5 of title 46, Code of Federal regulations
21 (or successor regulations).

22 “(c) REFUND.—Upon receipt of submissions under
23 subsection (a), if the Commission determines that a
24 charge does not comply with section 41104(a), the Com-
25 mission shall promptly order the refund of any demurrage
26 and detention charges paid.

1 “(d) PENALTIES.—In the event of a finding that a
2 charge does not comply with section 41104(a) after sub-
3 mission under subsection (a), a civil penalty under section
4 41107 shall be applied to the common carrier making such
5 charge.”.

6 (b) CLERICAL AMENDMENT.—The analysis for chap-
7 ter 413 of title 46, United States Code, is amended by
8 adding at the end the following:

“41310. Charge complaints.”.

9 **SEC. 11. INVESTIGATIONS.**

10 (a) AMENDMENTS.—Section 41302 of title 46,
11 United States Code, is amended—

12 (1) in subsection (a), in the first sentence, by
13 striking “or agreement” and inserting “agreement,
14 fee, or charge”; and

15 (2) in subsection (b)—

16 (A) in the subsection heading, by striking
17 “**Agreement**” and inserting “**Agreement,**
18 **fee, or charge**”; and

19 (B) by inserting “, fee, or charge” after
20 “agreement”.

21 (b) REPORT.—The Federal Maritime Commission
22 shall publish on a publicly available website of the Com-
23 mission a report containing the results of the investigation
24 entitled “Fact Finding No. 29, International Ocean
25 Transportation Supply Chain Engagement”.

1 **SEC. 12. AWARD OF ADDITIONAL AMOUNTS.**

2 Section 41305 of title 46, United States Code, is
3 amended—

4 (1) in subsection (c)—

5 (A) by striking “section 41102(b),”
6 through “or (3)” and inserting “subsection (b),
7 (c), or (d) of section 41102, paragraph (3) or
8 (6) of section 41104(a), or paragraph (1) or (3)
9 of section 41105”; and

10 (B) by inserting “or if the Commission de-
11 termined that a violation of section 41104(a) of
12 this title was made,” after “of this title”; and

13 (2) in subsection (d), by striking “section
14 41104(4)(A) or (B)” and inserting “subparagraph
15 (A) or (B) of section 41104(a)(4)”.

16 **SEC. 13. ENFORCEMENT OF REPARATION ORDERS.**

17 (a) IN GENERAL.—Section 41309 of title 46, United
18 States Code, is amended—

19 (1) in the section heading, by inserting “**or re-**
20 **fund**” after “**reparation**”;

21 (2) in subsection (a)—

22 (A) by inserting “or refund of a charge”
23 after “payment of reparation”; and

24 (B) by inserting “or to whom the refund of
25 the charge was ordered” after “award was
26 made”; and

1 (3) in subsection (b), by inserting “or refund of
2 such a charge” after “award of reparation”.

3 (b) CLERICAL AMENDMENT.—The analysis for chap-
4 ter 413 of title 46, United States Code, is amended by
5 striking the item relating to section 41309 and inserting
6 the following:

“41309. Enforcement of reparation or refund orders.”.

7 **SEC. 14. ANNUAL REPORT TO CONGRESS.**

8 Section 46106(b) of title 46, United States Code, is
9 amended—

10 (1) in paragraph (5) by striking “and” at the
11 end;

12 (2) in paragraph (6), by striking the period and
13 inserting “; and”; and

14 (3) by adding at the end the following:

15 “(7) an identification of any otherwise con-
16 cerning practices by ocean common carriers, particu-
17 larly such carriers that are controlled carriers, that
18 are—

19 “(A) State-owned or State-controlled enter-
20 prises; or

21 “(B) owned or controlled by, a subsidiary
22 of, or otherwise related legally or financially
23 (other than a minority relationship or invest-
24 ment) to a corporation based in a country—

1 “(i) identified as a nonmarket econ-
2 omy country (as defined in section 771(18)
3 of the Tariff Act of 1930 (19 U.S.C.
4 1677(18))) as of the date of enactment of
5 this paragraph;

6 “(ii) identified by the United States
7 Trade Representative in the most recent
8 report required by section 182 of the
9 Trade Act of 1974 (19 U.S.C. 2242) as a
10 priority foreign country under subsection
11 (a)(2) of that section; or

12 “(iii) subject to monitoring by the
13 United States Trade Representative under
14 section 306 of the Trade Act of 1974 (19
15 U.S.C. 2416).”.

16 **SEC. 15. TECHNICAL AMENDMENTS.**

17 (a) **ADDITIONAL PENALTIES.**—Section 41108(a) of
18 title 46, United States Code, is amended by striking “sec-
19 tion 41104(1), (2), or (7)” and inserting “paragraph (1),
20 (2), or (7) of section 41104(a)”.

21 (b) **ASSESSMENT OF PENALTIES.**—Section 41109(c)
22 of title 46, United States Code, is amended by striking
23 “section 41104(1) or (2)” and inserting “paragraph (1)
24 or (2) of section 41104(a)”.

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