

109TH CONGRESS
1ST SESSION

H. R. 1296

To amend title 49, United States Code, relating to responsibility for intermodal equipment compliance with commercial motor vehicle safety requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. BROWN of South Carolina introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, relating to responsibility for intermodal equipment compliance with commercial motor vehicle safety requirements, 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 “Intermodal Equipment
5 Safety and Responsibility Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Promoting safety on our Nation’s highways
2 is a national priority. The Department of Transpor-
3 tation has promulgated the Federal Motor Carrier
4 Safety Regulations to further this purpose. The sys-
5 tematic maintenance, repair, and inspection of
6 equipment traveling in interstate commerce are an
7 integral part of the safety regime.

8 (2) Intermodal transportation plays a signifi-
9 cant role in expanding our Nation’s commerce. The
10 Nation’s economy depends heavily upon the ability
11 to transport goods via the various modes of trans-
12 portation.

13 (3) Motor carriers and their drivers often re-
14 ceive trailers, chassis, containers and other pieces of
15 intermodal equipment to be transported in interstate
16 commerce. Motor carriers do not, however, possess
17 the requisite level of control or authority over this
18 intermodal equipment to perform the systematic
19 maintenance, repair and inspection necessary to en-
20 sure compliance with the Federal Motor Carrier
21 Safety Regulations and to ensure the safety of our
22 Nation’s highways.

23 (4) As a result of roadside inspections, motor
24 carriers and their drivers are cited and fined for vio-
25 lations of the Federal Motor Carrier Safety Regula-

1 tions attributable to intermodal equipment that
2 motor carriers and their drivers neither systemati-
3 cally maintain nor have the opportunity to system-
4 atically maintain. Additionally, violations of the Fed-
5 eral Motor Carrier Safety Regulations attributable
6 to intermodal equipment are assigned to the motor
7 carrier's safety record. Congress should exercise its
8 power to ensure that only those parties who control
9 the equipment, thus having the opportunity and au-
10 thority to systematically maintain, repair and in-
11 spect intermodal equipment, assume responsibility
12 for the safety of that equipment as it travels in
13 interstate commerce.

14 **SEC. 3. DEFINITIONS.**

15 Section 5901 of title 49, United States Code, is
16 amended by adding at the end the following:

17 “(9) MOTOR CARRIER.—The term ‘motor car-
18 rier’ means a person providing motor vehicle trans-
19 portation for compensation or a motor private car-
20 rier as that term is defined in chapter 131 of this
21 title.

22 “(10) EQUIPMENT.—The term ‘equipment’
23 means equipment commonly used in the road trans-
24 port of intermodal freight, including trailers, chassis,

1 containers and associated devices, and used as an in-
2 strumentality of foreign or interstate commerce.

3 “(11) EQUIPMENT INTERCHANGE AGREE-
4 MENT.—The term ‘equipment interchange agree-
5 ment’ means a written document executed by an
6 equipment controller or its agent and a motor car-
7 rier which establishes the responsibilities and liabil-
8 ities of both parties as they relate to the interchange
9 of the equipment.

10 “(12) EQUIPMENT CONTROLLER.—The term
11 ‘equipment controller’ means any party with any
12 legal right, title, or interest in the equipment, except
13 that a motor carrier is not an equipment controller
14 only because of providing or arranging for any part
15 of the intermodal transportation of the equipment.
16 In no instance shall a motor carrier who has not
17 been contractually delegated responsibility for sys-
18 tematic maintenance and repair of equipment be
19 considered a controller of that equipment.

20 “(13) INTERCHANGE.—The term ‘interchange’
21 means the act of providing equipment to a motor
22 carrier for the purpose of transporting the equip-
23 ment for loading or unloading by any party or repo-
24 sitioning the equipment for the benefit of the equip-
25 ment controller. Such term does not mean the leas-

1 ing of equipment to a motor carrier for use in the
2 motor carrier's over-the-road freight hauling oper-
3 ations.

4 “(14) FEDERAL MOTOR CARRIER SAFETY REG-
5 ULATIONS.—The term ‘Federal Motor Carrier Safety
6 Regulations’ means the regulations promulgated by
7 the United States Department of Transportation
8 governing the condition and maintenance of commer-
9 cial motor vehicles as set forth in title 49 of the
10 Code of Federal Regulations.”.

11 **SEC. 4. JURISDICTION OVER EQUIPMENT CONTROLLERS.**

12 Chapter 59 of title 49, United States Code, is further
13 amended by adding at the end the following:

14 **“§ 5910. Jurisdiction over equipment controller**

15 “The authority of the Secretary of Transportation to
16 prescribe regulations on commercial motor vehicle safety
17 under section 31136 shall apply to controllers of equip-
18 ment that is interchanged or intended to be inter-
19 changed.”.

20 **SEC. 5. EQUIPMENT CONTROLLER RESPONSIBILITY.**

21 Chapter 59 of title 49, United States Code, is further
22 amended by adding at the end the following:

1 **“§ 5911. Equipment inspection, repair, and mainte-**
2 **nance**

3 “(a) RESPONSIBILITY OF EQUIPMENT CON-
4 TROLLER.—Notwithstanding any provision in an equip-
5 ment interchange agreement to the contrary, an equip-
6 ment controller shall be responsible and held liable for the
7 systematic inspection, maintenance, and repair of equip-
8 ment interchanged or intended for interchange. An equip-
9 ment controller shall inspect, each time prior to offering
10 a motor carrier agent the equipment for interchange, the
11 equipment and provide such maintenance on, and make
12 such repairs to, the equipment to ensure such equipment
13 complies with all applicable Federal Motor Carrier Safety
14 Regulations at all times. At no time shall a motor carrier
15 agent be offered equipment that has not been inspected
16 and repaired as necessary to comply with such regulations.

17 “(b) REIMBURSEMENT OF MOTOR CARRIER.—In the
18 event that a repair to the equipment interchanged is re-
19 quired while in a motor carrier’s possession in order to
20 comply with the Federal Motor Carrier Safety Regula-
21 tions, the equipment controller shall promptly reimburse
22 the motor carrier for the actual expenses incurred and
23 time spent by the motor carrier for the necessary repair.

24 “(c) LIMITATION ON LIABILITY.—The equipment
25 controller shall not be liable under subsection (b) if the

1 motor carrier’s negligence or willful misconduct caused the
2 condition requiring repair under subsection (b).”.

3 **SEC. 6. SAFETY COMPLIANCE.**

4 Chapter 59 of title 49, United States Code, is further
5 amended by adding at the end the following:

6 **“§ 5912. Compliance with safety regulations**

7 “(a) EQUIPMENT CONTROLLER LIABILITY.—Not-
8 withstanding any provision in an equipment interchange
9 agreement to the contrary, the equipment controller shall
10 be liable for all violations of the Federal Motor Carrier
11 Safety Regulations attributable to the controller’s equip-
12 ment and shall pay any applicable fines, penalties, and
13 damages resulting from the equipment’s violation of such
14 regulations; except that the equipment controller shall not
15 be liable for violations of such regulations attributable to
16 the controller’s equipment that are proximately caused by
17 the motor carrier’s or motor carrier’s agent’s negligence
18 or willful misconduct.

19 “(b) MOTOR CARRIER’S LIMITED LIABILITY.—Ex-
20 cept as provided in subsection (a), a motor carrier and
21 any motor carrier agent who receives equipment through
22 interchange shall not be liable for any violation of the Fed-
23 eral Motor Carrier Safety Regulations attributable to that
24 equipment.

1 “(c) LIMITATION ON EFFECT.—No record or report
2 of a violation of the Federal Motor Carrier Safety Regula-
3 tions, whether issued by a Federal, State, or local law en-
4 forcement authority, attributable to equipment inter-
5 changed shall have any effect on a motor carrier’s overall
6 safety rating or safety status measurement system score,
7 as determined by the Federal Motor Carrier Safety Ad-
8 ministration, or on a motor carrier’s agent’s driving record
9 unless such violation was proximately caused by the motor
10 carrier’s or motor carrier’s agent’s negligence or willful
11 misconduct.

12 “(d) PROCEDURE FOR RECORDS CORRECTIONS.—
13 The Secretary of Transportation shall establish, within 6
14 months of the date of enactment of this section, an expe-
15 dited procedure to correct records or reports of violations
16 that should not have impacted a motor carrier or a motor
17 carrier agent under subsection (c).”.

18 **SEC. 7. AUTHORITY TO INSPECT.**

19 Chapter 59 of title 49, United States Code, is further
20 amended by adding at the end the following:

21 **“§ 5913. Authority to inspect**

22 “(a) ENTRY INTO FACILITY.—The Secretary of
23 Transportation is authorized to enter into the facility of
24 an equipment controller to inspect and determine if equip-
25 ment intended to be interchanged for use on a public high-

1 way complies with all applicable Federal Motor Carrier
2 Safety Regulations.

3 “(b) INSPECTION AND AUDIT PROGRAM.—The Sec-
4 retary shall establish and implement with appropriate
5 staffing an inspection and audit program at facilities of
6 equipment controllers to determine the compliance of
7 equipment intended to be interchanged for use on a public
8 highway with the Federal Motor Carrier Safety Regula-
9 tions. Inspection of equipment and the equipment’s cor-
10 responding maintenance records shall take place no less
11 than once every 3 months.

12 “(c) OUT-OF-SERVICE EQUIPMENT.—Equipment
13 that fails to comply with the Federal Motor Carrier Safety
14 Regulations during the inspection in subsection (b) shall
15 be placed out of service and shall not be used on a public
16 highway until such time as repairs have been completed.
17 Repairs of equipment placed out of service shall be docu-
18 mented in the equipment’s corresponding maintenance
19 records.

20 “(d) FINES.—The Secretary may establish fines
21 against equipment controllers for violations of section
22 5911.”.

23 **SEC. 8. PENALTIES FOR RETALIATION.**

24 Chapter 59 of title 49, United States Code, is further
25 amended by adding at the end the following:

1 **“§ 5914. Penalties for retaliation**

2 “(a) IN GENERAL.—An equipment controller shall
3 not take any action to threaten, coerce, discipline, dis-
4 criminate, or otherwise retaliate against a motor carrier
5 or motor carrier agent who requests maintenance or repair
6 of equipment intended for interchange in order to comply
7 with the Federal Motor Carrier Safety Regulations.

8 “(b) RETALIATION DEFINED.—For purposes of this
9 section, the term ‘retaliation’ includes failing to provide
10 compliant equipment within 60 minutes from the time an
11 agent for a motor carrier that has been requested to pick
12 up equipment arrives to pick up such equipment.

13 “(c) CIVIL PENALTY.—An equipment controller who
14 violates subsection (a) shall be liable to the United States
15 Government for a civil penalty of up to \$10,000 for each
16 violation.”.

17 **SEC. 9. DELEGATION OF MAINTENANCE RESPONSIBILITY.**

18 Chapter 59 of title 49, United States Code, is further
19 amended by adding at the end the following:

20 **“§ 5915. Maintenance responsibility**

21 “An equipment controller is prohibited from dele-
22 gating its responsibility to systematically maintain and re-
23 pair equipment intended for interchange to a motor car-
24 rier or motor carrier agent in an equipment interchange
25 agreement.”.

1 **SEC. 10. COMPATIBILITY OF STATE LAWS.**

2 (a) IN GENERAL.—Chapter 59 of title 49, United
3 States Code, is further amended by adding at the end the
4 following:

5 **“§ 5916. Compatibility of State laws**

6 “(a) PREEMPTION.—Except as provided in sub-
7 section (b) and unless authorized by another law of the
8 United States, a law, regulation, order, or other require-
9 ment of a State, political subdivision of a State, or Indian
10 tribe is preempted if complying with a requirement of the
11 State, political subdivision, or tribe and a requirement of
12 this chapter or a regulation prescribed under this chapter
13 is not possible.

14 “(b) COMPATIBLE LAWS.—A law, regulation, order,
15 or other requirement of a State, political subdivision of
16 a State, or Indian tribe shall remain in effect if compatible
17 with this chapter or any regulations prescribed under this
18 chapter but more stringent.”.

19 (b) CONFORMING AMENDMENT.—The analysis for
20 such chapter is amended by adding at the end the fol-
21 lowing:

- “5910. Jurisdiction over equipment controller.
- “5911. Equipment inspection, repair, and maintenance.
- “5912. Compliance with safety regulations.
- “5913. Authority to inspect.
- “5914. Penalties for retaliation.
- “5915. Maintenance responsibility.
- “5916. Compatibility of State laws.”.

1 **SEC. 11. IMPLEMENTING REGULATIONS.**

2 (a) FEDERAL REGULATIONS.—The Secretary of
3 Transportation, after notice and opportunity for comment,
4 shall issue regulations, as appropriate, implementing the
5 provisions of this Act. The regulations shall be issued as
6 part of the Federal Motor Carrier Safety Regulations. The
7 implementing regulations shall include provisions to—

8 (1) identify controllers of equipment inter-
9 changed or intended for interchange;

10 (2) match such equipment readily to its con-
11 troller through a unique identifying number;

12 (3) ensure that each equipment controller main-
13 tains a system of maintenance and repair records;

14 (4) evaluate equipment controllers' compliance
15 with the Federal Motor Carrier Safety Regulations;

16 (5) prohibit equipment controllers who fail to
17 attain satisfactory compliance with such regulations
18 from authorizing the placement of equipment on the
19 public highways;

20 (6) consider the effect that adequate mainte-
21 nance facilities may have on the resulting safe condi-
22 tion of equipment;

23 (7) provide for a process by which motor car-
24 riers and agents may anonymously petition the Fed-
25 eral Motor Carrier Safety Administration to under-

1 take an investigation of a noncompliant equipment
2 controller;

3 (8) establish administrative procedures to re-
4 solve disputes arising under this Act, including the
5 amendments made by this Act; and

6 (9) establish the inspection and audit program
7 5913(b) of title 49, United States Code.

8 (b) DEADLINES.—The regulations required under
9 subsection (a) shall be developed pursuant to a rulemaking
10 proceeding initiated within 120 days after the date of en-
11 actment of this Act and shall be issued not later than one
12 year after such date of enactment. Effective on the date
13 of enactment of this Act, and until such time as final regu-
14 lations are issued, no motor carrier or motor carrier agent
15 may be issued a citation for violations on equipment inter-
16 changed (as defined in section 5901 of title 49, United
17 States Code) to them except by the provisions of this Act.

18 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

19 There is authorized to be appropriated \$7,000,000
20 for each of fiscal years 2005, 2006, 2007, 2008, and 2009
21 to the Federal Motor Carrier Safety Administration for
22 the establishment and implementation of the inspection
23 program under section 5913 of title 49, United States
24 Code.

1 **SEC. 13. EFFECTIVE DATE.**

2 Sections 3, 4, 5, 6, 7, 8, 9, and 10 of this Act shall
3 be effective 30 days after the date of enactment of this
4 Act.

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