

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 600**

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**Introduced by Assembly Member Bonta**

February 20, 2013

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An act to amend Section ~~43701~~ of the Health and Safety Code, relating to vehicular air pollution. 22928 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 600, as amended, Bonta. ~~Heavy-duty vehicles: smoke emissions. Intermodal marine terminals.~~

*Existing law prohibits an intermodal marine equipment provider or marine terminal operator from imposing per diem, detention, or demurrage charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. Existing law also prohibits an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem or certain other charges from the motor carrier's freight bill.*

*This bill would modify the term "intermodal marine equipment provider" to become "intermodal equipment provider" and would define this new term. This bill would also modify the circumstances under which an intermodal equipment provider or an intermodal marine terminal operator is prohibited from imposing per diem, detention, or demurrage charges. This bill would prohibit an intermodal equipment provider from requiring a motor carrier to return intermodal equipment*

to a location other than the physical location at which the equipment was received, as specified.

~~Existing law requires the State Air Resources Board to adopt regulations requiring owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive emissions of smoke.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 22928 of the Business and Professions  
2 Code is amended to read:

3 22928. (a) The Legislature finds and declares that unilateral  
4 termination, suspension, or restriction of equipment interchange  
5 rights of an intermodal motor carrier shall not result from  
6 intermodal ~~marine~~ terminal actions as specified in subdivision (b).

7 (b) An intermodal ~~marine~~ equipment provider or intermodal  
8 marine terminal operator shall not impose per diem, detention, or  
9 demurrage charges on an intermodal motor carrier relative to  
10 transactions involving cargo shipped by intermodal transport under  
11 any of the following circumstances:

12 (1) When the intermodal marine or terminal truck gate is closed  
13 during posted normal working hours. No per diem, detention, or  
14 demurrage charges shall be imposed on a weekend or holiday, or  
15 during a labor disruption period, or during any other period  
16 involving an act of God or any other planned or unplanned action  
17 that closes the truck gate.

18 (2) When the intermodal marine terminal decides to divert *the*  
19 *return of* equipment *from the point at which it was interchanged*  
20 without 48 hours' electronic or written notification to the motor  
21 carrier *having possession of the equipment.*

22 (3) When the intermodal marine terminal is assessed a fine  
23 pursuant to Section 40720 of the Health and Safety Code.

24 (4) When the intermodal ~~marine terminal~~ equipment is ~~out of~~  
25 ~~compliance pursuant to~~ *not compliant as required in* Section  
26 34505.9 of the Vehicle Code or the equipment ~~is~~ *warrants being*  
27 placed out of service.

1 (5) When a loaded container *or the chassis on which it is*  
2 *mounted* is not available for pickup when the motor carrier arrives  
3 at the intermodal marine terminal.

4 (6) When the intermodal marine terminal is too congested to  
5 *safely or reasonably* accept the container and *the intermodal*  
6 *marine terminal* turns away the motor carrier.

7 (c) An intermodal-marine equipment provider shall not take any  
8 of the following actions:

9 (1) Charge back, deduct, or offset per diem charges, maintenance  
10 and repair charges, or peak hour pricing from a motor carrier's  
11 freight bill.

12 (2) Unilaterally terminate, suspend, or restrict the equipment  
13 interchange rights of a motor carrier or driver that uses the dispute  
14 resolution process contained in the Uniform Intermodal Interchange  
15 and Facilities Access Agreement to contest a charge, fee, or fine,  
16 including a charge for maintenance and repairs imposed by the  
17 intermodal marine terminal, while the dispute resolution process  
18 is ongoing *or after a challenge by a motor carrier is resolved in*  
19 *the motor carrier's favor*.

20 (3) Unilaterally terminate, suspend, or restrict the equipment  
21 interchange rights of a motor carrier for late payment of an  
22 undisputed invoice from the intermodal marine terminal, provided  
23 that the payment is no more than 60 days late.

24 (4) Unilaterally terminate, suspend, or restrict the equipment  
25 interchange rights of a motor carrier or driver for parking tickets  
26 issued by the marine terminal unless the tickets remain unpaid  
27 more than 60 days after being in *actual physical* receipt of the  
28 driver or motor carrier. No parking tickets shall be issued by the  
29 marine terminal to a driver or motor carrier for a parking violation  
30 if the assigned spot was occupied and the trouble window or  
31 terminal administration was unable to immediately provide a place  
32 to park, or if the driver was instructed to park the equipment in a  
33 different spot by marine terminal personnel or security.

34 (5) Willfully attempt to circumvent any provisions of this section  
35 or to fail, for any reason other than what is specified in the  
36 governing port tariff, to collect demurrage when due and payable  
37 and when consistent with this section. An intermodal motor carrier  
38 shall not be liable for any portion of demurrage when an intermodal  
39 container is not picked up during free time, which is the time period  
40 before demurrage charges are to be applied.

1 (6) *Require a motor carrier to return intermodal equipment to*  
2 *a location other than the physical location at which the equipment*  
3 *was received, unless the intermodal equipment provider directs,*  
4 *reasonably in advance of the commencement of the chargable*  
5 *demurrage, the equipment to be returned to a satellite location as*  
6 *governed by a written bilateral agreement between the intermodal*  
7 *equipment provider and the motor carrier. An intermodal*  
8 *equipment provider shall not unilaterally require a motor carrier*  
9 *to return intermodal equipment to a satellite location by notifying*  
10 *a motor carrier through a posting on an Internet Web site,*  
11 *electronic mail, shipping order, or any method of communication*  
12 *not specified in the written bilateral agreement between the*  
13 *intermodal equipment provider and the motor carrier.*

14 (d) As used in this chapter:

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

19 (2) “Closed” means not open or available to receive equipment.  
20 The marine terminal shall have posted working hours, and “closed”  
21 shall mean that the terminal is not open to release or accept  
22 equipment during those posted working hours.

23 (3) “Divert equipment” means the motor carrier has been  
24 directed to return the equipment to a location different from the  
25 location where the equipment was picked up by the motor carrier.

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

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

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

36 (7) “Intermodal equipment provider” means any party  
37 authorizing delivery or receipt of physical possession of equipment  
38 with a motor carrier commonly used in the road transport of  
39 intermodal freight, including, but not limited to, trailers, chassis,  
40 containers, and associated devices, but excluding, tractors. This

1 *definition applies to all intermodal equipment providers, regardless*  
2 *of whether the party participates in the Uniform Intermodal*  
3 *Interchange and Facilities Access Agreement.*

4 SECTION 1. ~~Section 43701 of the Health and Safety Code is~~  
5 ~~amended to read:~~

6 ~~43701. (a) (1) Not later than July 15, 1992, the state board,~~  
7 ~~in consultation with the bureau and the review committee~~  
8 ~~established pursuant to subdivision (a) of Section 44021, shall~~  
9 ~~adopt, after a public hearing, regulations that require that owners~~  
10 ~~or operators of heavy-duty diesel motor vehicles perform regular~~  
11 ~~inspections of their vehicles for excessive emissions of smoke.~~  
12 ~~The inspection procedure, the frequency of inspections, the~~  
13 ~~emission standards for smoke, and the actions the vehicle owner~~  
14 ~~or operator is required to take to remedy excessive smoke emissions~~  
15 ~~shall be specified by the state board. Those standards shall be~~  
16 ~~developed in consultation with interested parties. The smoke~~  
17 ~~standards adopted under this subdivision shall not be more stringent~~  
18 ~~than those adopted under Chapter 5 (commencing with Section~~  
19 ~~44000).~~

20 ~~(2) (A) On or before December 31 of each year, a fleet shall~~  
21 ~~comply with the regulations and standards for that calendar year.~~

22 ~~(B) For purposes of this paragraph, "fleet" means any group of~~  
23 ~~two or more heavy-duty diesel-fueled vehicles that are owned or~~  
24 ~~operated by the same person.~~

25 ~~(b) Not later than December 15, 1993, the state board shall, in~~  
26 ~~consultation with the State Energy Resources Conservation and~~  
27 ~~Development Commission, and after a public hearing, adopt~~  
28 ~~regulations that require that heavy-duty diesel motor vehicles~~  
29 ~~subject to subdivision (a) utilize emission control equipment and~~  
30 ~~alternative fuels. The state board shall consider, but not be limited~~  
31 ~~to, the use of cleaner burning diesel fuel, or other methods that~~  
32 ~~will reduce gaseous and smoke emissions to the greatest extent~~  
33 ~~feasible, taking into consideration the cost of compliance. The~~  
34 ~~regulations shall provide that any significant modification of the~~  
35 ~~engine necessary to meet these requirements shall be made during~~  
36 ~~a regularly scheduled major maintenance or overhaul of the~~  
37 ~~vehicle's engine. If the state board requires the use of alternative~~  
38 ~~fuels, it shall do so only to the extent those fuels are available.~~

39 ~~(c) The state board shall adopt emissions standards and~~  
40 ~~procedures for the qualification of any equipment used to meet the~~

1 requirements of subdivision (b), and only qualified equipment  
2 shall be used.

3 (d) To the extent permissible under federal law, commencing  
4 January 1, 2006, the owner or operator of any commercial motor  
5 truck, as defined in Section 410 of the Vehicle Code, with a gross  
6 vehicle weight rating (GVWR) greater than 10,000 pounds that  
7 enters the state for the purposes of operating in the state shall  
8 maintain, and provide upon demand to enforcement authorities,  
9 evidence demonstrating that its engine met the federal emission  
10 standards applicable to commercial heavy-duty engines for that  
11 engine's model-year at the time it was manufactured, pursuant to  
12 the protocol and regulations developed and implemented pursuant  
13 to subdivision (e).

14 (e) The state board, not later than January 1, 2006, in  
15 consultation with the Department of the California Highway Patrol,  
16 shall develop, adopt, and implement regulations establishing an  
17 inspection protocol for determining whether the engine of a truck  
18 subject to the requirements of subdivision (d) met the federal  
19 emission standard applicable to heavy-duty engines for that  
20 engine's model-year at the time it was manufactured.