

Senate Bill No. 45

CHAPTER 244

An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

[Approved by Governor September 22, 2005. Filed with Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 45, Alarcon. Intermodal marine terminals.

Existing law imposes special regulations on various business activities but does not specifically regulate detention and per diem charges imposed by intermodal terminals on intermodal equipment used by motor carriers.

This bill would prohibit an intermodal marine equipment provider or marine terminal operator from imposing per diem, detention, or demurrage charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. The bill would also prohibit 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, detention, or demurrage charges or certain other charges from the motor carrier's freight bill.

The people of the State of California do enact as follows:

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 28.5. INTERMODAL MARINE TERMINALS

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

(b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem, detention, or demurrage charges on an intermodal motor carrier 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 weekend or 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 terminal decides to divert equipment 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 marine terminal equipment is out of compliance pursuant to Section 34505.9 of the Vehicle Code or the equipment is placed out of service.

(5) When a loaded container is not available for pickup when the motor carrier arrives at the intermodal marine terminal.

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

(c) An intermodal marine equipment 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 terminal, 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 terminal, 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 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 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 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. An intermodal motor carrier shall not be liable for any portion of demurrage when an intermodal container is not picked up during free time, which is the time period before demurrage charges are to be applied.

(d) As used in this chapter:

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

(2) “Closed” means 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.

(3) “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.

(4) “Shall not impose per diem, detention, or demurrage charges on an intermodal carrier” shall apply to the day or days in question that an occurrence referenced in subdivision (b) took place.

(5) “Intermodal marine terminal” means a marine terminal location or facility that engages in discharging or receiving equipment owned, operated, or controlled by an equipment provider.

(6) “Written or electronic notification” means any communication by postal letter, facsimile, electronic mail, or other electronic notification.