

Calendar No. 120

103D CONGRESS
1ST SESSION

S. 412

[Report No. 103-79]

A BILL

To amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes.

JUNE 29 (legislative day, JUNE 22), 1993
Reported with amendments

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. EXON (for himself, Mr. KERREY, Mr. PRESSLER, Mrs. KASSEBAUM, Mr. DANFORTH, Mr. HATCH, Mr. DORGAN, Mr. BOND, Mr. PRYOR, Mr. BURNS, Mr. GORTON, Mr. LOTT, Mr. PACKWOOD, Mr. PELL, Mr. McCONNELL, Mr. KERRY, Mr. LUGAR, Mr. COCHRAN, Mr. MACK, Mr. THURMOND, Mr. McCAIN, Mr. FAIRCLOTH, Mr. CRAIG, Mr. BOREN, Mr. GREGG, Mr. KEMPTHORNE, and Mr. MATHEWS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 29 (legislative day, JUNE 22), 1993

Reported by Mr. HOLLINGS, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, 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 “Undercharge Equity
 5 Act of ~~1992~~”. 1993”.

6 **SEC. 2. DETERMINATIONS OF REASONABLENESS OF CER-**
 7 **TAIN RATES.**

8 ~~(a) IN GENERAL.—SECTION~~ *Section* 10701 of title
 9 49, United States Code, is amended by adding at the end
 10 the following new subsection:

11 “(f)(1) Subject to paragraph (10) of this subsection,
 12 when a claim is made by a motor carrier of property (other
 13 than a household goods carrier) or by a nonhousehold
 14 goods freight forwarder, or by a party representing such
 15 carrier or freight forwarder, regarding the collection of
 16 rates or charges in addition to the rates or charges origi-
 17 nally billed and collected by the carrier or freight for-
 18 warder, the person against whom the claim is made may
 19 elect to satisfy such claim under paragraph (4) or (5) of
 20 this subsection, upon showing that—

21 “(A) such carrier or forwarder is no longer
 22 transporting property or is transporting property for
 23 the purpose of avoiding the application of this sub-
 24 section; and

1 “(B) as to the claim at issue, (i) the person was
2 offered a transportation rate or charge by the car-
3 rier or forwarder other than the rate or charge le-
4 gally on file with the Commission for that shipment,
5 (ii) the person tendered freight to the carrier or for-
6 warder in reasonable reliance upon the offered trans-
7 portation rate or charge, (iii) the carrier or for-
8 warder did not properly or timely file with the Com-
9 mission a tariff providing for such transportation
10 rate or charge or failed to execute a valid contract
11 for transportation services, (iv) such transportation
12 rate or charge was billed and collected by the carrier
13 or forwarder, and (v) the carrier or forwarder de-
14 mands additional payment of a higher rate or charge
15 filed in a tariff.

16 Satisfaction of the claim under paragraph (4) or (5) of
17 this subsection shall be binding on the parties, and the
18 parties shall not be subject to chapter 119 of this title.

19 “(2) If there is a dispute as to paragraph (1)(A) of
20 this subsection, such dispute shall be resolved by the court
21 in which the claim is brought. If there is a dispute as to
22 paragraph (1)(B) (i) through (v) of this subsection, such
23 dispute shall be resolved by the Commission. Pending the
24 resolution of any such dispute, the person shall not have

1 to pay any additional compensation to the carrier or
2 forwarder.

3 “(3) In the event that a dispute arises as to the rate
4 or charge that was legally applicable to the shipment, such
5 dispute shall be resolved by the Commission within 1 year
6 after the dispute arises.

7 “(4) A person from whom the additional legally appli-
8 cable tariff rate or charge is sought may elect to satisfy
9 such claim if the shipment weighed 10,000 pounds or less,
10 by payment of 20 percent of the difference between the
11 carrier’s or forwarder’s legally applicable tariff rate or
12 charge and the rate or charge originally billed and
13 collected.

14 “(5) A person from whom the additional legally appli-
15 cable tariff rate or charge is sought may elect to satisfy
16 such claim if each shipment weighed more than 10,000
17 pounds, by payment of 10 percent of the difference be-
18 tween the carrier’s or forwarder’s legally applicable tariff
19 rate or charge and the rate or charge originally billed and
20 collected.

21 “(6) Notwithstanding paragraphs (4) and (5) of this
22 subsection, when a claim is made by a carrier or forwarder
23 described in paragraph (1)(A) of this subsection, or by a
24 party representing such carrier or forwarder, regarding
25 the collection of rates or charges in addition to the rate

1 or charge originally billed and collected by the carrier or
2 forwarder, and the person against whom the claim is made
3 is a small-business ~~concern~~, *concern or charitable organiza-*
4 *tion*, that person shall not be required to pay the claim
5 and the claim shall be deemed satisfied. Satisfaction of
6 the claim under this paragraph shall be binding on the
7 parties, and the parties shall not be subject to chapter 119
8 of this title.

9 “(7) When a person from whom the additional legally
10 applicable rate or charge is sought does not elect to use
11 the provisions of paragraph (4), (5), or (6) of this sub-
12 section, the person may pursue all rights and remedies ex-
13 isting under this title.

14 “(8)(A) When a person proceeds under paragraph (7)
15 of this subsection to challenge the reasonableness of the
16 legally applicable rate or charge being claimed by the car-
17 rier or forwarder in addition to the rate or charge origi-
18 nally billed and collected, the person shall not have to pay
19 any additional compensation to the carrier or forwarder
20 until the Commission has made a determination (which
21 shall be made within 1 year after such challenge) as to
22 the reasonableness of the challenged rate or charge as ap-
23 plied to the shipment of the person against whom the
24 claim is made. Subject to subparagraph (B) of this para-
25 graph, the Commission shall require the person to furnish

1 a bond, issued by a surety company found acceptable by
2 the Secretary of the Treasury, or to establish an interest
3 bearing escrow account.

4 “(B) The surety bond or interest bearing escrow ac-
5 count required under subparagraph (A) of this paragraph
6 shall be set or established in an amount equal to—

7 “(i) 20 percent of the amount claimed by the
8 carrier or forwarder for the additional rate or
9 charge, in the case of a shipment weighing 10,000
10 pounds or less; and

11 “(ii) 10 percent of such claimed amount, in the
12 case of a shipment weighing more than 10,000
13 pounds.

14 “(9) Except as authorized in paragraphs (4), (5), and
15 (6) of this subsection, nothing in this subsection shall re-
16 lieve a motor carrier or freight forwarder of the duty to
17 file and adhere to its rates, rules, and classifications as
18 required in sections 10761 and 10762 of this title.

19 “(10) If a carrier or forwarder or party representing
20 such carrier or forwarder makes a claim for additional
21 rates or charges as described in paragraph (1) of this sub-
22 section, the person against whom the claim is made must
23 notify such carrier, forwarder, or party as to the person’s
24 election to proceed under ~~paragraph (2) or (3)~~ *paragraph*
25 *(4) or (5)* of this subsection. Such notification—

1 “(A) with respect to a claim made before the
2 date of enactment of this subsection, shall be not
3 later than the 30th day after such date of enact-
4 ment; and

5 “(B) with respect to any claim not described in
6 subparagraph (A) of this paragraph, shall be not
7 later than the 60th day after the filing of an answer
8 to a complaint in a civil action for the collection of
9 such rates or charges, or not later than the 90th day
10 after the date of enactment of this subsection,
11 whichever is later.

12 ~~“(11) In this subsection, ‘small-business concern’~~
13 ~~means a person who would qualify as a small-business con-~~
14 ~~cern under the Small Business Act (15 U.S.C. 631 et~~
15 ~~seq.).”.~~

16 “(11) *In this subsection—*

17 “(A) *‘charitable organization’ means an organi-*
18 *zation which is exempt from taxation under section*
19 *503(c)(3) of the Internal Revenue Code of 1986 (26*
20 *U.S.C. 503(c)(3)); and*

21 “(B) *‘small-business concern’ means a person*
22 *who would qualify as a small-business concern under*
23 *the Small Business Act (15 U.S.C. 631 et. seq.).”.*

1 **SEC. 3. STATUTE OF LIMITATIONS.**

2 (a) MOTOR CARRIER CHARGES.—Section 11706(a)
3 of title 49, United States Code, is amended by striking
4 the period at the end and inserting in lieu thereof the fol-
5 lowing: “; except that a common carrier providing trans-
6 portation *or* service subject to the jurisdiction of the Com-
7 mission under subchapter II of chapter 105 of this title—

8 “(1) must begin, within 24 months after the
9 claim accrues, a civil action to recover charges for
10 such transportation or service if such transportation
11 or service is provided by the carrier on or after the
12 date of enactment of this exception and before the
13 date that is 1 year after such date of enactment;
14 and

15 “(2) must begin such a civil action within 18
16 months after the claim accrues if such transpor-
17 tation or service is provided by the carrier on or
18 after the date that is 1 year after such date of
19 enactment.”.

20 (b) MOTOR CARRIER OVERCHARGES.—Section
21 11706(b) of title 49, United States Code, is amended by
22 striking the period at the end of the first sentence and
23 inserting in lieu thereof the following: “; except that a per-
24 son must begin within 24 months after the claim accrues
25 a civil action to recover overcharges from a carrier subject
26 to the jurisdiction of the Commission under subchapter

1 II of chapter 105 of this title for transportation or service
2 taking place on or after the date of enactment of this ex-
3 ception and before the date that is 1 years after such date
4 of enactment, and for transportation or service taking
5 place on or after the date that is 1 year following such
6 date of enactment, a person must begin such a civil action
7 within 18 months after the claim accrues.”.

8 (c) CONFORMING AMENDMENT.—Section 11706(d)
9 of title 49, United States Code, is amended by striking
10 “3-year period” each place it appears and inserting in lieu
11 thereof “limitations period”.

12 **SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR COM-**
13 **MON CARRIERS OF PROPERTY.**

14 (a) IN GENERAL.—Chapter 117 of title 49, United
15 States Code, is amended by adding at the end the follow-
16 ing new section:

17 **“§11712. Tariff reconciliation rules for motor com-**
18 **mon carriers of property**

19 “(a) Subject to Interstate Commerce Commission re-
20 view and approval, motor carriers subject to the jurisdic-
21 tion of the Commission under subchapter II of chapter
22 105 of this title and shippers may resolve, by mutual con-
23 sent, overcharge and undercharge claims resulting from
24 billing errors or incorrect tariff provisions arising from the
25 inadvertent failure to properly and timely file and main-

1 tain agreed upon rates, rules, or classifications in compli-
2 ance with sections 10761 and 10762 of this title. Resolu-
3 tion of such claims among the parties shall not subject
4 any party to the penalties of section 11901, 11902, 11903,
5 11904, or 11914 of this title.

6 “(b) Nothing in this section shall relieve the motor
7 carrier of the duty to file and adhere to its rates, rules,
8 and classifications as required in sections 10761 and
9 10762, except as provided in subsection (a) of this section.

10 “(c) The Commission shall, within 90 days after the
11 date of enactment of this section, institute a proceeding
12 to establish rules pursuant to which the tariff require-
13 ments of section 10761 and 10762 of this title shall not
14 apply under circumstances described in subsection (a) of
15 this section.”.

16 (b) CONFORMING AMENDMENT.—The analysis for
17 chapter 117 of title 49, United States Code, is amended
18 by adding at the end the following:

“11712. Tariff reconciliation rules for motor common carriers of property.”.

19 **SEC. 5. EFFECTIVE DATE; APPLICABILITY.**

20 (a) GENERAL RULE.—Except as provided in sub-
21 section (b), the provisions of this Act (including the
22 amendments made by this Act) shall take effect on the
23 date of enactment of this Act.

24 (b) APPLICABILITY OF SECTION 2.—The amend-
25 ments made by section 2 shall apply to any proceeding

1 before the Interstate Commerce Commission, and to any
2 court action, which is pending or commenced on or after
3 the date of enactment of this Act and which pertains to
4 a claim arising from transportation shipments tendered
5 any time prior to the date that is 18 months after such
6 date of enactment. Unless Congress determines a continu-
7 ing need for section 2 and enacts additional legislation,
8 section 2 shall not apply to any such proceeding which
9 pertains to a claim arising from transportation shipments
10 tendered on or after the date that is 18 months following
11 such date of enactment.

12 (c) REPORT.—The Interstate Commerce Commission
13 shall submit a report to Congress, within 1 year after the
14 date of enactment of this Act, regarding whether there ex-
15 ists a justification for extending the applicability of section
16 2 beyond the limitation period specified in subsection (b).