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AB-2406 Intermodal marine terminals. (2021-2022)

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Assembly Bill No. 2406

CHAPTER 868

An act to amend Section 22928 of the Business and Professions Code, relating to business.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, 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 container provider from imposing those charges, extended dwell 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 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 transaction, as specified. The bill would also specify that those circumstances include when a return or delivery of an intermodal container is delayed because a booked vessel's receiving date changes, and when the 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 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 define "intermodal marine 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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22928 of the Business and Professions Code is amended to read:

22928. (a) The Legislature finds and declares that unilateral termination, suspension, or restriction of equipment interchange rights of a motor carrier shall not result from intermodal marine terminal or intermodal marine container provider actions as specified in subdivision (b).

(b) An intermodal marine container provider or intermodal marine terminal operator shall not commence or continue free time or impose per diem, detention, demurrage, extended dwell, or charges of a similar kind or character on a motor carrier, beneficial cargo owner, or other intermediary relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

(1) When the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate.

(2) When the intermodal marine container provider decides to divert equipment from the original interchange location without 48 hours' electronic or written notification to the motor carrier.

(3) When the intermodal marine terminal is assessed a fine pursuant to Section 40720 of the Health and Safety Code.

(4) When the intermodal chassis is out of compliance pursuant to Section 34505.9 of the Vehicle Code or the equipment is placed out of service in such a manner as to result in a per diem, detention, or demurrage charge.

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

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

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

(A) For appointment attempts during an intermodal marine terminal's posted first shift hours, no other appointments were available.

(B) For appointment attempts during an intermodal marine terminal's posted second shift hours, no other appointments were available.

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

(8) When an intermodal marine container provider or intermodal marine terminal has unilaterally imposed transaction restrictions, such as single or dual transaction, chassis matching, or empty container requirements that prevent a transaction and failed to provide a return location or other conditions that impede the motor carrier's ability to pick up or terminate intermodal marine containers.

(9) When a return or delivery of an intermodal container is delayed because a booked vessel's receiving date changes.

(10) 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.

(c) An intermodal marine container provider shall not take any of the following actions:

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

(2) 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 container provider, while the dispute resolution process is ongoing.

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

(4) Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier or driver for parking tickets issued by the intermodal 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 intermodal 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 intermodal marine terminal personnel or security.

(5) 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. A motor carrier shall not be liable for any portion of demurrage when an intermodal container is not picked up during free time.

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

(7) If a loaded container is not made available for pickup when a motor carrier arrives at the intermodal marine terminal, and all current charges have been paid, the intermodal marine terminal operator or intermodal marine container provider shall not impose any further cargo demurrage charges on the motor carrier, beneficial cargo owner, or other intermediary.

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

(e) As used in this chapter:

(1) "Closed" means that the terminal is not open or available to receive equipment. The marine terminal shall have posted working hours, and "closed" shall mean that the terminal is not open to release or accept equipment during those posted working hours.

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

(3) "Free time" means the time period offered by the intermodal marine container provider free of charge, beyond which additional charges, including per diem, detention, demurrage, extended dwell, or charges of a similar kind or character, are to be applied.

(4) "Intermodal marine container provider" means the entity authorizing delivery or receipt of physical possession of the container with a motor carrier, beneficial cargo owner, or other intermediary.

(5) "Intermodal marine terminal" means a marine terminal that engages in discharging or receiving equipment owned, operated, or controlled by an equipment provider. "Intermodal marine terminal" shall not include a local, municipal, or special district public agency seaport.

(6) "Motor carrier" has the same meaning as defined in Section 408 of the Vehicle Code.

(7) "Per diem," "detention," or "demurrage" means a charge imposed by an intermodal marine container provider or marine terminal operator for late return or pickup of an empty or a loaded intermodal container.

(8) "Satellite facility" means 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.

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

(10) "Written or electronic notification" means any communication by postal letter, facsimile, electronic mail, or other electronic notification.

(f) (1) Where provisions of this section 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.

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

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