

108TH CONGRESS  
1ST SESSION

# H. R. 2846

To amend the Merchant Marine Act, 1920, to allow transportation of merchandise in Hawaiian noncontiguous trade on foreign-flag vessels, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. CASE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Merchant Marine Act, 1920, to allow transportation of merchandise in Hawaiian noncontiguous trade on foreign-flag vessels, 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 “Hawaii Shipping Open  
5 Market Act of 2003”.

6 **SEC. 2. TRANSPORTATION OF CERTAIN MERCHANDISE.**

7 (a) IN GENERAL.—Section 27 of the Merchant Ma-  
8 rine Act, 1929 (46 App. U.S.C. 883) is amended by insert-

1 ing “(a) IN GENERAL.—” before the first sentence, and  
 2 by adding at the end the following:

3 “(b) NONCONTIGUOUS TRADE EXEMPTION.—Sub-  
 4 section (a) shall not apply with respect to transportation  
 5 in Hawaiian noncontiguous trade of merchandise on a for-  
 6 eign qualified freight vessel for which the Secretary of  
 7 Transportation has issued a certificate of documentation.

8 “(c) DEFINITIONS.—In this section:

9 “(1) FOREIGN QUALIFIED FREIGHT VESSEL.—  
 10 The term ‘foreign qualified freight vessel’ means a  
 11 freight vessel (as that term is defined in section  
 12 2101 of title 46, United States Code) of not less  
 13 than 1,000 gross tons that—

14 “(A) was not built in the United States (or  
 15 if rebuilt, not rebuilt in the United States);

16 “(B) is registered in a foreign country; and

17 “(C) employs United States citizens to the  
 18 extent required of vessels registered under sec-  
 19 tion 12102 of this title.

20 “(2) HAWAIIAN NONCONTIGUOUS TRADE.—The  
 21 term ‘Hawaiian noncontiguous trade’ means—

22 “(A) trade between a point in the contig-  
 23 uous 48 States or Alaska and a point in Ha-  
 24 waii; or

1                   “(B) trade between any point in Hawaii  
2                   and any other point in Hawaii.”.

3           (b) COASTWISE ENDORSEMENTS.—12106(b) of title  
4 46, United States Code, is amended—

5                   (1) by inserting “(1)” after “(b)”;

6                   (2) by inserting “to paragraph (2) and” after  
7           “Subject”; and

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

9           “(2)(A) Paragraph (1) shall not apply with respect  
10 to a foreign qualified freight vessel used for transportation  
11 referred to in section 27(b) of the Merchant Marine Act,  
12 1920 (46 App. U.S.C. 883(b)), for which the Secretary  
13 of Transportation has issued a certificate of documenta-  
14 tion.

15           “(B) In subparagraph (A) the term ‘foreign qualified  
16 freight vessel’ has the meaning given that term in section  
17 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
18 883(c)).”.

19           (c) FOREIGN TRANSFER.—Section 9(c) of the Ship-  
20 ping Act, 1916 (46 App. U.S.C. 808) is amended by in-  
21 serting “(1)” before the first sentence, and by adding at  
22 the end the following:

23           “(2)(A) Notwithstanding paragraph (1), a foreign  
24 qualified freight vessel for which the Secretary has issued  
25 a certificate of documentation after the date of enactment

1 of this Act and that is used solely for transportation re-  
2 ferred to in section 27(b) of the Merchant Marine Act,  
3 1920 (46 App. U.S.C. 883(b)) may be placed under for-  
4 eign registry without the approval of the Secretary at any  
5 time after that vessel is issued a certificate of documenta-  
6 tion. At such time as that vessel is placed under foreign  
7 registry, the Secretary shall revoke the certificate of docu-  
8 mentation issued by the Secretary.

9 “(B) In subparagraph (A) the term ‘foreign qualified  
10 freight vessel’ has the meaning given that term in section  
11 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
12 883(c)).”.

13 **SEC. 3. CITIZENSHIP AND TRANSFER PROVISIONS.**

14 (a) CITIZENSHIP OF CORPORATIONS, PARTNERSHIPS,  
15 AND ASSOCIATIONS.—Section 2 of the Shipping Act, 1916  
16 (46 U.S.C. App. 802) is amended by adding at the end  
17 the following:

18 “(d)(1) The following provisions of this section shall  
19 not apply to a foreign qualified freight vessel used for  
20 transportation referred to in section 27(b) of the Merchant  
21 Marine Act, 1920 (46 App. U.S.C. 883(b)):

22 “(A) The text of subparagraph after ‘possession  
23 thereof’.

24 “(B) subsection (c).

1       “(2) In paragraph (1) the term ‘foreign qualified  
2 freight vessel’ has the meaning given that term in section  
3 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
4 883(c)).”.

5       (b) APPROVAL OF TRANSFER OF REGISTRY OR OP-  
6 ERATION UNDER AUTHORITY OF A FOREIGN COUNTRY OR  
7 FOR SCRAPPING IN A FOREIGN COUNTRY; PENALTIES.—  
8 Section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)  
9 is amended by adding at the end the following:

10       “(e)(1) In lieu of the penalty under subsection (d),  
11 a person that commits an act described in paragraph (2)  
12 in violation of this section is liable to the United States  
13 Government for a civil penalty of not more than \$10,000  
14 for each violation.

15       “(2) The acts referred to in paragraph (1) are the  
16 following:

17               “(A) Charter, sell, or transfer a foreign quali-  
18 fied freight vessel used for transportation referred to  
19 in section 27(b) of the Merchant Marine Act, 1920  
20 (46 App. U.S.C. 883(b)), or interest in or control of  
21 such a vessel.

22               “(B) Place under foreign registry a foreign  
23 qualified freight vessel used for transportation re-  
24 ferred to in section 27(b) of the Merchant Marine

1 Act, 1920 (46 App. U.S.C. 883(b)), that is docu-  
2 mented in the United States.

3 “(C) Operate under the authority of a foreign  
4 country a foreign qualified freight vessel used for  
5 transportation referred to in section 27(b) of the  
6 Merchant Marine Act, 1920 (46 App. U.S.C.  
7 883(b)).

8 “(f) To promote the transfer of foreign vessels to be  
9 documented under chapter 121 of title 46, United States  
10 Code, for use for transportation referred to in section  
11 27(b) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
12 883(b)), the Secretary may grant approval under sub-  
13 section (c) with respect to such a vessel before the date  
14 the vessel is documented.”.

15 “(g) In subsections (e) and (f), the term ‘foreign  
16 qualified freight vessel’ has the meaning given that term  
17 in section 27(c) of the Merchant Marine Act, 1920 (46  
18 App. U.S.C. 883(e)).”.

19 **SEC. 4. LABOR PROVISIONS.**

20 (a) LIABILITY FOR INJURY OR DEATH OF MASTER  
21 OR CREW MEMBER.—Section 20(a) of the Act of March  
22 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. App.  
23 688(a)), is amended—

24 (1) by inserting “(1)” after “(a)”;

1           (2) by adding at the end of paragraph (1) (as  
2           designated under paragraph (1) of this subsection)  
3           the following new sentence: “In an action brought  
4           under this subsection against a defendant employer  
5           that does not reside or maintain an office in the  
6           United States (including any territory or possession  
7           of the United States) and that engages in any enter-  
8           prise that makes use of one or more ports in the  
9           United States (as defined in section 2101 of title 46,  
10          United States Code), jurisdiction shall be under the  
11          district court most proximate to the place of the oc-  
12          currence of the personal injury or death that is the  
13          subject of the action.”; and

14          (3) by adding at the end the following new  
15          paragraph:

16          “(2)(A) The employer of a master or member of the  
17          crew of a vessel—

18                 “(i) may, at the election of the employer, par-  
19                 ticipate in an authorized compensation plan under  
20                 the Longshore and Harbor Workers’ Compensation  
21                 Act (33 U.S.C. 901 et seq.); and

22                 “(ii) if the employer makes an election under  
23                 clause (i), notwithstanding section 2(3)(G) of the  
24                 Longshore and Harbor Workers’ Compensation Act  
25                 (33 U.S.C. 902(3)(G)), shall be subject to that Act.

1 “(B) If an employer makes an election, in accordance  
2 with subparagraph (A), to participate in an authorized  
3 compensation plan under the Longshore and Harbor  
4 Workers’ Compensation Act—

5 “(i) a master or crew member employed by that  
6 employer shall be considered to be an employee for  
7 the purposes of that Act; and

8 “(ii) the liability of that employer under that  
9 Act to the master or crew member, or to any person  
10 otherwise entitled to recover damages from the em-  
11 ployer based on the injury, disability, or death of the  
12 master or crew member, shall be exclusive and in  
13 lieu of all other liability.”.

14 (b) MINIMUM REQUIREMENTS.—All vessels, whether  
15 documented in the United States or not, operating in the  
16 coastwise trade of the United States shall be subject to  
17 minimum international labor standards for seafarers  
18 under international agreements in force for the United  
19 States, as determined by the Secretary of Transportation  
20 on the advice of the Secretaries of Labor and Defense.

21 **SEC. 5. REGULATIONS REGARDING VESSELS.**

22 (a) APPLICABLE MINIMUM REQUIREMENTS.—Except  
23 as provided in subsection (b), the minimum requirements  
24 for vessels engaging in the transportation of cargo or mer-  
25 chandise in the United States coastwise trade shall be the

1 recognized international standards in force for the United  
2 States (as determined by the Secretary of the department  
3 in which the Coast Guard is operating, in consultation  
4 with any other official of the Federal Government that the  
5 Secretary determines to be appropriate).

6 (b) CONSISTENCY IN APPLICATION OF STAND-  
7 ARDS.—In any case in which any minimum requirement  
8 for vessels referred to in subsection (a) establishes a lower  
9 standard than a minimum that is applicable to vessels that  
10 are documented in a foreign country and that are admit-  
11 ted to engage in the transportation of cargo and merchan-  
12 dise in the United States coastwise trade, the standard  
13 applicable to such vessels that are documented in a foreign  
14 country shall be the standard that is applied to United  
15 States documented vessels.

16 **SEC. 6. ENVIRONMENTAL STANDARDS.**

17 All vessels, whether documented under the laws of the  
18 United States or not, engaging in the United States coast-  
19 wise trade shall comply with all applicable United States  
20 and international environmental standards in force for the  
21 United States.

1 **SEC. 7. REQUIREMENTS FOR CERTAIN NONCITIZENS IR-**  
2 **REGULARLY ENGAGING IN DOMESTIC COAST-**  
3 **WISE TRADE.**

4 (a) **IN GENERAL.**—Each person or entity that is not  
5 a citizen of the United States, as defined in section  
6 2101(3a) of title 46, United States Code, that owns or  
7 operates vessels that irregularly engage in the United  
8 States domestic coastwise trade shall—

9 (1) name an agent upon whom process may be  
10 served;

11 (2) abide by all applicable laws of the United  
12 States, including applicable environmental and tax  
13 laws; and

14 (3) post evidence of documentation and en-  
15 dorsements aboard such vessel indicating the owner  
16 or owners of such vessel, including any person con-  
17 trolling vessels and the number of port calls and  
18 coastwise trips made during that calendar year.

19 (b) **PERSONS TREATED AS SINGLE EMPLOYER.**—For  
20 purposes of paragraph (3), all persons treated as a single  
21 employer under subsection (a) or (b) of section 52 of the  
22 Internal Revenue Code of 1986 shall be treated as 1 per-  
23 son.

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