

108TH CONGRESS
1ST SESSION

H. R. 2863

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

JULY 24, 2003

Mr. BROWN of South Carolina (for himself and Mr. BAKER) 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 2003”.

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) Notwithstanding any provision in an equipment
4 interchange agreement to the contrary, an equipment con-
5 troller shall be responsible and held liable for the system-
6 atic inspection, maintenance, and repair of equipment
7 interchanged or intended for interchange. An equipment
8 controller shall, each time prior to offering a motor carrier
9 agent the equipment for interchange, inspect the equip-
10 ment and provide such maintenance on, and make such
11 repairs to, the equipment to ensure such equipment com-
12 plies with all applicable Federal Motor Carrier Safety Reg-
13 ulations at all times. At no time shall a motor carrier
14 agent be offered equipment that has not been inspected
15 and repaired as necessary to comply with such regulations.

16 “(b) In the event that a repair to the equipment
17 interchanged is required while in a motor carrier’s posses-
18 sion in order to comply with the Federal Motor Carrier
19 Safety Regulations, the equipment controller shall prompt-
20 ly reimburse the motor carrier for the actual expenses in-
21 curred and time spent by the motor carrier for the nec-
22 essary repair.

23 “(c) The equipment controller shall not be liable
24 under subsection (b) if the motor carrier’s negligence or
25 willful misconduct caused the condition requiring repair
26 under subsection (b).”.

1 **SEC. 6. SAFETY COMPLIANCE.**

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

4 **“§ 5912. Compliance with safety regulations**

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

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

23 “(c) **LIMITATION ON EFFECT.**—No record or report
24 of a violation of the Federal Motor Carrier Safety Regula-
25 tions, whether issued by a Federal, State, or local law en-
26 forcement authority, attributable to equipment inter-

1 changed shall have any effect on a motor carrier’s overall
2 safety rating or safety status measurement system score,
3 as determined by the Federal Motor Carrier Safety Ad-
4 ministration, or on a motor carrier’s agent’s driving record
5 unless such violation was proximately caused by the motor
6 carrier’s or motor carrier’s agent’s negligence or willful
7 misconduct.

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

14 **SEC. 7. AUTHORITY TO INSPECT.**

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

17 **“§ 5913. Authority to inspect**

18 “(a) The Secretary of Transportation is authorized
19 to enter into the facility of an equipment controller to in-
20 spect and determine if equipment intended to be inter-
21 changed for use on a public highway complies with all ap-
22 plicable Federal Motor Carrier Safety Regulations.

23 “(b) The Secretary shall establish and implement
24 with appropriate staffing an inspection and audit program
25 at facilities of equipment controllers to determine the com-

1 pliance of equipment intended to be interchanged for use
2 on a public highway with the Federal Motor Carrier Safety
3 Regulations. Inspection of equipment and the equipment's
4 corresponding maintenance records shall take place no less
5 than once every 3 months.

6 “(c) Equipment that fails to comply with the Federal
7 Motor Carrier Safety Regulations during the inspection in
8 subsection (b) shall be placed out of service and shall not
9 be used on a public highway until such time as repairs
10 have been completed. Repairs of equipment placed out of
11 service shall be documented in the equipment's cor-
12 responding maintenance records.

13 “(d) The Secretary may establish fines against equip-
14 ment controllers for violations of section 5911.”.

15 **SEC. 8. PENALTIES FOR RETALIATION.**

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

18 **“§ 5914. Penalties for retaliation**

19 “(a) An equipment controller shall not take any ac-
20 tion to threaten, coerce, discipline, discriminate, or other-
21 wise retaliate against a motor carrier or motor carrier
22 agent who requests maintenance or repair of equipment
23 intended for interchange in order to comply with the Fed-
24 eral Motor Carrier Safety Regulations.

1 “(b) For purposes of this section, ‘retaliation’ shall
2 include, but not be limited to, failing to provide compliant
3 equipment within 60 minutes from the time an agent for
4 a motor carrier that has been requested to pick up equip-
5 ment arrives to pick up such equipment.

6 “(c) An equipment controller who violates subsection
7 (a) shall be liable to the United States Government for
8 a civil penalty of up to \$10,000 for each violation.”.

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

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

12 **“§ 5915. Maintenance responsibility**

13 “An equipment controller is prohibited from dele-
14 gating its responsibility to systematically maintain and re-
15 pair equipment intended for interchange to a motor car-
16 rier or motor carrier agent in an equipment interchange
17 agreement.”.

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

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

22 **“§ 5916. Compatibility of State laws**

23 “(a) Except as provided in subsection (b) and unless
24 authorized by another law of the United States, a law,
25 regulation, order, or other requirement of a State, political

1 subdivision of a State, or Indian tribe is preempted if com-
 2 plying with a requirement of the State, political subdivi-
 3 sion, or tribe and a requirement of this chapter or a regu-
 4 lation prescribed under this chapter is not possible.

5 “(b) A law, regulation, order, or other requirement
 6 of a State, political subdivision of a State, or Indian tribe
 7 shall remain in effect if compatible with this chapter or
 8 any regulations prescribed under this chapter but more
 9 stringent.”.

10 (b) CONFORMING AMENDMENT.—The analysis for
 11 such chapter is amended by adding at the end the fol-
 12 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.”.

13 **SEC. 11. IMPLEMENTING REGULATIONS.**

14 (a) FEDERAL REGULATIONS.—The Secretary of
 15 Transportation, after notice and opportunity for comment,
 16 shall issue regulations, as appropriate, implementing the
 17 provisions of this Act. The regulations shall be issued as
 18 part of the Federal Motor Carrier Safety Regulations. The
 19 implementing regulations shall include provisions to—

- 20 (1) identify controllers of equipment inter-
 21 changed or intended for interchange;

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

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

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

7 (5) prohibit equipment controllers who fail to
8 attain satisfactory compliance with such regulations
9 from authorizing the placement of equipment on the
10 public highways;

11 (6) consider the effect that adequate mainte-
12 nance facilities may have on the resulting safe condi-
13 tion of equipment;

14 (7) provide for a process by which motor car-
15 riers and agents may anonymously petition the Fed-
16 eral Motor Carrier Safety Administration to under-
17 take an investigation of a noncompliant equipment
18 controller;

19 (8) establish administrative procedures to re-
20 solve disputes arising under this Act, including the
21 amendments made by this Act; and

22 (9) establish the inspection and audit program
23 5913(b) of title 49, United States Code.

24 (b) DEADLINES.—The regulations required under
25 subsection (a) shall be developed pursuant to a rulemaking

1 proceeding initiated within 120 days after the date of en-
2 actment of this Act and shall be issued not later than one
3 year after such date of enactment. Effective on the date
4 of enactment of this Act, and until such time as final regu-
5 lations are issued, no motor carrier or motor carrier agent
6 may be issued a citation for violations on equipment inter-
7 changed (as defined in section 5901 of title 49, United
8 States Code) to them except by the provisions of this Act.

9 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated \$7,000,000
11 for each of fiscal years 2004, 2005, 2006, 2007, and 2008
12 to the Federal Motor Carrier Safety Administration for
13 the establishment and implementation of the inspection
14 program under section 5913 of title 49, United States
15 Code.

16 **SEC. 13. EFFECTIVE DATE.**

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

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