

105TH CONGRESS
1ST SESSION

S. 414

To amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States imports and exports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1997

Mrs. HUTCHISON (for herself, Mr. LOTT, Mr. BREAUX, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States imports and exports, 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 1997” .

6 **SEC. 2. EFFECTIVE DATE.**

7 Except as otherwise expressly provided in this Act,
8 this Act and the amendments made by this Act take effect
9 on March 1, 1998.

1 **TITLE I—AMENDMENTS TO THE**
2 **SHIPPING ACT OF 1984**

3 **SEC. 101. PURPOSE.**

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

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

8 (2) striking “needs.” in paragraph (3) and in-
9 serting “needs; and”; and

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

11 “(4) to promote the growth and development of
12 United States exports through competitive and effi-
13 cient ocean transportation and by placing a greater
14 reliance on the marketplace.”.

15 **SEC. 102. DEFINITIONS.**

16 (a) **IN GENERAL.**—Section 3 of the Shipping Act of
17 1984 (46 U.S.C. App. 1702) is amended by—

18 (1) striking paragraph (5) and redesignating
19 paragraph (4) as paragraph (5);

20 (2) inserting after paragraph (3) the following:

21 “(4) ‘Board’ means the Intermodal Transpor-
22 tation Board.”;

23 (3) striking “the government under whose reg-
24 istry the vessels of the carrier operate;” in para-
25 graph (8) and inserting “a government;”;

1 (4) striking paragraph (9) and inserting the fol-
2 lowing:

3 “(9) ‘deferred rebate’ means a return by a com-
4 mon carrier of any portion of freight money to a
5 shipper as a consideration for that shipper giving all,
6 or any portion, of its shipments to that or any other
7 common carrier over a fixed period of time, the pay-
8 ment of which is deferred beyond the completion of
9 service for which it is paid, and is made only if the
10 shipper has agreed to make a further shipment or
11 shipments with that or any other common carrier.”;

12 (5) striking “in an unfinished or semifinished
13 state that require special handling moving in lot
14 sizes too large for a container” in paragraph (11);

15 (6) striking “paper board in rolls, and paper in
16 rolls.” in paragraph (11) and inserting “paper and
17 paper board in rolls or in pallet or skid-sized
18 sheets.”;

19 (7) striking “conference, other than a service
20 contract or contract based upon time-volume rates,”
21 in paragraph (14) and inserting “conference”;

22 (8) striking “conference.” in paragraph (14)
23 and inserting “conference and the contract provides
24 for a deferred rebate arrangement.”;

1 (9) by striking “carrier.” in paragraph (15) and
2 inserting “carrier, or in connection with a common
3 carrier and a water carrier subject to subchapter II
4 of chapter 135 of title 49, United States Code.”.

5 (10) striking paragraph (17) and redesignating
6 paragraphs (18) through (27) as paragraphs (17)
7 through (26), respectively;

8 (11) striking paragraph (18), as redesignated,
9 and inserting the following:

10 “(18) ‘ocean freight forwarder’ means a person
11 that—

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

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

20 “(B) acts as a common carrier that does
21 not operate the vessels by which the ocean
22 transportation is provided, and is a shipper in
23 its relationship with an ocean common car-
24 rier.”;

1 (12) striking paragraph (20), as redesignated
2 and inserting the following:

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

16 (13) striking paragraph (22), as redesignated,
17 and inserting the following:

18 “(22) ‘shipper’ means—

19 “(A) a cargo owner;

20 “(B) the person for whose account the
21 ocean 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 freight forwarder, as de-
2 fined in paragraph (18)(B) of this section, that
3 accepts responsibility for payment of all charges
4 applicable under the tariff or service contract.”.

5 (b) SPECIAL EFFECTIVE DATE.—The amendments
6 made by subsection (a) take effect on the date of enact-
7 ment, except that the amendments made by paragraphs
8 (1) and (2) take effect on January 1, 1999.

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

10 (a) OCEAN COMMON CARRIERS.—Section 4(a) of the
11 Shipping Act of 1984 (46 U.S.C. App. 1703(a)) is amend-
12 ed by—

13 (1) striking “operators or non-vessel-operating
14 common carriers;” in paragraph (5) and inserting
15 “operators;”;

16 (2) striking “and” in paragraph (6) and insert-
17 ing “or”; and

18 (3) striking paragraph (7) and inserting the fol-
19 lowing:

20 “(7) discuss and agree upon any matter related
21 to service contracts.”.

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

1 (1) striking “(to the extent the agreements in-
2 volve ocean transportation in the foreign commerce
3 of the United States)”; and

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

8 **SEC. 104. AGREEMENTS.**

9 Section 5(b) of the Shipping Act of 1984 (46 U.S.C.
10 App. 1704(b)) is amended by—

11 (1) striking “and” at the end of paragraph (7);

12 (2) striking paragraph (8) and inserting the fol-
13 lowing:

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

1 existing conference tariff provision for that rate or
2 service item; and

3 “(9) prohibit the conference from—

4 “(A) prohibiting or restricting the mem-
5 bers of the conference from engaging in nego-
6 tiations for individual service contracts under
7 section 8(c)(3) of this Act with 1 or more ship-
8 pers;

9 “(B) requiring a member of the conference
10 to disclose the existence of a confidential indi-
11 vidual service contract under section 8(c)(3) of
12 this Act, or a negotiation on an individual serv-
13 ice contract under section 8(c)(3) of this Act,
14 except when the conference enters into negotia-
15 tions with the same shipper; and

16 “(C) issuing mandatory rules or require-
17 ments affecting individual service contracts
18 under section 8(c)(3) of this Act, except as pro-
19 vided in subparagraph (B).

20 A conference may issue voluntary guidelines relating to
21 the terms and procedures of individual service contracts
22 under section 8(c)(3) of this Act if the guidelines explicitly
23 state the right of members of the conference not to follow
24 the guidelines.”.

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

2 (a) IN GENERAL.—Section 7 of the Shipping Act of
3 1984 (46 U.S.C. App. 1706) is amended by—

4 (1) inserting “or publication” in paragraph (2)
5 of subsection (a) after “filing”;

6 (2) inserting “Federal Maritime” before “Com-
7 mission” in paragraph (6) of subsection (a);

8 (3) striking “or” at the end of subsection
9 (b)(2);

10 (4) striking “States.” at the end of subsection
11 (b)(3) and inserting “States; or”; and

12 (5) adding at the end of subsection (b) the fol-
13 lowing:

14 “(4) to any loyalty contract.”.

15 (b) SPECIAL EFFECTIVE DATE.—The amendments
16 made by subsection (a) take effect on the date of enact-
17 ment except the amendment made by paragraph (2) of
18 subsection (a) takes effect on January 1, 1999.

19 **SEC. 106. TARIFFS.**

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

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

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

1 (3) striking “inspection,” in paragraph (1) and
2 inserting “inspection in an automated tariff sys-
3 tem,”;

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

6 (5) striking “and” at the end of paragraph
7 (1)(D);

8 (6) striking “loyalty contract,” in paragraph
9 (1)(E);

10 (7) striking “agreement.” in paragraph (1)(E)
11 and inserting “agreement; and”;

12 (8) adding at the end of paragraph (1) the fol-
13 lowing:

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

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

18 “(2) Tariffs shall be made available electroni-
19 cally to any person, without time, quantity, or other
20 limitation, through appropriate access from remote
21 locations, and a reasonable charge may be assessed
22 for such access. No charge may be assessed a Fed-
23 eral agency for such access.”.

24 (b) SERVICE CONTRACTS.—Subsection (c) of that
25 section is amended to read as follows:

1 “(c) SERVICE CONTRACTS.—

2 “(1) IN GENERAL.—An individual ocean com-
3 mon carrier or an agreement between or among
4 ocean common carriers may enter into a service con-
5 tract with one or more shippers subject to the re-
6 quirements of this Act. The exclusive remedy for a
7 breach of a contract entered into under this sub-
8 section shall be an action in an appropriate court,
9 unless the parties otherwise agree.

10 “(2) AGREEMENT SERVICE CONTRACTS.—Ex-
11 cept for service contracts dealing with bulk cargo,
12 forest products, recycled metal scrap, new assembled
13 motor vehicles, waste paper, or paper waste, each
14 contract entered into under this subsection by an
15 agreement shall be filed confidentially with the Com-
16 mission, and at the same time, a concise statement
17 of its essential terms shall be published and made
18 available to the general public in tariff format, and
19 those essential terms shall be available to all ship-
20 pers similarly situated. The essential terms shall in-
21 clude—

22 “(A) the origin and destination port ranges
23 in the case of port-to-port movements, and the
24 origin and destination geographic areas in the
25 case of through intermodal movements;

1 “(B) the commodity or commodities in-
2 volved;

3 “(C) the minimum volume;

4 “(D) the line-haul rate;

5 “(E) the duration;

6 “(F) service commitments; and

7 “(G) the liquidated damages for non-
8 performance, if any.

9 “(3) INDIVIDUAL SERVICE CONTRACTS.—Not-
10 withstanding subsection (a) of this section and para-
11 graph (2) of this subsection, service contracts en-
12 tered into under this subsection between 1 or more
13 shippers and an individual ocean common carrier—

14 “(A) may be made on a confidential basis;

15 “(B) are not required to be filed with the
16 Commission; and

17 “(C) shall be retained by the parties to the
18 contract for 3 years subsequent to the expira-
19 tion of the contract.”;

20 (c) RATES.—Subsection (d) of that section is amend-
21 ed by—

22 (1) striking “30 days after filing with the Com-
23 mission.” in the first sentence and inserting “21 cal-
24 endar days after publication.”;

1 (2) striking “less than 30” in the next sentence
2 and inserting “less than 21 calendar”; and

3 (3) striking “publication and filing with the
4 Commission.” in the last sentence and inserting
5 “publication.”.

6 (d) MARINE TERMINAL OPERATOR SCHEDULES.—
7 Subsection (e) of that section is amended to read as fol-
8 lows:

9 “(e) MARINE TERMINAL OPERATOR SCHEDULES.—
10 A marine terminal operator may make available to the
11 public a schedule of rates, regulations, and practices, in-
12 cluding limitations of liability for cargo loss or damage,
13 pertaining to receiving, delivering, handling, or storing
14 property at its marine terminal. Any such schedule made
15 available to the public shall be enforceable as an implied
16 contract, subject to section 10 of this Act, without proof
17 of actual knowledge of its provisions.”.

18 (e) AUTOMATED TARIFF SYSTEM REQUIREMENTS;
19 FORM.—Subsection (f) of that section is amended to read
20 as follows:

21 “(f) REGULATIONS.—The Commission shall by regu-
22 lation prescribe the requirements for the accessibility and
23 accuracy of automated tariff systems established under
24 this section. The Commission may, after periodic review,
25 prohibit the use of any automated tariff system that fails

1 to meet the requirements established under this section.
2 The Commission may not require a common carrier to
3 provide a remote terminal for access under subsection
4 (a)(2). The Commission shall by regulation prescribe the
5 form and manner in which marine terminal operator
6 schedules authorized by this section shall be published.”.

7 **SEC. 107. AUTOMATED TARIFF FILING AND INFORMATION**
8 **SYSTEM.**

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

11 **SEC. 108. CONTROLLED CARRIERS.**

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

14 (1) striking “filed with the Commission” in the
15 first sentence of subsection (a) and inserting a
16 comma and “or charge or assess rates,”;

17 (2) striking “or maintain” in the first sentence
18 of subsection (a) and inserting “maintain, or en-
19 force”;

20 (3) striking “disapprove” in the third sentence
21 of subsection (a) and inserting “prohibit the publica-
22 tion or use of”; and

23 (4) striking “filed by a controlled carrier that
24 have been rejected, suspended, or disapproved by the
25 Commission” in the last sentence of subsection (a)

1 and inserting “that have been suspended or prohib-
2 ited by the Commission”;

3 (5) striking “may take into account appropriate
4 factors including, but not limited to, whether—” in
5 subsection (b) and inserting “shall take into account
6 whether the rates or charges which have been pub-
7 lished or assessed or which would result from the
8 pertinent classifications, rules, or regulations are
9 below a level which is fully compensatory to the con-
10 trolled carrier based upon that carrier’s actual costs
11 or upon its constructive costs. For purposes of the
12 preceding sentence, the term ‘constructive costs’
13 means the costs of another carrier, other than a con-
14 trolled carrier, operating similar vessels and equip-
15 ment in the same or a similar trade. The Commis-
16 sion may also take into account other appropriate
17 factors, including but not limited to, whether—”;

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

21 (7) striking “filed” each place it appears in
22 subsection (b) and inserting “published or assessed”;

23 (8) striking “filing with the Commission” in
24 subsection (c) and inserting “publication”;

1 (9) striking “DISAPPROVAL.—” in subsection
2 (d) and inserting “PROHIBITION OF RATES.—Within
3 120 days after the receipt of information requested
4 by the Commission under this section, the Commis-
5 sion shall determine whether the rates, charges, clas-
6 sifications, rules, or regulations of a controlled car-
7 rier may be unjust and unreasonable.” ;

8 (10) striking “filed” in subsection (d) and in-
9 serting “published or assessed”;

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

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

14 (15) striking “60” in subsection (d) and insert-
15 ing “30”;

16 (16) inserting “controlled” after “affected” in
17 subsection (d);

18 (17) striking “file” in subsection (d) and insert-
19 ing “publish”.

20 (18) striking “disapproval” in subsection (e)
21 and inserting “prohibition”;

22 (19) inserting “or” after the semicolon in sub-
23 section (f)(1);

24 (20) striking paragraphs (2), (3), and (4) of
25 subsection (f); and

1 (21) redesignating paragraph (5) of subsection
2 (f) as paragraph (2).

3 **SEC. 109. PROHIBITED ACTS.**

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

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

7 (2) redesignating paragraph (4) as paragraph
8 (1);

9 (3) inserting after paragraph (1), as redesignig-
10 nated, the following:

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

12 “(A) is not in accordance with the rates
13 contained in a tariff published or a service con-
14 tract entered into under section 8 of this Act
15 unless excepted or exempted under section
16 8(a)(1) or 16 of this Act; or

17 “(B) is under a tariff or service contract
18 which has been suspended or prohibited by the
19 Commission under section 9 or 11a of this
20 Act;”;

21 (4) redesignating paragraphs (5) through (8) as
22 paragraphs (3) through (6), respectively;

23 (5) striking paragraph (9) and redesignating
24 paragraphs (10) through (16) as paragraphs (7)
25 through (13), respectively;

1 (6) in paragraph (7), as redesignated, inserting
2 “except for service contracts,” before “demand,”;

3 (7) in paragraph (9), as redesignated —

4 (A) inserting “port, class or type of ship-
5 per, ocean freight forwarder,” after “locality,”;
6 and

7 (B) inserting a comma and “except for
8 service contracts,” after “deal or”;

9 (8) striking “a non-vessel-operating common
10 carrier” each place it appears in paragraphs (11)
11 and (12), as redesignated, and inserting “an ocean
12 freight forwarder”;

13 (9) striking “sections 8 and 23” in paragraphs
14 (11) and (12), as redesignated, and inserting “sec-
15 tions 8 and 19”;

16 (10) striking “paragraph (16)” in the matter
17 appearing after paragraph (13), as redesignated,
18 and inserting “paragraph (13)”;

19 (11) inserting “the Commission,” after “United
20 States,” in such matter.

21 (b) Section 10(c)(5) of the Shipping Act of 1984 (46
22 U.S.C. App. 1709(c)(5)) is amended by inserting “as de-
23 fined by section 3(18)(A) of this Act,” before “or limit”.

1 (c) Section 10(d)(3) of the Shipping Act of 1984 (46
2 U.S.C. App. 1709(d)(3)) is amended by striking “sub-
3 section (b)(11), (12), and (16)” and inserting “sub-
4 sections (b)(8), (9), and (13)”.

5 **SEC. 110. COMPLAINTS, INVESTIGATIONS, REPORTS, AND**
6 **REPARATIONS.**

7 Section 11(g) of the Shipping Act of 1984 (46 U.S.C.
8 App. 1710(g)) is amended by—

9 (1) striking “section 10(b)(5) or (7)” and in-
10 sserting “section 10(b)(3) or (5)”; and

11 (2) striking “section 10(b)(6)(A) or (B)” and
12 inserting “section 10(b)(4)(A) or (B).”.

13 **SEC. 111. FOREIGN SHIPPING PRACTICES ACT OF 1988.**

14 Section 10002 of the Foreign Shipping Practices Act
15 of 1988 (46 U.S.C. App. 1710a) is amended by—

16 (1) by striking “non-vessel-operating common
17 carrier,” in paragraph (1) and inserting “ocean
18 freight forwarder,”;

19 (2) by striking “non-vessel-operating common
20 carrier operations,” in paragraph (4);

21 (3) by inserting “and service contracts” after
22 “tariffs” each place it appears in subsection
23 (e)(1)(B);

24 (4) by striking “filed with the Commission” in
25 subsection (e)(1)(B); and

1 (5) by striking “section 13(b)(5) of the Ship-
2 ping Act of 1984 (46 App. U.S.C. 1712(b)(5)” in
3 subsection (h) and inserting “section 13(b)(6) of the
4 Shipping Act of 1984 (46 App. U.S.C. 1712(b)(6))”.

5 **SEC. 112. SUBPOENAS AND DISCOVERY.**

6 Section 12(a)(2) of the Shipping Act of 1984 (46
7 U.S.C. App. 1711 (a)(2)) is amended by striking “evi-
8 dence.” and inserting “evidence, including individual serv-
9 ice contracts described in section 8(c)(3) of this Act.”.

10 **SEC. 113. PENALTIES.**

11 (a) Section 13(a) of the Shipping Act of 1984 (46
12 U.S.C. App. 1712(a)) is amended by adding at the end
13 thereof the following: “The amount of any penalty im-
14 posed upon a common carrier under this subsection shall
15 constitute a lien upon the vessels of the common carrier
16 and any such vessel may be libeled therefor in the district
17 court of the United States for the district in which it may
18 be found.”.

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

21 (1) striking “section 10(b)(1), (2), (3), (4), or
22 (8)” in paragraph (1) and inserting “section
23 10(b)(1), (2), or (6)”;

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

1 (3) inserting before paragraph (5), as redesignig-
2 nated, the following:

3 “(4) If the Commission finds, after notice and
4 an opportunity for a hearing, that a common carrier
5 has failed to supply information ordered to be pro-
6 duced or compelled by subpoena under section 12 of
7 this Act, the Commission may request that the Sec-
8 retary of the Treasury refuse or revoke any clear-
9 ance required for a vessel operated by that common
10 carrier. Upon request by the Commission, the Sec-
11 retary of the Treasury shall, with respect to the ves-
12 sel concerned, refuse or revoke any clearance re-
13 quired by section 4197 of the Revised Statutes of
14 the United States (46 U.S.C. 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 striking “or
20 (b)(4)” and inserting “or (b)(2)”.

21 **SEC. 114. REPORTS AND CERTIFICATES.**

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

24 (1) striking “and certificates” in the section
25 heading;

1 (2) striking “(a) REPORTS.—” in the sub-
2 section heading for subsection (a); and

3 (3) striking subsection (b).

4 **SEC. 115. EXEMPTIONS.**

5 Section 16 of the Shipping Act of 1984 (46 U.S.C.
6 App. 1715) is amended by striking “substantially impair
7 effective regulation by the Commission, be unjustly dis-
8 criminatory, result in substantial reduction in competition,
9 or be detrimental to commerce.” and inserting “result in
10 substantial reduction in competition or be detrimental to
11 commerce.”.

12 **SEC. 116. AGENCY REPORTS AND ADVISORY COMMISSION.**

13 Section 18 of the Shipping Act of 1984 (46 U.S.C.
14 App. 1717) is repealed.

15 **SEC. 117. OCEAN FREIGHT FORWARDERS.**

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

18 (1) striking subsection (a) and inserting the fol-
19 lowing:

20 “(a) LICENSE.—No person in the United States may
21 act as an ocean freight forwarder unless that person holds
22 a license issued by the Commission. The Commission shall
23 issue a forwarder’s license to any person that the Commis-
24 sion determines to be qualified by experience and char-
25 acter to act as an ocean freight forwarder.”;

1 (2) redesignating subsections (b), (c), and (d)
2 as subsections (c), (d), and (e), respectively;

3 (3) inserting after subsection (a) the following:

4 “(b) FINANCIAL RESPONSIBILITY.—

5 “(1) No person may act as an ocean freight for-
6 warder unless that person furnishes a bond, proof of
7 insurance, or other surety in a form and amount de-
8 termined by the Commission to insure financial re-
9 sponsibility that is issued by a surety company
10 found acceptable by the Secretary of the Treasury.

11 “(2) A bond, insurance, or other surety ob-
12 tained pursuant to this section—

13 “(A) shall be available to pay any judg-
14 ment for damages against an ocean freight for-
15 warder arising from its transportation-related
16 activities under section 3(18) of this Act, or any
17 order for reparation issued pursuant to section
18 11 or 14 of this Act, or any penalty assessed
19 pursuant to section 13 of this Act; and

20 “(B) may be available to pay any claim
21 against an ocean freight forwarder arising from
22 its transportation-related activities under sec-
23 tion 3(18) of this Act that is deemed valid by
24 the surety company after providing the ocean

1 freight forwarder the opportunity to address the
2 validity of the claim.

3 “(3) An ocean freight forwarder not domiciled
4 in the United States shall designate a resident agent
5 in the United States for receipt of service of judicial
6 and administrative process, including subpoenas.”;

7 (4) striking “a bond in accordance with sub-
8 section (a)(2)” in subsection (c), as redesignated,
9 and inserting “a bond, proof of insurance, or other
10 surety in accordance with subsection (b)(1)”;

11 (5) striking “forwarder” in paragraph (1) of
12 subsection (e) and inserting “forwarder, as described
13 in section 3(18),”;

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

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

20 (8) adding at the end of subsection (e), as re-
21 designated, 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

1 level of compensation paid to an ocean freight for-
2 warder, as defined in section 3(18)(A) of this Act,
3 may—

4 “(A) deny to any member of the con-
5 ference or group the right, upon notice of not
6 more than 5 calendar days, to take independent
7 action on any level of compensation paid to an
8 ocean freight forwarder, as so defined; or

9 “(B) agree to limit the payment of com-
10 pensation to an ocean freight forwarder, as so
11 defined, to less than 1.25 percent of the aggre-
12 gate of all rates and charges which are applica-
13 ble under a tariff and which are assessed
14 against the cargo on which the forwarding serv-
15 ices are provided.”.

16 **SEC. 118. CONTRACTS, AGREEMENTS, AND LICENSES**
17 **UNDER PRIOR SHIPPING LEGISLATION.**

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

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

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

1 continue in force and effect as if issued or effective under
2 this Act, as amended by the Ocean Shipping Reform Act
3 of 1997, and all new agreements, contracts, and modifica-
4 tions to existing, pending, or new contracts or agreements
5 shall be considered under this Act, as amended by the
6 Ocean Shipping Reform Act of 1997.”;

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

9 “(3) The Ocean Shipping Reform Act of 1997
10 shall not affect any suit—

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

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

17 “(4) Regulations issued by the Federal Mari-
18 time Commission shall remain in force and effect
19 where not inconsistent with this Act, as amended by
20 the Ocean Shipping Reform Act of 1997.”.

21 **SEC. 119. SURETY FOR NON-VESSEL-OPERATING COMMON**
22 **CARRIERS.**

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

1 **SEC. 120. REPLACEMENT OF FEDERAL MARITIME COMMIS-**
 2 **SION WITH INTERMODAL TRANSPORTATION**
 3 **BOARD.**

4 (a) IN GENERAL.—The Shipping Act of 1984 (46
 5 U.S.C. App. 1701 et seq.) is amended by—

6 (1) striking “Federal Maritime Commission”
 7 each place it appears, except in sections 7(a)(6) and
 8 20, and inserting “Intermodal Transportation
 9 Board”;

10 (2) striking “Commission” each place it ap-
 11 pears (including chapter and section headings), ex-
 12 cept in sections 7(a)(6) and 20, and inserting
 13 “Board”; and

14 (3) striking “Commission’s” each place it ap-
 15 pears and inserting “Board’s”.

16 (b) EFFECTIVE DATE.—The amendments made by
 17 subsection (a) take effect on January 1, 1999.

18 **TITLE II—TRANSFER OF FUNC-**
 19 **TIONS OF THE FEDERAL MAR-**
 20 **ITIME COMMISSION TO THE**
 21 **INTERMODAL TRANSPOR-**
 22 **TATION BOARD**

23 **SEC. 201. TRANSFER TO THE INTERMODAL TRANSPOR-**
 24 **TATION BOARD.**

25 (a) CHANGE OF NAME OF SURFACE TRANSPOR-
 26 TATION BOARD TO INTERMODAL TRANSPORTATION

1 BOARD.—The ICC Termination Act of 1995 (Pub. L.
2 104-88) is amended by striking “Surface Transportation
3 Board” each place it appears and inserting “Intermodal
4 Transportation Board”.

5 (b) FUNCTIONS OF THE FEDERAL MARITIME COM-
6 MISSION.—All functions, powers and duties vested in the
7 Federal Maritime Commission shall be administered by
8 the Intermodal Transportation Board.

9 (c) REGULATIONS.—No later than January 1, 1998,
10 the Federal Maritime Commission, in consultation with
11 the Surface Transportation Board, shall prescribe final
12 regulations to implement the changes made by this Act.

13 (d) AUTHORIZATION OF APPROPRIATIONS FOR FIS-
14 CAL YEAR 1998.—There is authorized to be appropriated
15 to the Federal Maritime Commission, \$15,000,000 for fis-
16 cal year 1998.

17 (e) COMMISSIONERS OF THE FEDERAL MARITIME
18 COMMISSION.—Subject to the political party restrictions
19 of section 701(b) of title 49, United States Code, the 2
20 Commissioners of the Federal Maritime Commission
21 whose terms have the latest expiration dates shall become
22 members of the Intermodal Transportation Board. Of the
23 2 members of the Intermodal Transportation Board first

1 appointed under this subsection, the one with the first ex-
 2 piring term (as a member of the Federal Maritime Com-
 3 mission) shall serve for a term ending December 31, 2000,
 4 and the other shall serve for a term ending December 31,
 5 2002. Effective January 1, 1999, the right of any Federal
 6 Maritime Commission commissioner other than those des-
 7 ignated under this subsection to remain in office is termi-
 8 nated.

9 (f) MEMBERSHIP OF THE INTERMODAL TRANSPOR-
 10 TATION BOARD.—

11 (1) NUMBER OF MEMBERS.—Section 701(b)(1)
 12 of title 49, United States Code, is amended by—

13 (A) striking “3 members” and inserting “5
 14 members”; and

15 (B) striking “2 members” and inserting “3
 16 members”.

17 (2) QUALIFICATIONS.—Section 701(b)(2) of
 18 title 49, United States Code, is amended by insert-
 19 ing after “sector.” the following: “Effective January
 20 1, 1999, at least 2 members shall be individuals
 21 with—

22 “(A) professional standing and dem-
 23 onstrated knowledge in the fields of maritime
 24 transportation or its regulation; or

1 (5) striking “tariffs filed with the Commission”
2 in subsection (9)(b) and inserting “tariffs and serv-
3 ice contracts”; and

4 (6) striking “Commission” each place it ap-
5 pears (including the heading) and inserting
6 “Board”.

7 (b) SPECIAL EFFECTIVE DATE.—The amendments
8 made by subsection (a) take effect on the date of enact-
9 ment of this Act, except that the amendments made by
10 paragraphs (1) and (6) of that subsection take effect on
11 January 1, 1999.

12 **SEC. 302. TECHNICAL CORRECTIONS.**

13 (a) PUBLIC LAW 89–777.—The Act of November 6,
14 1966, (Public Law 89–777; 80 Stat. 1356; 46 U.S.C. App.
15 817 et seq.) is amended by—

16 (1) striking “Federal Maritime Commission”
17 each place it appears and inserting “Intermodal
18 Transportation Board”; and

19 (2) striking “Commission” each place it ap-
20 pears and inserting “Board”.

21 (b) TITLE 28, UNITED STATES CODE, AND CROSS
22 REFERENCE.—

23 (1) Section 2341 of title 28, United States
24 Code, is amended by—

1 (A) striking “Commission, the Federal
2 Maritime Commission,” in paragraph (3)(A);
3 and

4 (B) striking “Surface” in paragraph
5 (3)(E) and inserting “Intermodal”.

6 (2) Section 2342 of such title is amended by—

7 (A) striking paragraph (3) and inserting
8 the following:

9 “(3) all rules, regulations, or final orders of the
10 Secretary of Transportation issued pursuant to sec-
11 tion 2, 9, 37, 41, or 43 of the Shipping Act, 1916
12 (46 U.S.C. App. 802, 803, 808, 835, 839, or 841a)
13 or pursuant to part B or C of subtitle IV of title 49
14 (49 U.S.C. 13101 et seq. or 15101 et seq.);” and

15 (B) striking paragraph (5) and inserting
16 the following:

17 “(5) all rules, regulations, or final orders of the
18 Intermodal Transportation Board—

19 “(A) made reviewable by section 2321 of
20 this title; or

21 “(B) pursuant to—

22 “(i) section 19 of the Merchant Ma-
23 rine Act, 1920 (46 U.S.C. App. 876);

1 “(ii) section 14 or 17 of the Shipping
2 Act of 1984 (46 U.S.C. App. 1713 or
3 1716); or

4 “(iii) section 2(d) or 3(d) of the Act
5 of November 6, 1966 (46 U.S.C. App.
6 817d(d) or 817e(d));”.

7 (c) FOREIGN SHIPPING PRACTICES ACT OF 1988.—
8 Section 10002(i) of the Foreign Shipping Practices Act
9 of 1988 (46 U.S.C. 1710a(i)) is amended by striking
10 “2342(3)(B)” and inserting “2342(5)(B)”.

11 (d) TARIFF ACT OF 1930.—Section 641(i) of the
12 Tariff Act of 1930 (19 U.S.C. 1641) is repealed.

13 (e) EFFECTIVE DATES.—

14 (1) The amendments made by subsections (a),
15 (b), and (c) take effect January 1, 1999.

16 (2) The repeal made by subsection (d) takes ef-
17 fect March 1, 1998.

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