

Calendar No. 311

117TH CONGRESS
2D SESSION

S. 3580

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2022

Ms. KLOBUCHAR (for herself, Mr. THUNE, Ms. BALDWIN, Mr. HOEVEN, Ms. STABENOW, Mr. MARSHALL, Mr. PETERS, Mr. MORAN, Mr. BLUMENTHAL, Mr. YOUNG, Mr. KELLY, Mrs. BLACKBURN, Mr. BOOKER, Ms. ERNST, Ms. SMITH, Mr. CRAPO, Ms. CORTEZ MASTO, Mr. BRAUN, Mr. WARNOCK, Mr. RISCH, Mr. BENNET, Mr. CRAMER, Mr. WYDEN, Mr. BLUNT, Mr. VAN HOLLEN, Mr. BOOZMAN, Mr. PADILLA, Mrs. FISCHER, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 24, 2022

Reported by Ms. CANTWELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ocean Shipping Re-
3 form Act of 2022”.

4 **SEC. 2. PURPOSES.**

5 Section 40101 of title 46, United States Code, is
6 amended—

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

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

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

14 (3) by striking paragraph (4) and inserting the
15 following:

16 “(4) promote the growth and development of
17 United States exports.”.

18 **SEC. 3. SERVICE CONTRACTS.**

19 Section 40502(e) of title 46, United States Code, is
20 amended—

21 (1) in paragraph (7) by striking “, and” and in-
22 serting a semicolon;

23 (2) in paragraph (8) by striking the period and
24 inserting “, and”; and

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

1 “(9) any other essential terms that the Federal
2 Maritime Commission determines necessary or ap-
3 propriate.”.

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

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

8 **“§ 40504. Shipping exchange registry**

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

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

23 “(c) EXEMPTION.—The Commission may exempt,
24 conditionally or unconditionally, a shipping exchange from
25 registration under this section if the Commission finds

1 that the shipping exchange is subject to comparable, com-
 2 prehensive supervision and regulation by the appropriate
 3 governmental authorities in a foreign country where the
 4 shipping exchange is headquartered.

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

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

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

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

“40504. Shipping exchange registry.”.

1 **SEC. 5. PROHIBITION ON RETALIATION.**

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

4 ~~“(d) PROHIBITION ON RETALIATION.—~~

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

16 ~~“(2) ACTIONS.—The actions described in this~~
17 ~~paragraph are—~~

18 ~~“(A) refusing, or threatening to refuse,~~
19 ~~cargo space accommodations when available; or~~

20 ~~“(B) resorting to any other prohibited ac-~~
21 ~~tions under section 41104(a)(3).”.~~

22 **SEC. 6. PUBLIC DISCLOSURE.**

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

1 “(d) PUBLIC DISCLOSURES.—The Federal Maritime
2 Commission shall publish, and annually update, on the
3 website of the Commission—

4 “(1) all findings by the Commission of false
5 certifications by common carriers or marine terminal
6 operators under section 41104(a)(15) of this title;
7 and

8 “(2) all penalties imposed or assessed against
9 common carriers or marine terminal operators, as
10 applicable, under sections 41107, 41108, and 41109,
11 listed by each common carrier or marine terminal
12 operator.”.

13 **SEC. 7. COMMON CARRIERS.**

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

16 (1) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
18 by striking “may not” and inserting “shall
19 not”;

20 (B) by striking paragraph (3) and insert-
21 ing the following:

22 “(3) with due regard being given to the proper
23 loading of the vessel and the available tonnage,
24 refuse cargo space accommodations when available;

1 or resort to other unfair or unjustly discriminatory
2 methods;”;

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

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

11 (E) in paragraph (10), by adding “, in-
12 cluding with respect to vessel space accommoda-
13 tions” after “negotiate”;

14 (F) in paragraph (12) by striking “, or”
15 and inserting a semicolon;

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

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

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

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

1 “(A) all provisions of part 545 of title 46;
2 Code of Federal Regulations (or successor regu-
3 lations); and

4 “(B) the findings of the final rule pub-
5 lished on May 18, 2020, entitled ‘Interpretive
6 Rule on Demurrage and Detention Under the
7 Shipping Act’ (85 Fed. Reg. 29638).”; and
8 (2) by adding at the end the following:

9 “(d) VIOLATION OF PROHIBITION.—If the Commis-
10 sion determines, after an investigation in response to a
11 submission under section 41310, that a certification under
12 subsection (a)(15) was inaccurate or false, penalties under
13 section 41107 shall be applied.

14 “(e) CERTIFICATION.—Failure to include a certifi-
15 cation under subsection (a)(15) alongside any demurrage
16 or detention charge shall eliminate any obligation of the
17 charged party to pay the applicable charge.”.

18 (b) RULEMAKING ON DEMURRAGE OR DETENTION.—

19 (1) IN GENERAL.—Not later than 1 year after
20 the date of enactment of this Act, the Federal Mari-
21 time Commission shall issue rulemaking further de-
22 fining prohibited practices by common carriers, ma-
23 rine terminal operators, shippers, and ocean trans-
24 portation intermediaries under section 41102(e) of

1 title 46, United States Code, regarding the assess-
 2 ment of demurrage or detention charges.

3 ~~(2) CONTENTS.—~~The rulemaking under para-
 4 graph ~~(1)~~ shall seek to further clarify reasonable
 5 rules and practices related to the assessment of de-
 6 tention and demurrage charges to address the issues
 7 identified in the final rule published on May 18,
 8 2020, titled “Interpretive Rule on Demurrage and
 9 Detention Under the Shipping Act” (85 Fed. Reg.
 10 29638), including a determination of which parties
 11 may be appropriately billed for any demurrage, de-
 12 tention, or other similar per container charges.

13 ~~(c) RULEMAKING ON UNFAIR OR UNJUSTLY DIS-~~
 14 ~~CRIMINATORY METHODS.—~~Not later than 1 year after the
 15 date of enactment of this Act, the Federal Maritime Com-
 16 mission shall issue rulemaking defining unfair or unjustly
 17 discriminatory methods under section 41104(a)(3) of title
 18 46, as amended by this section.

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

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

2 (a) ~~IN GENERAL.~~—Title 46, United States Code, is
3 amended—

4 (1) in section 41107—

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

7 (B) in subsection (a), by inserting “or, in
8 addition to or in lieu of a civil penalty, is liable
9 for the refund of a charge” after “civil pen-
10 alty”; and

11 (C) in subsection (b), by inserting “or, in
12 addition to or in lieu of a civil penalty, the re-
13 fund of a charge,” after “civil penalty”; and

14 (2) in section 41109—

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

17 (B) in subsection (a)—

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

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

23 (C) by striking subsection (c);

24 (D) by redesignating subsections (d)
25 through (g) as subsections (e) through (f);

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

4 (F) in subsection (e), as redesignated by
 5 subparagraph (D), by inserting “or who is or-
 6 dered to refund a charge” after “civil penalty is
 7 assessed”; and

8 (G) in subsection (f), as redesignated by
 9 subparagraph (D)—

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

12 (ii) by inserting “or the amount or-
 13 dered to be refunded” after “amount as-
 14 sessed”.

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

17 (1) by striking the item relating to section
 18 41107 and inserting the following:

“41107. Monetary penalties or refunds.”;

19 and

20 (2) by striking the item relating to section
 21 41109 and inserting the following:

“41109. Assessment of penalties or refunds.”.

1 **SEC. 9. DATA COLLECTION.**

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

5 **“SEC. 41110. DATA COLLECTION.**

6 “(a) IN GENERAL.—Common carriers covered under
7 this chapter shall submit to the Federal Maritime Com-
8 mission a calendar quarterly report that describes the
9 total import and export tonnage and the total loaded and
10 empty 20-foot equivalent units per vessel (making port in
11 the United States, including any territory or possession
12 of the United States) operated by such common carrier.

13 “(b) PROHIBITION ON DUPLICATION.—Data required
14 to be reported under subsection (a) may not duplicate in-
15 formation—

16 “(1) submitted to the Corps of Engineers pur-
17 suant to section 11 of the Act entitled ‘An Act au-
18 thorizing the construction, repair, and preservation
19 of certain public works on rivers and harbors, and
20 for other purposes’, approved September 22, 1922
21 (33 U.S.C. 555), by an ocean common carrier acting
22 as a vessel operator; or

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

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

“41110. Data collection.”.

4 **SEC. 10. CHARGE COMPLAINTS.**

5 (a) ~~IN GENERAL.~~—Chapter 413 of title 46, United
 6 States Code, is amended by adding at the end the fol-
 7 lowing:

8 **“§ 41310. Charge complaints**

9 “(a) ~~IN GENERAL.~~—A person may submit to the
 10 Federal Maritime Commission, and the Commission shall
 11 accept, information concerning charges. The information
 12 submitted to the Commission may include the bill of lading
 13 numbers, certifications, or any other relevant information.

14 “(b) ~~INVESTIGATION.~~—Upon receipt of a submission
 15 under subsection (a), with respect to a charge assessed
 16 by a common carrier, the Commission shall promptly in-
 17 vestigate the charge with regard to compliance with sec-
 18 tion 41104(a). The common carrier shall—

19 “(1) be provided an opportunity to submit addi-
 20 tional information related to the charge in question;
 21 and

22 “(2) bear the burden of establishing the reason-
 23 ableness of any demurrage or detention charges
 24 which are the subject of any complaint proceeding
 25 challenging a common carrier or marine terminal op-

1 erator demurrage or detention charge pursuant to
 2 section 545.5 of title 46, Code of Federal regulations
 3 (or successor regulations).

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

9 “(d) PENALTIES.—In the event of a finding that a
 10 charge does not comply with section 41104(a) after sub-
 11 mission under subsection (a), a civil penalty under section
 12 41107 shall be applied to the common carrier making such
 13 charge.”.

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

“41310. Charge complaints.”.

17 **SEC. 11. INVESTIGATIONS.**

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

20 (1) in subsection (a), in the first sentence, by
 21 striking “or agreement” and inserting “agreement,
 22 fee, or charge”; and

23 (2) in subsection (b)—

1 (A) in the subsection heading, by striking
2 ~~“Agreement”~~ and inserting ~~“Agreement,~~
3 ~~fee, or charge”~~; and

4 (B) by inserting “, fee, or charge” after
5 “agreement”.

6 (b) ~~REPORT.~~—The Federal Maritime Commission
7 shall publish on a publicly available website of the Com-
8 mission a report containing the results of the investigation
9 entitled ~~“Fact Finding No. 29, International Ocean~~
10 ~~Transportation Supply Chain Engagement”~~.

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

12 Section 41305 of title 46, United States Code, is
13 amended—

14 (1) in subsection (c)—

15 (A) by striking ~~“section 41102(b),”~~
16 through ~~“or (3)”~~ and inserting ~~“subsection (b),~~
17 ~~(c), or (d) of section 41102, paragraph (3) or~~
18 ~~(6) of section 41104(a), or paragraph (1) or (3)~~
19 ~~of section 41105”~~; and

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

23 (2) in subsection (d), by striking ~~“section~~
24 ~~41104(4)(A) or (B)”~~ and inserting ~~“subparagraph~~
25 ~~(A) or (B) of section 41104(a)(4)”~~.

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

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

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

6 (2) in subsection (a)—

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

9 (B) by inserting “or to whom the refund of
10 the charge was ordered” after “award was
11 made”; and

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

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

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

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

19 Section 46106(b) of title 46, United States Code, is
20 amended—

21 (1) in paragraph (5) by striking “and” at the
22 end;

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

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

1 “(7) an identification of any otherwise con-
2 cerning practices by ocean common carriers, particu-
3 larly such carriers that are controlled carriers, that
4 are—

5 “(A) State-owned or State-controlled enter-
6 prises; or

7 “(B) owned or controlled by, a subsidiary
8 of, or otherwise related legally or financially
9 (other than a minority relationship or invest-
10 ment) to a corporation based in a country—

11 “(i) identified as a nonmarket econ-
12 omy country (as defined in section 771(18)
13 of the Tariff Act of 1930 (19 U.S.C.
14 1677(18))) as of the date of enactment of
15 this paragraph;

16 “(ii) identified by the United States
17 Trade Representative in the most recent
18 report required by section 182 of the
19 Trade Act of 1974 (19 U.S.C. 2242) as a
20 priority foreign country under subsection
21 (a)(2) of that section; or

22 “(iii) subject to monitoring by the
23 United States Trade Representative under
24 section 306 of the Trade Act of 1974 (19
25 U.S.C. 2416).”.

1 **SEC. 15. TECHNICAL AMENDMENTS.**

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

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

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Ocean Shipping Reform*
12 *Act of 2022”.*

13 **SEC. 2. PURPOSES.**

14 Section 40101 of title 46, United States Code, is
15 amended—

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

18 “(2) *ensure an efficient, competitive, and eco-*
19 *nomical transportation system in the ocean commerce*
20 *of the United States;”;*

21 (2) *in paragraph (3), by inserting “and sup-*
22 *porting commerce” after “needs”; and*

23 (3) *by striking paragraph (4) and inserting the*
24 *following:*

25 “(4) *promote the growth and development of*
26 *United States exports through a competitive and effi-*

1 *cient system for the carriage of goods by water in the*
 2 *foreign commerce of the United States, and by plac-*
 3 *ing a greater reliance on the marketplace.”.*

4 **SEC. 3. SERVICE CONTRACTS.**

5 *Section 40502(c) of title 46, United States Code, is*
 6 *amended—*

7 *(1) in paragraph (7), by striking “; and” and*
 8 *inserting a semicolon;*

9 *(2) in paragraph (8), by striking the period and*
 10 *inserting “; and”; and*

11 *(3) by adding at the end the following:*

12 *“(9) any other essential terms that the Federal*
 13 *Maritime Commission determines necessary or appro-*
 14 *priate through a rulemaking process.”.*

15 **SEC. 4. SHIPPING EXCHANGE REGISTRY.**

16 *(a) IN GENERAL.—Chapter 405 of title 46, United*
 17 *States Code, is amended by adding at the end the following:*

18 **“§ 40504. Shipping exchange registry**

19 *“(a) IN GENERAL.—No person may operate a shipping*
 20 *exchange involving ocean transportation in the foreign com-*
 21 *merce of the United States unless the shipping exchange is*
 22 *registered as a national shipping exchange under the terms*
 23 *and conditions provided in this section and the regulations*
 24 *issued pursuant to this section.*

1 “(b) *REGISTRATION.*—A person shall register a ship-
 2 ping exchange by filing with the Federal Maritime Commis-
 3 sion an application for registration in such form as the
 4 Commission, by rule, may prescribe, containing the rules
 5 of the exchange and such other information and documents
 6 as the Commission, by rule, may prescribe as necessary or
 7 appropriate to complete a shipping exchange’s registration.

8 “(c) *EXEMPTION.*—The Commission may exempt, con-
 9 ditionally or unconditionally, a shipping exchange from
 10 registration under this section if the Commission finds that
 11 the shipping exchange is subject to comparable, comprehen-
 12 sive supervision and regulation by the appropriate govern-
 13 mental authorities in a foreign country where the shipping
 14 exchange is headquartered.

15 “(d) *REGULATIONS.*—Not later than 3 years after the
 16 date of enactment of the Ocean Shipping Reform Act of
 17 2022, the Commission shall issue regulations pursuant to
 18 subsection (a), which shall set standards necessary to carry
 19 out subtitle IV of this title for registered national shipping
 20 exchanges, including the minimum requirements for service
 21 contracts established under section 40502 of this title.

22 “(e) *DEFINITION OF SHIPPING EXCHANGE.*—In this
 23 section, the term ‘shipping exchange’ means a platform
 24 (digital, over-the-counter, or otherwise) that connects ship-
 25 pers with common carriers for the purpose of entering into

1 *underlying agreements or contracts for the transport of*
 2 *cargo, by vessel or other modes of transportation.”.*

3 (b) *APPLICABILITY.—The registration requirement*
 4 *under section 40504 of title 46, United States Code (as*
 5 *added by subsection (a)), shall take effect on the date on*
 6 *which the Federal Maritime Commission states the rule is*
 7 *effective in the regulations issued under such section.*

8 (c) *CLERICAL AMENDMENT.—The analysis for chapter*
 9 *405 of title 46, United States Code, is amended by adding*
 10 *at the end the following:*

“40504. Shipping exchange registry.”.

11 **SEC. 5. PROHIBITION ON RETALIATION.**

12 *Section 41102 of title 46, United States Code, is*
 13 *amended by adding at the end the following:*

14 *“(d) RETALIATION AND OTHER DISCRIMINATORY AC-*
 15 *TIONS.—A common carrier, marine terminal operator, or*
 16 *ocean transportation intermediary, acting alone or in con-*
 17 *junction with any other person, directly or indirectly, may*
 18 *not—*

19 *“(1) retaliate against a shipper, an agent of a*
 20 *shipper, an ocean transportation intermediary, or a*
 21 *motor carrier by refusing, or threatening to refuse, an*
 22 *otherwise-available cargo space accommodation; or*

23 *“(2) resort to any other unfair or unjustly dis-*
 24 *criminatory action for—*

1 “(A) the reason that a shipper, an agent of
2 a shipper, an ocean transportation intermediary,
3 or motor carrier has—

4 “(i) patronized another carrier; or

5 “(ii) filed a complaint against the
6 common carrier, marine terminal operator,
7 or ocean transportation intermediary; or

8 “(B) any other reason.”.

9 **SEC. 6. PUBLIC DISCLOSURE.**

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

12 “(d) *PUBLIC DISCLOSURES.*—The Federal Maritime
13 Commission shall publish, and annually update, on the
14 website of the Commission—

15 “(1) all findings by the Commission of false de-
16 tention and demurrage invoice information by com-
17 mon carriers under section 41104(a)(15) of this title;
18 and

19 “(2) all penalties imposed or assessed against
20 common carriers, as applicable, under sections 41107,
21 41108, and 41109, listed by each common carrier.”.

22 **SEC. 7. COMMON CARRIERS.**

23 (a) *IN GENERAL.*—Section 41104 of title 46, United
24 States Code, is amended—

25 (1) in subsection (a)—

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

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

5 “(3) unreasonably refuse cargo space accom-
6 modations when available, or resort to other unfair or
7 unjustly discriminatory methods;”;

8 (C) in paragraph (5), by striking “ in the
9 matter of rates or charges” and inserting
10 “against any commodity group or type of ship-
11 ment or in the matter of rates or charges”;

12 (D) in paragraph (10), by adding “, in-
13 cluding with respect to vessel space accommoda-
14 tions provided by an ocean common carrier”
15 after “negotiate”;

16 (E) in paragraph (12) by striking “; or”
17 and inserting a semicolon;

18 (F) in paragraph (13) by striking the pe-
19 riod and inserting a semicolon; and

20 (G) by adding at the end the following:

21 “(14) assess any party for a charge that is in-
22 consistent or does not comply with all applicable pro-
23 visions and regulations, including subsection (c) of
24 section 41102 or part 545 of title 46, Code of Federal
25 Regulations (or successor regulations);

1 “(15) invoice any party for demurrage or deten-
 2 tion charges unless the invoice includes information
 3 as described in subsection (d) showing that such
 4 charges comply with—

5 “(A) all provisions of part 545 of title 46,
 6 Code of Federal Regulations (or successor regula-
 7 tions); and

8 “(B) applicable provisions and regulations,
 9 including the principles of the final rule pub-
 10 lished on May 18, 2020, entitled ‘Interpretive
 11 Rule on Demurrage and Detention Under the
 12 Shipping Act’ (or successor rule); or

13 “(16) for service pursuant to a service contract,
 14 give any undue or unreasonable preference or advan-
 15 tage or impose any undue or unreasonable prejudice
 16 or disadvantage against any commodity group or
 17 type of shipment.”; and

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

19 “(d) *DETENTION AND DEMURRAGE INVOICE INFORMA-*
 20 *TION.—*

21 “(1) *INACCURATE INVOICE.—*If the Commission
 22 determines, after an investigation in response to a
 23 submission under section 41310, that an invoice
 24 under subsection (a)(15) was inaccurate or false, pen-
 25 alties or refunds under section 41107 shall be applied.

1 “(2) *CONTENTS OF INVOICE.*—*An invoice under*
2 *subsection (a)(15), unless otherwise determined by*
3 *subsequent Commission rulemaking, shall include ac-*
4 *curate information on each of the following, as well*
5 *as minimum information as determined by the Com-*
6 *mission:*

7 “(A) *Date that container is made available.*

8 “(B) *The port of discharge.*

9 “(C) *The container number or numbers.*

10 “(D) *For exported shipments, the earliest*
11 *return date.*

12 “(E) *The allowed free time in days.*

13 “(F) *The start date of free time.*

14 “(G) *The end date of free time.*

15 “(H) *The applicable detention or demurrage*
16 *rule on which the daily rate is based.*

17 “(I) *The applicable rate or rates per the ap-*
18 *plicable rule.*

19 “(J) *The total amount due.*

20 “(K) *The email, telephone number, or other*
21 *appropriate contact information for questions or*
22 *requests for mitigation of fees.*

23 “(L) *A statement that the charges are con-*
24 *sistent with any of Federal Maritime Commis-*

1 *sion rules with respect to detention and demur-*
 2 *rage.*

3 *“(M) A statement that the common carrier’s*
 4 *performance did not cause or contribute to the*
 5 *underlying invoiced charges.*

6 *“(e) SAFE HARBOR.—If a non-vessel operating com-*
 7 *mon carrier passes through to the relevant shipper an in-*
 8 *voice made by the ocean common carrier, and the Commis-*
 9 *sion finds that the non-vessel operating common carrier is*
 10 *not otherwise responsible for the charge, then the ocean com-*
 11 *mon carrier shall be subject to refunds or penalties pursu-*
 12 *ant to subsection (d)(1).*

13 *“(f) ELIMINATION OF CHARGE OBLIGATION.—Failure*
 14 *to include the information required under subsection (d) on*
 15 *an invoice with any demurrage or detention charge shall*
 16 *eliminate any obligation of the charged party to pay the*
 17 *applicable charge.”.*

18 *(b) RULEMAKING ON DEMURRAGE OR DETENTION.—*

19 *(1) IN GENERAL.—Not later than 45 days after*
 20 *the date of enactment of this Act, the Federal Mari-*
 21 *time Commission shall initiate a rulemaking further*
 22 *defining prohibited practices by common carriers,*
 23 *marine terminal operators, shippers, and ocean trans-*
 24 *portation intermediaries under section 41102(c) of*
 25 *title 46, United States Code, regarding the assessment*

1 of demurrage or detention charges. *The Federal Mari-*
 2 *time Commission shall issue a final rule defining*
 3 *such practices not later than 1 year after the date of*
 4 *enactment of this Act.*

5 (2) *CONTENTS.—The rule under paragraph (1)*
 6 *shall seek to further clarify reasonable rules and prac-*
 7 *tices related to the assessment of detention and de-*
 8 *murrage charges to address the issues identified in the*
 9 *final rule published on May 18, 2020, entitled “Inter-*
 10 *pretive Rule on Demurrage and Detention Under the*
 11 *Shipping Act” (or successor rule), including a deter-*
 12 *mination of which parties may be appropriately*
 13 *billed for any demurrage, detention, or other similar*
 14 *per container charges.*

15 (c) *RULEMAKING ON UNFAIR OR UNJUSTLY DISCRIMI-*
 16 *NATORY METHODS.—Not later than 60 days after the date*
 17 *of enactment of this Act, the Federal Maritime Commission*
 18 *shall initiate a rulemaking defining unfair or unjustly dis-*
 19 *criminatory methods under section 41104(a)(3) of title 46,*
 20 *United States Code, as amended by this section. The Fed-*
 21 *eral Maritime Commission shall issue a final rule not later*
 22 *than 1 year after the date of enactment of this Act.*

23 (d) *RULEMAKING ON UNREASONABLE REFUSAL TO*
 24 *DEAL OR NEGOTIATE WITH RESPECT TO VESSEL SPACE*
 25 *ACCOMMODATIONS.—Not later than 30 days after the date*

1 *of enactment of this Act, the Federal Maritime Commission,*
 2 *in consultation with the Commandant of the United States*
 3 *Coast Guard, shall initiate a rulemaking defining unrea-*
 4 *sonable refusal to deal or negotiate with respect to vessel*
 5 *space under section 41104(a)(10) of title 46, as amended*
 6 *by this section. The Federal Maritime Commission shall*
 7 *issue a final rule not later than 6 months after the date*
 8 *of enactment of this Act.*

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

10 (a) *IN GENERAL.*—Title 46, United States Code, is
 11 amended—

12 (1) *in section 41107—*

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

15 (B) *in subsection (a), by inserting “or, in*
 16 *addition to or in lieu of a civil penalty, is liable*
 17 *for the refund of a charge” after “civil penalty”;*
 18 *and*

19 (C) *in subsection (b), by inserting “or, in*
 20 *addition to or in lieu of a civil penalty, the re-*
 21 *fund of a charge,” after “civil penalty”; and*

22 (2) *section 41109 is amended—*

23 (A) *by striking subsections (a) and (b) and*
 24 *inserting the following:*

1 “(a) *GENERAL AUTHORITY.—Until a matter is re-*
 2 *ferred to the Attorney General, the Federal Maritime Com-*
 3 *mission may—*

4 “(1) *after notice and opportunity for a hearing,*
 5 *in accordance with this part—*

6 “(A) *assess a civil penalty; or*

7 “(B) *in addition to, or in lieu of, assessing*
 8 *a civil penalty under subparagraph (A), order a*
 9 *refund of money (including additional amounts*
 10 *in accordance with section 41305(c)), subject to*
 11 *subsection (b)(2); and*

12 “(2) *compromise, modify, or remit, with or with-*
 13 *out conditions, a civil penalty or refund imposed*
 14 *under paragraph (1).*

15 “(b) *DETERMINATION OF AMOUNT.—*

16 “(1) *FACTORS FOR CONSIDERATION.—In deter-*
 17 *mining the amount of a civil penalty assessed or re-*
 18 *fund of money ordered pursuant to subsection (a), the*
 19 *Federal Maritime Commission shall take into consid-*
 20 *eration—*

21 “(A) *the nature, circumstances, extent, and*
 22 *gravity of the violation committed;*

23 “(B) *with respect to the violator—*

24 “(i) *the degree of culpability;*

25 “(ii) *any history of prior offenses;*

1 “(iii) the ability to pay; and

2 “(iv) such other matters as justice may
3 require; and

4 “(C) the amount of any refund of money or-
5 dered pursuant to subsection (a)(1)(B).

6 “(2) *COMMENSURATE REDUCTION IN CIVIL PEN-*
7 *ALTY.—*

8 “(A) *IN GENERAL.—In any case in which*
9 *the Federal Maritime Commission orders a re-*
10 *fund of money pursuant to subsection (a)(1)(B)*
11 *in addition to assessing a civil penalty pursuant*
12 *to subsection (a)(1)(A), the amount of the civil*
13 *penalty assessed shall be decreased by any addi-*
14 *tional amounts included in the refund of money*
15 *in excess of the actual injury (as defined in sec-*
16 *tion 41305(a)).*

17 “(B) *TREATMENT OF REFUNDS.—A refund*
18 *of money ordered pursuant to subsection*
19 *(a)(1)(B) shall be—*

20 “(i) *considered to be compensation*
21 *paid to the applicable claimant; and*

22 “(ii) *deducted from the total amount of*
23 *damages awarded to that claimant in a*
24 *civil action against the violator relating to*
25 *the applicable violation.”;*

1 (B) in subsection (c), by striking “may not
2 be imposed” and inserting “or refund of money
3 under subparagraph (A) or (B), respectively, of
4 subsection (a)(1) may not be imposed”;

5 (C) in subsection (e), by inserting “or order
6 a refund of money” after “penalty”;

7 (D) in subsection (f), by inserting “, or that
8 is ordered to refund money,” after “assessed”;
9 and

10 (E) in subsection (g), in the first sentence,
11 by inserting “or a refund required under this
12 section” after “penalty”.

13 **SEC. 9. DATA COLLECTION.**

14 (a) *IN GENERAL.*—Chapter 411 of title 46, United
15 States Code, is amended by adding at the end the following:

16 **“§41110. Data collection**

17 *“The Federal Maritime Commission shall publish on*
18 *its website a calendar quarterly report that describes the*
19 *total import and export tonnage and the total loaded and*
20 *empty 20-foot equivalent units per vessel (making port in*
21 *the United States, including any territory or possession of*
22 *the United States) operated by each ocean common carrier*
23 *covered under this chapter. Ocean common carriers under*
24 *this chapter shall provide to the Commission all necessary*

1 *information, as determined by the Commission, for comple-*
 2 *tion of this report.”.*

3 *(b) RULE OF CONSTRUCTION.—Nothing in this section,*
 4 *and the amendment made by this section, shall be construed*
 5 *to compel the public disclosure of any confidential or pro-*
 6 *prietary data, in accordance with section 552(b)(4) of title*
 7 *5, United States Code.*

8 *(c) CLERICAL AMENDMENT.—The analysis for chapter*
 9 *411 of title 46, United States Code, is amended by adding*
 10 *at the end the following:*

“41110. Data collection.”.

11 **SEC. 10. CHARGE COMPLAINTS.**

12 *(a) IN GENERAL.—Chapter 413 of title 46, United*
 13 *States Code, is amended by adding at the end the following:*

14 **“§41310. Charge complaints**

15 *“(a) IN GENERAL.—A person may submit to the Fed-*
 16 *eral Maritime Commission, and the Commission shall ac-*
 17 *cept, information concerning complaints about charges as-*
 18 *essed by a common carrier. The information submitted to*
 19 *the Commission may include the bill of lading numbers,*
 20 *invoices, or any other relevant information.*

21 *“(b) INVESTIGATION.—Upon receipt of a submission*
 22 *under subsection (a), with respect to a charge assessed by*
 23 *a common carrier, the Commission shall promptly inves-*
 24 *tigate the charge with regard to compliance with section*
 25 *41104(a) and section 41102. The common carrier shall—*

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

4 “(2) bear the burden of establishing the reason-
 5 ableness of any demurrage or detention charges pur-
 6 suant to section 545.5 of title 46, Code of Federal
 7 Regulations (or successor regulations).

8 “(c) *REFUND*.—Upon receipt of submissions under
 9 subsection (a), if the Commission determines that a charge
 10 does not comply with section 41104(a) or 41102, the Com-
 11 mission shall promptly order the refund of charges paid.

12 “(d) *PENALTIES*.—In the event of a finding that a
 13 charge does not comply with section 41104(a) or 41102 after
 14 submission under subsection (a), a civil penalty under sec-
 15 tion 41107 shall be applied to the common carrier making
 16 such charge.

17 “(e) *CONSIDERATIONS*.—If the common carrier assess-
 18 ing the charge is acting in the capacity of a non-vessel-
 19 operating common carrier, the Commission shall, while con-
 20 ducting an investigation under subsection (b), consider—

21 “(1) whether the non-vessel-operating common
 22 carrier is responsible for the noncompliant assessment
 23 of the charge, in whole or in part; and

1 “(2) *whether another party is ultimately respon-*
 2 *sible in whole or in part and potentially subject to ac-*
 3 *tion under subsections (c) and (d).*”.

4 (b) *CLERICAL AMENDMENT.*—*The analysis for chapter*
 5 *413 of title 46, United States Code, is amended by adding*
 6 *at the end the following:*

 “41310. *Charge complaints.*”.

7 **SEC. 11. INVESTIGATIONS.**

8 (a) *AMENDMENTS.*—*Section 41302 of title 46, United*
 9 *States Code, is amended—*

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

13 (2) *in subsection (b)—*

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

17 (B) *by inserting “, fee, or charge” after*
 18 *“agreement”.*

19 (b) *REPORT.*—*The Federal Maritime Commission*
 20 *shall publish on a publicly available website of the Commis-*
 21 *sion a report containing the results of the investigation en-*
 22 *titled “Fact Finding No. 29, International Ocean Trans-*
 23 *portation Supply Chain Engagement”.*

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

2 Section 41305(c) of title 46, United States Code is
3 amended by striking “41102(b)” and inserting “subsection
4 (b) or (c) of section 41102”.

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

6 Section 41309 of title 46, United States Code, is
7 amended—

8 (1) in subsection (a), by striking “reparation,
9 the person to whom the award was made” and insert-
10 ing “a refund of money or reparation, the person to
11 which the refund or reparation was awarded”; and

12 (2) in subsection (b), in the first sentence—

13 (A) by striking “made an award of repara-
14 tion” and inserting “ordered a refund of money
15 or any other award of reparation”; and

16 (B) by inserting “(except for the Commis-
17 sion or any component of the Commission)”
18 after “parties in the order”.

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

20 Section 46106(b) of title 46, United States Code, is
21 amended—

22 (1) in paragraph (5), by striking “and” at the
23 end;

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

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

1 “(7) an identification of any otherwise con-
 2 cerning practices by ocean common carriers, particu-
 3 larly such carriers that are controlled carriers, that
 4 are—

5 “(A) State-owned or State-controlled enter-
 6 prises; or

7 “(B) owned or controlled by, a subsidiary
 8 of, or otherwise related legally or financially
 9 (other than a minority relationship or invest-
 10 ment) to a corporation based in a country—

11 “(i) identified as a nonmarket econ-
 12 omy country (as defined in section 771(18)
 13 of the Tariff Act of 1930 (19 U.S.C.
 14 1677(18))) as of the date of enactment of
 15 this paragraph;

16 “(ii) identified by the United States
 17 Trade Representative in the most recent re-
 18 port required by section 182 of the Trade
 19 Act of 1974 (19 U.S.C. 2242) as a priority
 20 foreign country under subsection (a)(2) of
 21 that section; or

22 “(iii) subject to monitoring by the
 23 United States Trade Representative under
 24 section 306 of the Trade Act of 1974 (19
 25 U.S.C. 2416).”.

1 **SEC. 15. TECHNICAL AMENDMENTS.**

2 (a) *Section 41108(a) of title 46, United States Code,*
 3 *is amended by striking “section 41104(1), (2), or (7)” and*
 4 *inserting “paragraph (1), (2), or (7) of section 41104(a)”.*

5 (b) *Section 41109(c) of title 46, United States Code,*
 6 *as amended by section 8 of this Act, is further amended*
 7 *by striking “section 41102(a) or 41104(1) or (2) of this*
 8 *title” and inserting “subsection (a) or (d) of section 41102*
 9 *or paragraph (1) or (2) of section 41104(a)”.*

10 (c) *Section 41305 of title 46, United States Code, as*
 11 *amended by section 12 of this Act, is further amended—*

12 (1) *in subsection (c), by striking “41104(3) or*
 13 *(6), or 41105(1) or (3) of this title” and inserting*
 14 *“paragraph (3) or (6) of section 41104(a), or para-*
 15 *graph (1) or (3) of section 41105”; and*

16 (2) *in subsection (d), by striking “section*
 17 *41104(4)(A) or (B) of this title” and inserting “sub-*
 18 *paragraph (A) or (B) of section 41104(a)(4)”.*

19 **SEC. 16. DWELL TIME STATISTICS.**

20 (a) *DEFINITIONS.—In this section:*

21 (1) *DIRECTOR.—The term “Director” means the*
 22 *Director of the Bureau of Transportation Statistics.*

23 (2) *MARINE CONTAINER.—The term “marine*
 24 *container” means an intermodal container with a*
 25 *length of—*

26 (A) *not less than 20 feet; and*

1 (B) *not greater than 45 feet.*

2 (3) *OUT OF SERVICE PERCENTAGE.*—*The term*
 3 *“out of service percentage” means the proportion of*
 4 *the chassis fleet for any defined geographical area*
 5 *that is out of service at any one time.*

6 (4) *STREET DWELL TIME.*—*The term “street*
 7 *dwell time”, with respect to a piece of equipment,*
 8 *means the quantity of time during which the piece of*
 9 *equipment is in use outside of the terminal.*

10 (b) *AUTHORITY TO COLLECT DATA.*—

11 (1) *IN GENERAL.*—*Each port, marine terminal*
 12 *operator, and chassis owner or provider with a fleet*
 13 *of over 50 chassis that supply chassis for a fee shall*
 14 *submit to the Director such data as the Director de-*
 15 *termines to be necessary for the implementation of*
 16 *this section, subject to subchapter III of chapter 35 of*
 17 *title 44, United States Code.*

18 (2) *APPROVAL BY OMB.*—*Subject to the avail-*
 19 *ability of appropriations, not later than 60 days after*
 20 *the date of enactment of this Act, the Director of the*
 21 *Office of Management and Budget shall approve an*
 22 *information collection for purposes of this section.*

23 (c) *PUBLICATION.*—*Subject to the availability of ap-*
 24 *propriations, not later than 240 days after the date of en-*
 25 *actment of this Act, and not less frequently than monthly*

1 *thereafter, the Director shall publish statistics relating to*
 2 *the dwell time of equipment used in intermodal transpor-*
 3 *tation at the top 25 ports, including inland ports, by 20-*
 4 *foot equivalent unit, including—*

5 *(1) total street dwell time, from all causes, of*
 6 *marine containers and marine container chassis; and*

7 *(2) the average out of service percentage, which*
 8 *shall not be identifiable with any particular port,*
 9 *marine terminal operator, or chassis provider.*

10 *(d) FACTORS.—Subject to the availability of appro-*
 11 *priations, to the maximum extent practicable, the Director*
 12 *shall publish the statistics described in subsection (c) on a*
 13 *local, regional, and national basis.*

14 *(e) SUNSET.—The authority under this section shall*
 15 *expire December 31, 2026.*

16 **SEC. 17. FEDERAL MARITIME COMMISSION ACTIVITIES.**

17 *(a) PUBLIC SUBMISSIONS TO COMMISSION.—The Fed-*
 18 *eral Maritime Commission shall—*

19 *(1) establish on the public website of the Com-*
 20 *mission a webpage that allows for the submission of*
 21 *comments, complaints, concerns, reports of non-*
 22 *compliance, requests for investigation, and requests*
 23 *for alternative dispute resolution; and*

1 (2) *direct each submission under the link estab-*
 2 *lished under paragraph (1) to the appropriate compo-*
 3 *nent office of the Commission.*

4 (b) *AUTHORIZATION OF OFFICE OF CONSUMER AF-*
 5 *FAIRS AND DISPUTE RESOLUTION SERVICES.—The Com-*
 6 *mission shall maintain an Office of Consumer Affairs and*
 7 *Dispute Resolution Services to provide nonadjudicative*
 8 *ombuds assistance, mediation, facilitation, and arbitration*
 9 *to resolve challenges and disputes involving cargo ship-*
 10 *ments, household good shipments, and cruises subject to the*
 11 *jurisdiction of the Commission.*

12 (c) *ENHANCING CAPACITY FOR INVESTIGATIONS.—*

13 (1) *IN GENERAL.—Pursuant to section 41302 of*
 14 *title 46, United States Code, not later than 18 months*
 15 *after the date of enactment of this Act, the Chair-*
 16 *person of the Commission shall staff within the Bu-*
 17 *reau of Enforcement, the Bureau of Certification and*
 18 *Licensing, the Office of the Managing Director, the*
 19 *Office of Consumer Affairs and Dispute Resolution*
 20 *Services, and the Bureau of Trade Analysis not fewer*
 21 *than 7 total positions to assist in investigations and*
 22 *oversight, in addition to the positions within the Bu-*
 23 *reau of Enforcement, the Bureau of Certification and*
 24 *Licensing, the Office of the Managing Director, the*
 25 *Office of Consumer Affairs and Dispute Resolution*

1 *Services, and the Bureau of Trade Analysis on that*
 2 *date of enactment.*

3 (2) *DUTIES.—The additional staff appointed*
 4 *under paragraph (1) shall provide support—*

5 (A) *to Area Representatives of the Bureau*
 6 *of Enforcement;*

7 (B) *to attorneys of the Bureau of Enforce-*
 8 *ment in enforcing the laws and regulations sub-*
 9 *ject to the jurisdiction of the Commission;*

10 (C) *for the alternative dispute resolution*
 11 *services of the Commission; or*

12 (D) *for the review of agreements and activi-*
 13 *ties subject to the authority of the Commission.*

14 **SEC. 18. TEMPORARY EMERGENCY AUTHORITY.**

15 (a) *DEFINITIONS.—In this section:*

16 (1) *COMMON CARRIER.—The term “common car-*
 17 *rier” has the meaning given the term in section 40102*
 18 *of title 46, United States Code.*

19 (2) *MOTOR CARRIER.—The term “motor carrier”*
 20 *has the meaning given the term in section 13102 of*
 21 *title 49, United States Code.*

22 (3) *RAIL CARRIER.—The term “rail carrier” has*
 23 *the meaning given the term in section 10102 of title*
 24 *49, United States Code.*

1 (4) *SHIPPER*.—The term “shipper” has the
 2 meaning given the term in section 40102 of title 46,
 3 United States Code.

4 (b) *PUBLIC INPUT ON INFORMATION SHARING*.—

5 (1) *IN GENERAL*.—Not later than 60 days after
 6 the date of enactment of this Act, the Federal Mari-
 7 time Commission shall issue a request for informa-
 8 tion, seeking public comment regarding—

9 (A) whether congestion of the carriage of
 10 goods has created an emergency situation of a
 11 magnitude such that there exists a substantial,
 12 adverse effect on the competitiveness and reli-
 13 ability of the international ocean transportation
 14 supply system;

15 (B) whether an emergency order under this
 16 section would alleviate such an emergency situa-
 17 tion; and

18 (C) the appropriate scope of such an emer-
 19 gency order, if applicable.

20 (2) *CONSULTATION*.—During the public comment
 21 period under paragraph (1), the Commission may
 22 consult, as the Commission determines to be appro-
 23 priate, with—

24 (A) other Federal departments and agencies;
 25 and

1 (B) persons with expertise relating to mari-
 2 time and freight operations.

3 (c) *AUTHORITY TO REQUIRE INFORMATION SHAR-*
 4 *ING.*—On making a unanimous determination described in
 5 subsection (d), the Commission may issue an emergency
 6 order requiring any common carrier or marine terminal
 7 operator to share directly with relevant shippers, rail car-
 8 riers, or motor carriers information relating to cargo
 9 throughput and availability, in order to ensure the efficient
 10 transportation, loading, and unloading of cargo to or
 11 from—

12 (1) any inland destination or point of origin;

13 (2) any vessel; or

14 (3) any point on a wharf or terminal.

15 (d) *DESCRIPTION OF DETERMINATION.*—

16 (1) *IN GENERAL.*—A determination referred to
 17 in subsection (c) is a unanimous determination by
 18 the commissioners on the Commission that congestion
 19 of carriage of goods has created an emergency situa-
 20 tion of a magnitude such that there exists a substan-
 21 tial, adverse effect on the competitiveness and reli-
 22 ability of the international ocean transportation sup-
 23 ply system.

24 (2) *FACTORS FOR CONSIDERATION.*—In issuing
 25 an emergency order pursuant to subsection (c), the

1 *Commission shall tailor the emergency order with re-*
 2 *spect to temporal and geographic scope, taking into*
 3 *consideration the likely burdens on common carriers*
 4 *and marine terminal operators and the likely benefits*
 5 *on congestion relating to the purposes described in*
 6 *section 40101 of title 46, United States Code.*

7 *(e) PETITIONS FOR EXCEPTION.—*

8 *(1) IN GENERAL.—A common carrier or marine*
 9 *terminal operator subject to an emergency order*
 10 *issued pursuant to this section may submit to the*
 11 *Commission a petition for exception from 1 or more*
 12 *requirements of the emergency order, based on a show-*
 13 *ing of undue hardship or other condition rendering*
 14 *compliance with such a requirement impracticable.*

15 *(2) DETERMINATION.—The Commission shall*
 16 *make a determination regarding a petition for excep-*
 17 *tion under paragraph (1) by—*

18 *(A) majority vote; and*

19 *(B) not later than 21 days after the date on*
 20 *which the petition is submitted.*

21 *(3) INAPPLICABILITY PENDING REVIEW.—The re-*
 22 *quirements of an emergency order that is the subject*
 23 *of a petition for exception under this subsection shall*
 24 *not apply to the petitioner during the period for*
 25 *which the petition is pending.*

1 (f) *LIMITATIONS.*—

2 (1) *TERM.*—*An emergency order issued pursuant*
3 *to this section—*

4 (A) *shall remain in effect for a period of not*
5 *longer than 60 days; but*

6 (B) *may be renewed by a unanimous deter-*
7 *mination of the Commission.*

8 (2) *SUNSET.*—*The authority provided by this*
9 *section shall terminate on the date that is 18 months*
10 *after the date of enactment of this Act.*

11 (3) *INVESTIGATIVE AUTHORITY UNAFFECTED.*—
12 *Nothing in this section shall affect the investigative*
13 *authorities of the Commission as described in subpart*
14 *R of part 502 of title 46, Code of Federal Regulations.*

15 **SEC. 19. BEST PRACTICES FOR CHASSIS POOLS.**

16 (a) *IN GENERAL.*—*Not later than April 1, 2023, the*
17 *Federal Maritime Commission shall enter into an agree-*
18 *ment with the Transportation Research Board of the Na-*
19 *tional Academies of Sciences, Engineering, and Medicine*
20 *under which the Transportation Research Board shall carry*
21 *out a study and develop best practices for on-terminal or*
22 *near-terminal chassis pools that provide service to marine*
23 *terminal operators, motor carriers, railroads, and other*
24 *stakeholders that use the chassis pools, with the goal of opti-*
25 *mizing supply chain efficiency and effectiveness.*

1 (b) *REQUIREMENTS.*—*In developing best practices*
 2 *under subsection (a), the Transportation Research Board*
 3 *shall—*

4 (1) *take into consideration—*

5 (A) *practical obstacles to the implementa-*
 6 *tion of chassis pools; and*

7 (B) *potential solutions to those obstacles;*
 8 *and*

9 (2) *address relevant communication practices,*
 10 *information sharing, and knowledge management.*

11 (c) *PUBLICATION.*—*The Commission shall publish the*
 12 *best practices developed under this section on a publicly*
 13 *available website by not later than April 1, 2024.*

14 (d) *FUNDING.*—*Subject to appropriations, the Com-*
 15 *mission may expend such sums as are necessary, but not*
 16 *to exceed \$500,000, to carry out this section.*

17 **SEC. 20. LICENSING TESTING.**

18 (a) *IN GENERAL.*—*Not later than 90 days after the*
 19 *date of enactment of this Act, the Administrator of the Fed-*
 20 *eral Motor Carrier Safety Administration (referred to in*
 21 *this section as the “Administrator”) shall conduct a review*
 22 *of the discretionary waiver authority described in the docu-*
 23 *ment issued by the Administrator entitled “Waiver for*
 24 *States Concerning Third Party CDL Skills Test Examiners*

1 *In Response to the COVID–19 Emergency” and dated Au-*
 2 *gust 31, 2021, for safety concerns.*

3 *(b) PERMANENT WAIVER.—If the Administrator finds*
 4 *no safety concerns after conducting a review under sub-*
 5 *section (a), the Administrator shall—*

6 *(1) notwithstanding any other provision of law,*
 7 *make the waiver permanent; and*

8 *(2) not later than 90 days after completing the*
 9 *review under subsection (a), revise section 384.228 of*
 10 *title 49, Code of Federal Regulations, to provide that*
 11 *the discretionary waiver authority referred to in sub-*
 12 *section (a) shall be permanent.*

13 *(c) REPORT.—If the Administrator declines to move*
 14 *forward with a rulemaking for revision under subsection*
 15 *(b), the Administrator shall explain the reasons for declin-*
 16 *ing to move forward with the rulemaking in a report to*
 17 *the Committee on Commerce, Science, and Transportation*
 18 *of the Senate and the Committee on Transportation and*
 19 *Infrastructure of the House of Representatives.*

20 **SEC. 21. PLANNING.**

21 *Section 6702(g) of title 49, United States Code, is*
 22 *amended—*

23 *(1) by striking “Of the amounts” and inserting*
 24 *the following:*

25 *“(1) IN GENERAL.—Of the amounts”; and*

1 (2) *by adding at the end the following:*

2 “(2) *NONAPPLICABILITY OF CERTAIN LIMITA-*
 3 *TIONS.—Subparagraphs (A) and (B) of subsection*
 4 *(c)(2) shall not apply with respect to amounts made*
 5 *available for planning, preparation, or design under*
 6 *paragraph (1).”.*

7 **SEC. 22. REVIEW OF POTENTIAL DISCRIMINATION AGAINST**
 8 **TRANSPORTATION OF QUALIFIED HAZ-**
 9 **ARDOUS MATERIALS.**

10 (a) *IN GENERAL.—Not later than 90 days after the*
 11 *date of enactment of this Act, the Comptroller General of*
 12 *the United States shall initiate a review of whether there*
 13 *have been any systemic decisions by ocean common carriers*
 14 *to discriminate against maritime transport of qualified*
 15 *hazardous materials by unreasonably denying vessel space*
 16 *accommodations, equipment, or other instrumentalities*
 17 *needed to transport such materials. The Comptroller Gen-*
 18 *eral shall take into account any applicable safety and pollu-*
 19 *tion regulations.*

20 (b) *CONSULTATION.—The Comptroller General of the*
 21 *United States may consult with the Commandant of the*
 22 *Coast Guard and the Chair of the Federal Maritime Com-*
 23 *mission in conducting the review under this section.*

24 (c) *DEFINITIONS.—In this section:*

1 (1) *HAZARDOUS MATERIALS.*—*The term “haz-*
 2 *ardous materials” includes dangerous goods, as de-*
 3 *finied by the International Maritime Dangerous Goods*
 4 *Code.*

5 (2) *OCEAN COMMON CARRIER.*—*The term “ocean*
 6 *common carrier” has the meaning given such term in*
 7 *section 40102 of title 46, United States Code.*

8 (3) *QUALIFIED HAZARDOUS MATERIALS.*—*The*
 9 *term “qualified hazardous materials” means haz-*
 10 *ardous materials for which the shipper has certified*
 11 *to the ocean common carrier that such materials have*
 12 *been or will be tendered in accordance with applicable*
 13 *safety laws, including regulations.*

14 (4) *SHIPPER.*—*The term “shipper” has the*
 15 *meaning given such term in section 40102 of title 46,*
 16 *United States Code.*

17 **SEC. 23. TRANSPORTATION WORKER IDENTIFICATION CRE-**
 18 **DENTIALS.**

19 (a) *DEFINITION OF DIRECT ASSISTANCE TO A UNITED*
 20 *STATES PORT.*—*In this section:*

21 (1) *IN GENERAL.*—*The term “direct assistance to*
 22 *a United States port” means the transportation of*
 23 *cargo directly to or from a United States port.*

24 (2) *EXCLUSIONS.*—*The term “direct assistance to*
 25 *a United States port” does not include—*

1 (A) *the transportation of a mixed load of*
 2 *cargo that includes—*

3 (i) *cargo that does not originate from*
 4 *a United States port; or*

5 (ii) *a container or cargo that is not*
 6 *bound for a United States port;*

7 (B) *any period during which a motor car-*
 8 *rier or driver is operating in interstate com-*
 9 *merce to transport cargo or provide services not*
 10 *in support of transportation to or from a United*
 11 *States port; or*

12 (C) *the period after a motor carrier dis-*
 13 *patches the applicable driver or commercial*
 14 *motor vehicle of the motor carrier to another lo-*
 15 *cation to begin operation in interstate commerce*
 16 *in a manner that is not in support of transpor-*
 17 *tation to or from a United States port.*

18 (b) *TRANSPORTATION WORKER IDENTIFICATION CRE-*
 19 *DENTIALS.—The Administrator of the Transportation Secu-*
 20 *rity Administration and the Commandant of the Coast*
 21 *Guard shall jointly prioritize and expedite the consider-*
 22 *ation of applications for a Transportation Worker Identi-*
 23 *fication Credential with respect to applicants that reason-*
 24 *ably demonstrate that the purpose of the Transportation*
 25 *Worker Identification Credential is for providing, within*

1 *the interior of the United States, direct assistance to a*
 2 *United States port.*

3 **SEC. 24. USE OF UNITED STATES INLAND PORTS FOR STOR-**
 4 **AGE AND TRANSFER OF CARGO CONTAINERS.**

5 *(a) MEETING.—Not later than 90 days after the date*
 6 *of enactment of this Act, the Assistant Secretary for Trans-*
 7 *portation Policy, in consultation with the Administrator of*
 8 *the Maritime Administration and the Chairperson of the*
 9 *Federal Maritime Commission, shall convene a meeting of*
 10 *representatives of entities described in subsection (b) to dis-*
 11 *cuss the feasibility of, and strategies for, identifying Federal*
 12 *and non-Federal land, including inland ports, for the pur-*
 13 *poses of storage and transfer of cargo containers due to port*
 14 *congestion.*

15 *(b) DESCRIPTION OF ENTITIES.—The entities referred*
 16 *to in subsection (a) are—*

17 *(1) representatives of United States major gate-*
 18 *way ports, inland ports, and export terminals;*

19 *(2) ocean carriers;*

20 *(3) railroads;*

21 *(4) trucking companies;*

22 *(5) port workforce, including organized labor;*

23 *and*

24 *(6) such other stakeholders as the Secretary of*
 25 *Transportation, in consultation with the Chairperson*

1 *of the Federal Maritime Commission, determines to be*
 2 *appropriate.*

3 *(c) REPORT TO CONGRESS.—As soon as practicable*
 4 *after the date of the meeting convened under subsection (a),*
 5 *the Assistant Secretary for Transportation Policy, in con-*
 6 *sultation with the Administrator of the Maritime Adminis-*
 7 *tration and the Chairperson of the Federal Maritime Com-*
 8 *mission, shall submit to Congress a report describing—*

9 *(1) the results of the meeting;*

10 *(2) the feasibility of identifying land or property*
 11 *under the jurisdiction of United States, or ports in*
 12 *the United States, for storage and transfer of cargo*
 13 *containers; and*

14 *(3) recommendations relating to the meeting, if*
 15 *any.*

16 *(d) SAVINGS PROVISION.—No authorization contained*
 17 *in this section may be acted on in a manner that jeopard-*
 18 *izes or negatively impacts the national security or defense*
 19 *readiness of the United States.*

20 **SEC. 25. REPORT ON ADOPTION OF TECHNOLOGY AT**
 21 **UNITED STATES PORTS.**

22 *Not later than 1 year after the date of enactment of*
 23 *this Act, the Comptroller General of the United States shall*
 24 *submit to Congress a report describing the adoption of tech-*

1 *nology at United States ports, as compared to that adoption*
 2 *at foreign ports, including—*

3 *(1) the technological capabilities of United States*
 4 *ports, as compared to foreign ports;*

5 *(2) an assessment of whether the adoption of*
 6 *technology at United States ports could lower the*
 7 *costs of cargo handling;*

8 *(3) an assessment of regulatory and other bar-*
 9 *riers to the adoption of technology at United States*
 10 *ports; and*

11 *(4) an assessment of technology and the work-*
 12 *force.*

13 **SEC. 26. AUTHORIZATION OF APPROPRIATIONS.**

14 *Section 46108 of title 46, United States Code, is*
 15 *amended by striking “\$29,086,888 for fiscal year 2020 and*
 16 *\$29,639,538 for fiscal year 2021” and inserting*
 17 *“\$32,869,000 for fiscal year 2022, \$38,260,000 for fiscal*
 18 *year 2023, \$43,720,000 for fiscal year 2024, and*
 19 *\$49,200,000 for fiscal year 2025”.*

Calendar No. 311

117TH CONGRESS
2D Session
S. 3580

A BILL

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

MARCH 24, 2022

Reported with an amendment