

105TH CONGRESS
2^D SESSION

S. 414

AMENDMENT

In the House of Representatives, U. S.,

August 4, 1998.

Resolved, That the bill from the Senate (S. 414) entitled “An Act to amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States exports, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Ocean Shipping Reform*
3 *Act of 1998”.*

4 ***SEC. 2. EFFECTIVE DATE.***

5 *Except as otherwise expressly provided in this Act, this*
6 *Act and the amendments made by this Act take effect May*
7 *1, 1999.*

8 ***TITLE I—AMENDMENTS TO THE***
9 ***SHIPPING ACT OF 1984***

10 ***SEC. 101. PURPOSE.***

11 *Section 2 of the Shipping Act of 1984 (46 U.S.C. App.*
12 *1701) is amended by—*

1 (1) striking “and” after the semicolon in para-
2 graph (2);

3 (2) striking “needs.” in paragraph (3) and in-
4 sserting “needs; and”;

5 (3) adding at the end thereof the following:

6 “(4) to promote the growth and development of
7 United States exports through competitive and effi-
8 cient ocean transportation and by placing a greater
9 reliance on the marketplace.”.

10 **SEC. 102. DEFINITIONS.**

11 Section 3 of the Shipping Act of 1984 (46 U.S.C. App.
12 1702) is amended by—

13 (1) striking “the government under whose reg-
14 istry the vessels of the carrier operate;” in paragraph
15 (8) and inserting “a government;”;

16 (2) striking paragraph (9) and inserting the fol-
17 lowing:

18 “(9) ‘deferred rebate’ means a return by a com-
19 mon carrier of any portion of freight money to a
20 shipper as a consideration for that shipper giving all,
21 or any portion, of its shipments to that or any other
22 common carrier over a fixed period of time, the pay-
23 ment of which is deferred beyond the completion of
24 service for which it is paid, and is made only if the

1 *shipper has agreed to make a further shipment or*
2 *shipments with that or any other common carrier.”;*

3 (3) *striking paragraph (10) and redesignating*
4 *paragraphs (11) through (27) as paragraphs (10)*
5 *through (26);*

6 (4) *striking “in an unfinished or semifinished*
7 *state that require special handling moving in lot sizes*
8 *too large for a container,” in paragraph (10), as re-*
9 *designated;*

10 (5) *striking “paper board in rolls, and paper in*
11 *rolls.” in paragraph (10) as redesignated and insert-*
12 *ing “paper and paper board in rolls or in pallet or*
13 *skid-sized sheets.”;*

14 (6) *striking “conference, other than a service con-*
15 *tract or contract based upon time-volume rates,” in*
16 *paragraph (13) as redesignated and inserting “agree-*
17 *ment”;*

18 (7) *striking “conference.” in paragraph (13) as*
19 *redesignated and inserting “agreement and the con-*
20 *tract provides for a deferred rebate arrangement.”;*

21 (8) *by striking “carrier.” in paragraph (14) as*
22 *redesignated and inserting “carrier, or in connection*
23 *with a common carrier and a water carrier subject to*
24 *subchapter II of chapter 135 of title 49, United States*
25 *Code.”;*

1 (9) striking paragraph (16) as redesignated and
2 redesignating paragraphs (17) through (26) as redesi-
3 gnated as paragraphs (16) through (25), respectively;
4 (10) striking paragraph (17), as redesignated,
5 and inserting the following:

6 “(17) ‘ocean transportation intermediary’ means
7 an ocean freight forwarder or a non-vessel-operating
8 common carrier. For purposes of this paragraph, the
9 term—

10 “(A) ‘ocean freight forwarder’ means a per-
11 son that—

12 “(i) in the United States, dispatches
13 shipments from the United States via a
14 common carrier and books or otherwise ar-
15 ranges space for those shipments on behalf
16 of shippers; and

17 “(ii) processes the documentation or
18 performs related activities incident to those
19 shipments; and

20 “(B) ‘non-vessel-operating common carrier’
21 means a common carrier that does not operate
22 the vessels by which the ocean transportation is
23 provided, and is a shipper in its relationship
24 with an ocean common carrier.”;

1 (11) striking paragraph (19), as redesignated
2 and inserting the following:

3 “(19) ‘service contract’ means a written contract,
4 other than a bill of lading or a receipt, between one
5 or more shippers and an individual ocean common
6 carrier or an agreement between or among ocean com-
7 mon carriers in which the shipper or shippers makes
8 a commitment to provide a certain volume or portion
9 of cargo over a fixed time period, and the ocean com-
10 mon carrier or the agreement commits to a certain
11 rate or rate schedule and a defined service level, such
12 as assured space, transit time, port rotation, or simi-
13 lar service features. The contract may also specify
14 provisions in the event of nonperformance on the part
15 of any party.”; and

16 (12) striking paragraph (21), as redesignated,
17 and inserting the following:

18 “(21) ‘shipper’ means—

19 “(A) a cargo owner;

20 “(B) the person for whose account the ocean
21 transportation is provided;

22 “(C) the person to whom delivery is to be
23 made;

24 “(D) a shippers’ association; or

1 “(E) an ocean transportation intermediary,
 2 as defined in paragraph (17)(B) of this section,
 3 that accepts responsibility for payment of all
 4 charges applicable under the tariff or service con-
 5 tract.”.

6 **SEC. 103. AGREEMENTS WITHIN THE SCOPE OF THE ACT.**

7 (a) *OCEAN COMMON CARRIERS*.—Section 4(a) of the
 8 *Shipping Act of 1984 (46 U.S.C. App. 1703(a))* is amended
 9 by—

10 (1) striking “operators or non-vessel-operating
 11 common carriers;” in paragraph (5) and inserting
 12 “operators;”;

13 (2) striking “and” in paragraph (6) and insert-
 14 ing “or”; and

15 (3) striking paragraph (7) and inserting the fol-
 16 lowing:

17 “(7) discuss and agree on any matter related to
 18 service contracts.”.

19 (b) *MARINE TERMINAL OPERATORS*.—Section 4(b) of
 20 *that Act (46 U.S.C. App. 1703(b))* is amended by—

21 (1) striking “(to the extent the agreements in-
 22 volve ocean transportation in the foreign commerce of
 23 the United States)”;

24 (2) striking “and” in paragraph (1) and insert-
 25 ing “or”; and

1 (3) striking “arrangements.” in paragraph (2)
2 and inserting “arrangements, to the extent that such
3 agreements involve ocean transportation in the for-
4 eign commerce of the United States.”.

5 **SEC. 104. AGREEMENTS.**

6 (a) *IN GENERAL.*—Section 5 of the Shipping Act of
7 1984 (46 U.S.C. App. 1704) is amended by—

8 (1) striking subsection (b)(8) and inserting the
9 following:

10 “(8) provide that any member of the conference
11 may take independent action on any rate or service
12 item upon not more than 5 calendar days’ notice to
13 the conference and that, except for exempt commod-
14 ities not published in the conference tariff, the con-
15 ference will include the new rate or service item in its
16 tariff for use by that member, effective no later than
17 5 calendar days after receipt of the notice, and by
18 any other member that notifies the conference that it
19 elects to adopt the independent rate or service item on
20 or after its effective date, in lieu of the existing con-
21 ference tariff provision for that rate or service item;

22 (2) redesignating subsections (c) through (e) as
23 subsections (d) through (f); and

24 (3) inserting after subsection (b) the following:

1 “(c) *OCEAN COMMON CARRIER AGREEMENTS.*—An
2 *ocean common carrier agreement may not—*

3 “(1) *prohibit or restrict a member or members of*
4 *the agreement from engaging in negotiations for serv-*
5 *ice contracts with 1 or more shippers;*

6 “(2) *require a member or members of the agree-*
7 *ment to disclose a negotiation on a service contract,*
8 *or the terms and conditions of a service contract,*
9 *other than those terms or conditions required to be*
10 *published under section 8(c)(3) of this Act; or*

11 “(3) *adopt mandatory rules or requirements af-*
12 *fecting the right of an agreement member or agree-*
13 *ment members to negotiate and enter into service con-*
14 *tracts.*

15 *An agreement may provide authority to adopt voluntary*
16 *guidelines relating to the terms and procedures of an agree-*
17 *ment member’s or agreement members’ service contracts if*
18 *the guidelines explicitly state the right of members of the*
19 *agreement not to follow the guidelines. These guidelines*
20 *shall be confidentially submitted to the Commission.”.*

21 (b) *APPLICATION.*—

22 (1) *Subsection (e) of section 5 of that Act, as re-*
23 *designated, is amended by striking “this Act, the*
24 *Shipping Act, 1916, and the Intercoastal Shipping*
25 *Act, 1933, do” and inserting “this Act does”; and*

1 (2) *Subsection (f) of section 5 of that Act, as re-*
2 *designated, is amended by—*

3 (A) *striking “and the Shipping Act, 1916,*
4 *do” and inserting “does”;*

5 (B) *striking “or the Shipping Act, 1916,”;*
6 *and*

7 (C) *inserting “or are essential terms of a*
8 *service contract” after “tariff”.*

9 **SEC. 105. EXEMPTION FROM ANTITRUST LAWS.**

10 *Section 7 of the Shipping Act of 1984 (46 U.S.C. App.*
11 *1706) is amended by—*

12 (1) *inserting “or publication” in paragraph (2)*
13 *of subsection (a) after “filing”;*

14 (2) *striking “or” at the end of subsection (b)(2);*

15 (3) *striking “States.” at the end of subsection*
16 *(b)(3) and inserting “States; or”; and*

17 (4) *adding at the end of subsection (b) the follow-*
18 *ing:*

19 “*(4) to any loyalty contract.*”.

20 **SEC. 106. TARIFFS.**

21 (a) *IN GENERAL.—Section 8(a) of the Shipping Act*
22 *of 1984 (46 U.S.C. App. 1707(a)) is amended by—*

23 (1) *inserting “new assembled motor vehicles,”*
24 *after “scrap,” in paragraph (1);*

1 (2) striking “file with the Commission, and” in
2 paragraph (1);

3 (3) striking “inspection,” in paragraph (1) and
4 inserting “inspection in an automated tariff system,”;

5 (4) striking “tariff filings” in paragraph (1) and
6 inserting “tariffs”;

7 (5) striking “freight forwarder” in paragraph
8 (1)(C) and inserting “transportation intermediary, as
9 defined in section 3(17)(A),”;

10 (6) striking “and” at the end of paragraph
11 (1)(D);

12 (7) striking “loyalty contract,” in paragraph
13 (1)(E);

14 (8) striking “agreement.” in paragraph (1)(E)
15 and inserting “agreement; and”;

16 (9) adding at the end of paragraph (1) the fol-
17 lowing:

18 “(F) include copies of any loyalty contract,
19 omitting the shipper’s name.”; and

20 (10) striking paragraph (2) and inserting the
21 following:

22 “(2) Tariffs shall be made available electroni-
23 cally to any person, without time, quantity, or other
24 limitation, through appropriate access from remote
25 locations, and a reasonable charge may be assessed for

1 *such access. No charge may be assessed a Federal*
2 *agency for such access.”.*

3 **(b) SERVICE CONTRACTS.**—*Subsection (c) of that sec-*
4 *tion is amended to read as follows:*

5 **“(c) SERVICE CONTRACTS.**—

6 **“(1) IN GENERAL.**—*An individual ocean com-*
7 *mon carrier or an agreement between or among ocean*
8 *common carriers may enter into a service contract*
9 *with one or more shippers subject to the requirements*
10 *of this Act. The exclusive remedy for a breach of a*
11 *contract entered into under this subsection shall be an*
12 *action in an appropriate court, unless the parties oth-*
13 *erwise agree. In no case may the contract dispute res-*
14 *olution forum be controlled by or in any way affili-*
15 *ated with a controlled carrier as defined in section*
16 *3(8) of this Act, or by the government which owns or*
17 *controls the carrier.*

18 **“(2) FILING REQUIREMENTS.**—*Except for service*
19 *contracts dealing with bulk cargo, forest products, re-*
20 *cycled metal scrap, new assembled motor vehicles,*
21 *waste paper, or paper waste, each contract entered*
22 *into under this subsection by an individual ocean*
23 *common carrier or an agreement shall be filed con-*
24 *fidentially with the Commission. Each service con-*
25 *tract shall include the following essential terms—*

1 “(A) the origin and destination port ranges;

2 “(B) the origin and destination geographic
3 areas in the case of through intermodal move-
4 ments;

5 “(C) the commodity or commodities in-
6 volved;

7 “(D) the minimum volume or portion;

8 “(E) the line-haul rate;

9 “(F) the duration;

10 “(G) service commitments; and

11 “(H) the liquidated damages for non-
12 performance, if any.

13 “(3) PUBLICATION OF CERTAIN TERMS.—When a
14 service contract is filed confidentially with the Com-
15 mission, a concise statement of the essential terms de-
16 scribed in paragraphs 2 (A), (C), (D), and (F) shall
17 be published and made available to the general public
18 in tariff format.

19 “(4) DISCLOSURE OF CERTAIN TERMS.—

20 “(A) An ocean common carrier, which is a
21 party to or is subject to the provisions of a col-
22 lective bargaining agreement with a labor orga-
23 nization, shall, in response to a written request
24 by such labor organization, state whether it is re-
25 sponsible for the following work at dock areas

1 *and within port areas in the United States with*
2 *respect to cargo transportation under a service*
3 *contract described in paragraph (1) of this sub-*
4 *section—*

5 *“(i) the movement of the shipper’s*
6 *cargo on a dock area or within the port*
7 *area or to or from railroad cars on a dock*
8 *area or within the port area;*

9 *“(ii) the assignment of intraport car-*
10 *riage of the shipper’s cargo between areas*
11 *on a dock or within the port area;*

12 *“(iii) the assignment of the carriage of*
13 *the shipper’s cargo between a container*
14 *yard on a dock area or within the port area*
15 *and a rail yard adjacent to such container*
16 *yard; and*

17 *“(iv) the assignment of container*
18 *freight station work and container mainte-*
19 *nance and repair work performed at a dock*
20 *area or within the port area.*

21 *“(B) The common carrier shall provide the*
22 *information described in subparagraph (A) of*
23 *this paragraph to the requesting labor organiza-*
24 *tion within a reasonable period of time.*

1 “(C) This paragraph requires the disclosure
2 of information by an ocean common carrier only
3 if there exists an applicable and otherwise lawful
4 collective bargaining agreement which pertains
5 to that carrier. No disclosure made by an ocean
6 common carrier shall be deemed to be an admis-
7 sion or agreement that any work is covered by
8 a collective bargaining agreement. Any dispute
9 regarding whether any work is covered by a col-
10 lective bargaining agreement and the responsibil-
11 ity of the ocean common carrier under such
12 agreement shall be resolved solely in accordance
13 with the dispute resolution procedures contained
14 in the collective bargaining agreement and the
15 National Labor Relations Act, and without ref-
16 erence to this paragraph.

17 “(D) Nothing in this paragraph shall have
18 any effect on the lawfulness or unlawfulness
19 under this Act, the National Labor Relations
20 Act, the Taft-Hartley Act, the Federal Trade
21 Commission Act, the antitrust laws, or any other
22 Federal or State law, or any revisions or amend-
23 ments thereto, of any collective bargaining agree-
24 ment or element thereof, including any element

1 that constitutes an essential term of a service
2 contract under this subsection.

3 “(E) For purposes of this paragraph the
4 terms ‘dock area’ and ‘within the port area’ shall
5 have the same meaning and scope as in the ap-
6 plicable collective bargaining agreement between
7 the requesting labor organization and the car-
8 rier.”.

9 (c) *RATES*.—Subsection (d) of that section is amended
10 by—

11 (1) striking the subsection caption and inserting
12 “(d) *TARIFF RATES*.—”;

13 (2) striking “30 days after filing with the Com-
14 mission.” in the first sentence and inserting “30 cal-
15 endar days after publication.”;

16 (3) inserting “calendar” after “30” in the next
17 sentence; and

18 (4) striking “publication and filing with the
19 Commission.” in the last sentence and inserting
20 “publication.”.

21 (d) *REFUNDS*.—Subsection (e) of that section is
22 amended by—

23 (1) striking “tariff of a clerical or administra-
24 tive nature or an error due to inadvertence” in para-
25 graph (1) and inserting a comma; and

1 (2) striking “file a new tariff,” in paragraph (1)
 2 and inserting “publish a new tariff, or an error in
 3 quoting a tariff,”;

4 (3) striking “refund, filed a new tariff with the
 5 Commission” in paragraph (2) and inserting “refund
 6 for an error in a tariff or a failure to publish a tariff,
 7 published a new tariff”;

8 (4) inserting “and” at the end of paragraph (2);
 9 and

10 (5) striking paragraph (3) and redesignating
 11 paragraph (4) as paragraph (3).

12 (e) *MARINE TERMINAL OPERATOR SCHEDULES*.—Sub-
 13 section (f) of that section is amended to read as follows:

14 “(f) *MARINE TERMINAL OPERATOR SCHEDULES*.—A
 15 marine terminal operator may make available to the public,
 16 subject to section 10(d) of this Act, a schedule of rates, regu-
 17 lations, and practices, including limitations of liability for
 18 cargo loss or damage, pertaining to receiving, delivering,
 19 handling, or storing property at its marine terminal. Any
 20 such schedule made available to the public shall be enforce-
 21 able by an appropriate court as an implied contract with-
 22 out proof of actual knowledge of its provisions.”.

23 (f) *AUTOMATED TARIFF SYSTEM REQUIREMENTS*;
 24 *FORM*.—Section 8 of that Act is amended by adding at the
 25 end the following:

1 “(g) *REGULATIONS.*—*The Commission shall by regula-*
 2 *tion prescribe the requirements for the accessibility and ac-*
 3 *curacy of automated tariff systems established under this*
 4 *section. The Commission may, after periodic review, pro-*
 5 *hibit the use of any automated tariff system that fails to*
 6 *meet the requirements established under this section. The*
 7 *Commission may not require a common carrier to provide*
 8 *a remote terminal for access under subsection (a)(2). The*
 9 *Commission shall by regulation prescribe the form and*
 10 *manner in which marine terminal operator schedules au-*
 11 *thorized by this section shall be published.”.*

12 **SEC. 107. AUTOMATED TARIFF FILING AND INFORMATION**
 13 **SYSTEM.**

14 *Section 502 of the High Seas Driftnet Fisheries En-*
 15 *forcement Act (46 U.S.C. App. 1707a) is repealed.*

16 **SEC. 108. CONTROLLED CARRIERS.**

17 *Section 9 of the Shipping Act of 1984 (46 U.S.C. App.*
 18 *1708) is amended by—*

19 (1) *striking “service contracts filed with the*
 20 *Commission” in the first sentence of subsection (a)*
 21 *and inserting “service contracts, or charge or assess*
 22 *rates,”;*

23 (2) *striking “or maintain” in the first sentence*
 24 *of subsection (a) and inserting “maintain, or en-*
 25 *force”;*

1 (3) striking “disapprove” in the third sentence of
2 subsection (a) and inserting “prohibit the publication
3 or use of”; and

4 (4) striking “filed by a controlled carrier that
5 have been rejected, suspended, or disapproved by the
6 Commission” in the last sentence of subsection (a)
7 and inserting “that have been suspended or prohibited
8 by the Commission”;

9 (5) striking “may take into account appropriate
10 factors including, but not limited to, whether—” in
11 subsection (b) and inserting “shall take into account
12 whether the rates or charges which have been pub-
13 lished or assessed or which would result from the per-
14 tinent classifications, rules, or regulations are below
15 a level which is fully compensatory to the controlled
16 carrier based upon that carrier’s actual costs or upon
17 its constructive costs. For purposes of the preceding
18 sentence, the term ‘constructive costs’ means the costs
19 of another carrier, other than a controlled carrier, op-
20 erating similar vessels and equipment in the same or
21 a similar trade. The Commission may also take into
22 account other appropriate factors, including but not
23 limited to, whether—”;

1 (6) striking paragraph (1) of subsection (b) and
2 redesignating paragraphs (2), (3), and (4) as para-
3 graphs (1), (2), and (3), respectively;

4 (7) striking “filed” in paragraph (1) as redesign-
5 ated and inserting “published or assessed”;

6 (8) striking “filing with the Commission.” in
7 subsection (c) and inserting “publication.”;

8 (9) striking “DISAPPROVAL OF RATES.—” in
9 subsection (d) and inserting “PROHIBITION OF
10 RATES.—Within 120 days after the receipt of infor-
11 mation requested by the Commission under this sec-
12 tion, the Commission shall determine whether the
13 rates, charges, classifications, rules, or regulations of
14 a controlled carrier may be unjust and unreason-
15 able.”;

16 (10) striking “filed” in subsection (d) and insert-
17 ing “published or assessed”;

18 (11) striking “may issue” in subsection (d) and
19 inserting “shall issue”;

20 (12) striking “disapproved.” in subsection (d)
21 and inserting “prohibited.”;

22 (13) striking “60” in subsection (d) and insert-
23 ing “30”;

24 (14) inserting “controlled” after “affected” in
25 subsection (d);

1 (15) striking “file” in subsection (d) and insert-
2 ing “publish”;

3 (16) striking “disapproval” in subsection (e) and
4 inserting “prohibition”;

5 (17) inserting “or” after the semicolon in sub-
6 section (f)(1);

7 (18) striking paragraphs (2), (3), and (4) of sub-
8 section (f); and

9 (19) redesignating paragraph (5) of subsection
10 (f) as paragraph (2).

11 **SEC. 109. PROHIBITED ACTS.**

12 (a) Section 10(b) of the Shipping Act of 1984 (46
13 *U.S.C. App. 1709(b)*) is amended by—

14 (1) striking paragraphs (1) through (3);

15 (2) redesignating paragraph (4) as paragraph
16 (1);

17 (3) inserting after paragraph (1), as redesign-
18 ated, the following:

19 “(2) provide service in the liner trade that—

20 “(A) is not in accordance with the rates,
21 charges, classifications, rules, and practices con-
22 tained in a tariff published or a service contract
23 entered into under section 8 of this Act unless ex-
24 cepted or exempted under section 8(a)(1) or 16
25 of this Act; or

1 “(B) is under a tariff or service contract
2 which has been suspended or prohibited by the
3 Commission under section 9 of this Act or the
4 Foreign Shipping Practices Act of 1988 (46
5 U.S.C. App. 1710a);”;

6 (4) redesignating paragraphs (5) and (6) as
7 paragraphs (3) and (4), respectively;

8 (5) striking “except for service contracts,” in
9 paragraph (4), as redesignated, and inserting “for
10 service pursuant to a tariff;”;

11 (6) striking “rates;” in paragraph (4)(A), as re-
12 designated, and inserting “rates or charges;”;

13 (7) inserting after paragraph (4), as redesign-
14 ated, the following:

15 “(5) for service pursuant to a service contract,
16 engage in any unfair or unjustly discriminatory
17 practice in the matter of rates or charges with respect
18 to any port;”;

19 (8) redesignating paragraphs (7) and (8) as
20 paragraphs (6) and (7), respectively;

21 (9) striking paragraph (6) as redesignated and
22 inserting the following:

23 “(6) use a vessel or vessels in a particular trade
24 for the purpose of excluding, preventing, or reducing

1 *competition by driving another ocean common carrier*
2 *out of that trade;”;*

3 *(10) striking paragraphs (9) through (13) and*
4 *inserting the following:*

5 *“(8) for service pursuant to a tariff, give any*
6 *undue or unreasonable preference or advantage or im-*
7 *pose any undue or unreasonable prejudice or dis-*
8 *advantage;*

9 *“(9) for service pursuant to a service contract,*
10 *give any undue or unreasonable preference or advan-*
11 *tage or impose any undue or unreasonable prejudice*
12 *or disadvantage with respect to any port;*

13 *“(10) unreasonably refuse to deal or negotiate;”;*

14 *(11) redesignating paragraphs (14), (15), and*
15 *(16) as paragraphs (11), (12), and (13), respectively;*

16 *(12) striking “a non-vessel-operating common*
17 *carrier” in paragraphs (11) and (12) as redesignated*
18 *and inserting “an ocean transportation inter-*
19 *mediary”;*

20 *(13) striking “sections 8 and 23” in paragraphs*
21 *(11) and (12) as redesignated and inserting “sections*
22 *8 and 19”;*

23 *(14) striking “or in which an ocean transpor-*
24 *tation intermediary is listed as an affiliate” in para-*
25 *graph (12), as redesignated;*

1 (15) striking “Act;” in paragraph (12), as redesi-
2 gnated, and inserting “Act, or with an affiliate of
3 such ocean transportation intermediary;”

4 (16) striking “paragraph (16)” in the matter ap-
5 pearing after paragraph (13), as redesignated, and
6 inserting “paragraph (13)”; and

7 (17) inserting “the Commission,” after “United
8 States,” in such matter.

9 (b) Section 10(c) of the Shipping Act of 1984 (46
10 U.S.C. App. 1709(c)) is amended by—

11 (1) striking “non-ocean carriers” in paragraph
12 (4) and inserting “non-ocean carriers, unless such ne-
13 gotiations and any resulting agreements are not in
14 violation of the antitrust laws and are consistent with
15 the purposes of this Act”;

16 (2) striking “freight forwarder” in paragraph
17 (5) and inserting “transportation intermediary, as
18 defined by section 3(17)(A) of this Act,”;

19 (3) striking “or” at the end of paragraph (5);

20 (4) striking “contract.” in paragraph (6) and
21 inserting “contract;”; and

22 (5) adding at the end the following:

23 “(7) for service pursuant to a service contract,
24 engage in any unjustly discriminatory practice in the
25 matter of rates or charges with respect to any locality,

1 *port, or persons due to those persons' status as ship-*
2 *pers' associations or ocean transportation inter-*
3 *mediaries; or*

4 *“(8) for service pursuant to a service contract,*
5 *give any undue or unreasonable preference or advan-*
6 *tage or impose any undue or unreasonable prejudice*
7 *or disadvantage with respect to any locality, port, or*
8 *persons due to those persons' status as shippers' asso-*
9 *ciations or ocean transportation intermediaries;”.*

10 *(c) Section 10(d) of the Shipping Act of 1984 (46*
11 *U.S.C. App. 1709(d)) is amended by—*

12 *(1) striking “freight forwarders,” and inserting*
13 *“transportation intermediaries;”;*

14 *(2) striking “freight forwarder,” in paragraph*
15 *(1) and inserting “transportation intermediary;”;*

16 *(3) striking “subsection (b)(11), (12), and (16)”*
17 *and inserting “subsections (b)(10) and (13)”;* and

18 *(4) adding at the end thereof the following:*

19 *“(4) No marine terminal operator may give any*
20 *undue or unreasonable preference or advantage or im-*
21 *pose any undue or unreasonable prejudice or dis-*
22 *advantage with respect to any person.*

23 *“(5) The prohibition in subsection (b)(13) of this*
24 *section applies to ocean transportation inter-*

1 (5) striking “filed with the Commission,” in sub-
 2 section (e)(1)(B) and inserting “and service con-
 3 tracts,”;

4 (6) inserting “and service contracts” after “tar-
 5 iffs” the second place it appears in subsection
 6 (e)(1)(B); and

7 (7) striking “(b)(5)” each place it appears in
 8 subsection (h) and inserting “(b)(6)”.

9 **SEC. 112. PENALTIES.**

10 (a) Section 13(a) of the Shipping Act of 1984 (46
 11 U.S.C. App. 1712(a)) is amended by adding at the end
 12 thereof the following: “The amount of any penalty imposed
 13 upon a common carrier under this subsection shall con-
 14 stitute a lien upon the vessels operated by that common car-
 15 rier and any such vessel may be libeled therefore in the dis-
 16 trict court of the United States for the district in which
 17 it may be found.”.

18 (b) Section 13(b) of the Shipping Act of 1984 (46
 19 U.S.C. App. 1712(b)) is amended by—

20 (1) striking “section 10(b)(1), (2), (3), (4), or
 21 (8)” in paragraph (1) and inserting “section
 22 10(b)(1), (2), or (7)”;

23 (2) by redesignating paragraphs (4), (5), and (6)
 24 as paragraphs (5), (6), and (7), respectively;

1 (3) inserting before paragraph (5), as redesignated, the following:

2
3 “(4) If the Commission finds, after notice and an
4 opportunity for a hearing, that a common carrier has
5 failed to supply information ordered to be produced
6 or compelled by subpoena under section 12 of this Act,
7 the Commission may request that the Secretary of the
8 Treasury refuse or revoke any clearance required for
9 a vessel operated by that common carrier. Upon re-
10 quest by the Commission, the Secretary of the Treas-
11 ury shall, with respect to the vessel concerned, refuse
12 or revoke any clearance required by section 4197 of
13 the Revised Statutes of the United States (46 U.S.C.
14 App. 91).”; and

15 (4) striking “paragraphs (1), (2), and (3)” in
16 paragraph (6), as redesignated, and inserting “para-
17 graphs (1), (2), (3), and (4)”.

18 (c) Section 13(f)(1) of the Shipping Act of 1984 (46
19 U.S.C. App. 1712(f)(1)) is amended by—

20 (1) striking “or (b)(4)” and inserting “or
21 (b)(2)”;

22 (2) striking “(b)(1), (4)” and inserting “(b)(1),
23 (2)”;

24 (3) adding at the end thereof the following “Nei-
25 ther the Commission nor any court shall order any

1 *person to pay the difference between the amount billed*
2 *and agreed upon in writing with a common carrier*
3 *or its agent and the amount set fourth in any tariff*
4 *or service contract by that common carrier for the*
5 *transportation service provided.”.*

6 **SEC. 113. REPORTS AND CERTIFICATES.**

7 *Section 15 of the Shipping Act of 1984 (46 U.S.C.*
8 *App. 1714) is amended by—*

9 *(1) striking “and certificates” in the section*
10 *heading;*

11 *(2) striking “(a) REPORTS.—” in the subsection*
12 *heading for subsection (a); and*

13 *(3) striking subsection (b).*

14 **SEC. 114. EXEMPTIONS.**

15 *Section 16 of the Shipping Act of 1984 (46 U.S.C.*
16 *App. 1715) is amended by striking “substantially impair*
17 *effective regulation by the Commission, be unjustly dis-*
18 *criminatory, result in a substantial reduction in competi-*
19 *tion, or be detrimental to commerce.” and inserting “result*
20 *in substantial reduction in competition or be detrimental*
21 *to commerce.”.*

22 **SEC. 115. AGENCY REPORTS AND ADVISORY COMMISSION.**

23 *Section 18 of the Shipping Act of 1984 (46 U.S.C.*
24 *App. 1717) is repealed.*

1 **SEC. 116. OCEAN FREIGHT FORWARDERS.**

2 *Section 19 of the Shipping Act of 1984 (46 U.S.C.*
3 *App. 1718) is amended by—*

4 *(1) striking “freight forwarders” in the section*
5 *caption and inserting “transportation inter-*
6 *mediaries”;*

7 *(2) striking subsection (a) and inserting the fol-*
8 *lowing:*

9 *“(a) LICENSE.—No person in the United States may*
10 *act as an ocean transportation intermediary unless that*
11 *person holds a license issued by the Commission. The Com-*
12 *mission shall issue an intermediary’s license to any person*
13 *that the Commission determines to be qualified by experi-*
14 *ence and character to act as an ocean transportation inter-*
15 *mediary.”;*

16 *(3) redesignating subsections (b), (c), and (d) as*
17 *subsections (c), (d), and (e), respectively;*

18 *(4) inserting after subsection (a) the following:*

19 *“(b) FINANCIAL RESPONSIBILITY.—*

20 *“(1) No person may act as an ocean transpor-*
21 *tation intermediary unless that person furnishes a*
22 *bond, proof of insurance, or other surety in a form*
23 *and amount determined by the Commission to insure*
24 *financial responsibility that is issued by a surety*
25 *company found acceptable by the Secretary of the*
26 *Treasury.*

1 “(2) A bond, insurance, or other surety obtained
2 pursuant to this section—

3 “(A) shall be available to pay any order for
4 reparation issued pursuant to section 11 or 14
5 of this Act, or any penalty assessed pursuant to
6 section 13 of this Act;

7 “(B) may be available to pay any claim
8 against an ocean transportation intermediary
9 arising from its transportation-related activities
10 described in section 3(17) of this Act with the
11 consent of the insured ocean transportation
12 intermediary and subject to review by the surety
13 company, or when the claim is deemed valid by
14 the surety company after the ocean transpor-
15 tation intermediary has failed to respond to ade-
16 quate notice to address the validity of the claim;
17 and

18 “(C) shall be available to pay any judgment
19 for damages against an ocean transportation
20 intermediary arising from its transportation-re-
21 lated activities under section 3(17) of this Act,
22 provided the claimant has first attempted to re-
23 solve the claim pursuant to subparagraph (B) of
24 this paragraph and the claim has not been re-
25 solved within a reasonable period of time.

1 “(3) *The Commission shall prescribe regulations*
2 *for the purpose of protecting the interests of claim-*
3 *ants, ocean transportation intermediaries, and surety*
4 *companies with respect to the process of pursuing*
5 *claims against ocean transportation intermediary*
6 *bonds, insurance, or sureties through court judgments.*
7 *The regulations shall provide that a judgment for*
8 *monetary damages may not be enforced except to the*
9 *extent that the damages claimed arise from the trans-*
10 *portation-related activities of the insured ocean trans-*
11 *portation intermediary, as defined by the Commis-*
12 *sion.*

13 “(4) *An ocean transportation intermediary not*
14 *domiciled in the United States shall designate a resi-*
15 *dent agent in the United States for receipt of service*
16 *of judicial and administrative process, including sub-*
17 *poenas.”;*

18 (5) *striking, each place such term appears—*

19 (A) *“freight forwarder” and inserting*
20 *“transportation intermediary”;*

21 (B) *“a forwarder’s” and inserting “an*
22 *intermediary’s”;*

23 (C) *“forwarder” and inserting “inter-*
24 *mediary”;* and

1 (D) “forwarding” and inserting “inter-
2 mediary”;

3 (6) striking “a bond in accordance with sub-
4 section (a)(2).” in subsection (c), as redesignated, and
5 inserting “a bond, proof of insurance, or other surety
6 in accordance with subsection (b)(1).”;

7 (7) striking “FORWARDERS.—” in the caption of
8 subsection (e), as redesignated, and inserting “INTER-
9 MEDIARIES.—”;

10 (8) striking “intermediary” the first place it ap-
11 pears in subsection (e)(1), as redesignated and as
12 amended by paragraph (5)(A), and inserting “inter-
13 mediary, as defined in section 3(17)(A) of this Act,”;

14 (9) striking “license” in paragraph (1) of sub-
15 section (e), as redesignated, and inserting “license, if
16 required by subsection (a),”;

17 (10) striking paragraph (3) of subsection (e), as
18 redesignated, and redesignating paragraph (4) as
19 paragraph (3); and

20 (11) adding at the end of subsection (e), as redesi-
21 gnated, the following:

22 “(4) No conference or group of 2 or more ocean
23 common carriers in the foreign commerce of the
24 United States that is authorized to agree upon the
25 level of compensation paid to an ocean transportation

1 *intermediary, as defined in section 3(17)(A) of this*
 2 *Act, may—*

3 *“(A) deny to any member of the conference*
 4 *or group the right, upon notice of not more than*
 5 *5 calendar days, to take independent action on*
 6 *any level of compensation paid to an ocean*
 7 *transportation intermediary, as so defined; or*

8 *“(B) agree to limit the payment of com-*
 9 *pen- sation to an ocean transportation inter-*
 10 *mediary, as so defined, to less than 1.25 percent*
 11 *of the aggregate of all rates and charges which*
 12 *are applicable under a tariff and which are as-*
 13 *sessed against the cargo on which the inter-*
 14 *mediary services are provided.”.*

15 **SEC. 117. CONTRACTS, AGREEMENTS, AND LICENSES**
 16 **UNDER PRIOR SHIPPING LEGISLATION.**

17 *Section 20 of the Shipping Act of 1984 (46 U.S.C.*
 18 *App. 1719) is amended by—*

19 *(1) striking subsection (d) and inserting the fol-*
 20 *lowing:*

21 *“(d) EFFECTS ON CERTAIN AGREEMENTS AND CON-*
 22 *TRACTS.—All agreements, contracts, modifications, licenses,*
 23 *and exemptions previously issued, approved, or effective*
 24 *under the Shipping Act, 1916, or the Shipping Act of 1984,*
 25 *shall continue in force and effect as if issued or effective*

1 *under this Act, as amended by the Ocean Shipping Reform*
 2 *Act of 1998, and all new agreements, contracts, and modi-*
 3 *fications to existing, pending, or new contracts or agree-*
 4 *ments shall be considered under this Act, as amended by*
 5 *the Ocean Shipping Reform Act of 1998.”;*

6 (2) *inserting the following at the end of sub-*
 7 *section (e):*

8 “(3) *The Ocean Shipping Reform Act of 1998*
 9 *shall not affect any suit—*

10 “(A) *filed before the effective date of that*
 11 *Act; or*

12 “(B) *with respect to claims arising out of*
 13 *conduct engaged in before the effective date of*
 14 *that Act filed within 1 year after the effective*
 15 *date of that Act.*

16 “(4) *Regulations issued by the Federal Maritime*
 17 *Commission shall remain in force and effect where*
 18 *not inconsistent with this Act, as amended by the*
 19 *Ocean Shipping Reform Act of 1998.”.*

20 **SEC. 118. SURETY FOR NON-VESSEL-OPERATING COMMON**
 21 **CARRIERS.**

22 *Section 23 of the Shipping Act of 1984 (46 U.S.C.*
 23 *App. 1721) is repealed.*

1 **TITLE II—AUTHORIZATION OF**
2 **APPROPRIATIONS FOR THE**
3 **FEDERAL MARITIME COMMIS-**
4 **SION**

5 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS FOR FIS-**
6 **CAL YEAR 1998.**

7 *There are authorized to be appropriated to the Federal*
8 *Maritime Commission, \$15,000,000 for fiscal year 1998.*

9 **SEC. 202. FEDERAL MARITIME COMMISSION ORGANIZA-**
10 **TION.**

11 *Section 102(d) of Reorganization Plan No. 7 of 1961*
12 *(75 Stat. 840) is amended to read as follows:*

13 *“(d) A vacancy or vacancies in the membership of*
14 *Commission shall not impair the power of the Commission*
15 *to execute its functions. The affirmative vote of a majority*
16 *of the members serving on the Commission is required to*
17 *dispose of any matter before the Commission.”.*

18 **SEC. 203. REGULATIONS.**

19 *Not later than March 1, 1999, the Federal Maritime*
20 *Commission shall prescribe final regulations to implement*
21 *the changes made by this Act.*

1 **TITLE III—AMENDMENTS TO**
 2 **OTHER SHIPPING AND MARI-**
 3 **TIME LAWS**

4 **SEC. 301. AMENDMENTS TO SECTION 19 OF THE MERCHANT**
 5 **MARINE ACT, 1920.**

6 (a) *IN GENERAL.*—Section 19 of the Merchant Marine
 7 Act, 1920 (46 U.S.C. App. 876) is amended by—

8 (1) striking “forwarding and” in subsection
 9 (1)(b);

10 (2) striking “non-vessel-operating common car-
 11 rier operations,” in subsection (1)(b) and inserting
 12 “ocean transportation intermediary services and op-
 13 erations,”;

14 (3) striking “methods or practices” and inserting
 15 “methods, pricing practices, or other practices” in
 16 subsection (1)(b);

17 (4) striking “tariffs of a common carrier” in
 18 subsection 7(d) and inserting “tariffs and service con-
 19 tracts of a common carrier”;

20 (5) striking “use the tariffs of conferences” in
 21 subsections (7)(d) and (9)(b) and inserting “use tar-
 22 iff s of conferences and service contracts of agree-
 23 ments”;

1 (6) striking “tariffs filed with the Commission”
2 in subsection (9)(b) and inserting “tariffs and service
3 contracts”;

4 (7) striking “freight forwarder,” each place it
5 appears and inserting “transportation inter-
6 mediary,”; and

7 (8) striking “tariff” each place it appears in
8 subsection (11) and inserting “tariff or service con-
9 tract”.

10 (b) *STYLISTIC CONFORMITY*.—Section 19 of the Mer-
11 chant Marine Act, 1920 (46 U.S.C. App. 876), as amended
12 by subsection (a), is further amended by—

13 (1) redesignating subdivisions (1) through (12)
14 as subsections (a) through (l), respectively;

15 (2) redesignating subdivisions (a), (b), and (c) of
16 subsection (a), as redesignated, as paragraphs (1),
17 (2), and (3);

18 (3) redesignating subdivisions (a) through (d) of
19 subsection (f), as redesignated, as paragraphs (1)
20 through (4), respectively;

21 (4) redesignating subdivisions (a) through (e) of
22 subsection (g), as redesignated, as paragraphs (1)
23 through (5), respectively;

1 (5) redesignating clauses (i) and (ii) of sub-
2 section (g)(4), as redesignated, as subparagraphs (A)
3 and (B), respectively;

4 (6) redesignating subdivisions (a) through (e) of
5 subsection (i), as redesignated, as paragraphs (1)
6 through (5), respectively;

7 (7) redesignating subdivisions (a) and (b) of sub-
8 section (j), as redesignated, as paragraphs (1) and
9 (2), respectively;

10 (8) striking “subdivision (c) of paragraph (1)”
11 in subsection (c), as redesignated, and inserting “sub-
12 section (a)(3)”;

13 (9) striking “paragraph (2)” in subsection (c),
14 as redesignated, and inserting “subsection (b)”;

15 (10) striking “paragraph (1)(b)” each place it
16 appears and inserting “subsection (a)(2)”;

17 (11) striking “subdivision (b),” in subsection
18 (g)(4), as redesignated, and inserting “paragraph
19 (2),”;

20 (12) striking “paragraph (9)(d)” in subsection
21 (j)(1), as redesignated, and inserting “subsection
22 (i)(4)”;

23 (13) striking “paragraph (7)(d) or (9)(b)” in
24 subsection (k), as redesignated, and inserting “sub-
25 section (g)(4) or (i)(2)”.

1 **SEC. 302. TECHNICAL CORRECTIONS.**

2 (a) *PUBLIC LAW 89-777.*—Sections 2 and 3 of the Act
3 of November 6, 1966 (46 U.S.C. App. 817d and 817e) are
4 amended by striking “they in their discretion” each place
5 it appears and inserting “it in its discretion”.

6 (b) *TARIFF ACT OF 1930.*—Section 641(i) of the Tariff
7 Act of 1930 (19 U.S.C. 1641) is repealed.

8 **TITLE IV—CERTAIN LOAN GUAR-**
9 **ANTEES AND COMMITMENTS**

10 **SEC. 401. CERTAIN LOAN GUARANTEES AND COMMIT-**
11 **MENTS.**

12 (a) *The Secretary of Transportation may not issue a*
13 *guarantee or commitment to guarantee a loan for the con-*
14 *struction, reconstruction, or reconditioning of a liner vessel*
15 *under the authority of title XI of the Merchant Marine Act,*
16 *1936 (46 U.S.C. App. 1271 et seq.) after the date of enact-*
17 *ment of this Act unless the Chairman of the Federal Mari-*
18 *time Commission certifies that the operator of such vessel—*

19 (1) *has not been found by the Commission to*
20 *have violated section 19 of the Merchant Marine Act,*
21 *1920 (46 U.S.C. App. 876), or the Foreign Shipping*
22 *Practices Act of 1988 (46 U.S.C. App. 1701a), within*
23 *the previous 5 years; and*

24 (2) *has not been found by the Commission to*
25 *have committed a violation of the Shipping Act of*
26 *1984 (46 U.S.C. App. 1701 et seq.), which involves*

1 *unjust or unfair discriminatory treatment or undue*
2 *or unreasonable prejudice or disadvantage with re-*
3 *spect to a United States shipper, ocean transportation*
4 *intermediary, ocean common carrier, or port within*
5 *the previous 5 years.*

6 *(b) The Secretary of Commerce may not issue a guar-*
7 *antee or a commitment to guarantee a loan for the construc-*
8 *tion, reconstruction, or reconditioning of a fishing vessel*
9 *under the authority of title XI of the Merchant Marine Act,*
10 *1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel oper-*
11 *ator has been—*

12 *(1) held liable or liable in rem for a civil penalty*
13 *pursuant to section 308 of the Magnuson-Stevens*
14 *Fishery Conservation and Management Act (16*
15 *U.S.C. 1858) and not paid the penalty;*

16 *(2) found guilty of an offense pursuant to section*
17 *309 of the Magnuson-Stevens Fishery Conservation*
18 *and Management Act (16 U.S.C. 1859) and not paid*
19 *the assessed fine or served the assessed sentence;*

20 *(3) held liable for a civil or criminal penalty*
21 *pursuant to section 105 of the Marine Mammal Pro-*
22 *tection Act of 1972 (16 U.S.C. 1375) and not paid the*
23 *assessed fine or served the assessed sentence; or*

1 (4) held liable for a civil penalty by the Coast
2 Guard pursuant to title 33 or 46, United States Code,
3 and not paid the assessed fine.

Attest:

Clerk.