117TH CONGRESS
2D Session

S.

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. KLOBUCHAR (for herself, Mr. THUNE, Ms. BALDWIN, Mr. HOEVEN, Ms. STABENOW, Mr. MARSHALL, Mr. PETERS, Mr. MORAN, Mr. BLUMENTHAL, Mr. YOUNG, Mr. KELLY, Mrs. BLACKBURN, Mr. BOOKER, and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 46, United States Code, with respect to prohibited acts by ocean common carriers or marine terminal operators, 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 “Ocean Shipping Re-
5  form Act of 2022”.

6  SEC. 2. PURPOSES.

7  Section 40101 of title 46, United States Code, is
8  amended—
(1) by striking paragraph (2) and inserting the following:

“(2) ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States;”;

(2) in paragraph (3), by inserting “and supporting commerce” before “needs”; and

(3) by striking paragraph (4) and inserting the following:

“(4) promote the growth and development of United States exports.”.

SEC. 3. SERVICE CONTRACTS.

Section 40502(c) of title 46, United States Code, is amended—

(1) in paragraph (7) by striking “; and” and inserting a semicolon;

(2) in paragraph (8) by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(9) any other essential terms that the Federal Maritime Commission determines necessary or appropriate.”.
SEC. 4. SHIPPING EXCHANGE REGISTRY.

(a) IN GENERAL.—Chapter 405 of title 46, United States Code, is amended by adding at the end the following:

§ 40504. Shipping exchange registry

(a) IN GENERAL.—No person may operate a shipping exchange involving ocean transportation in the foreign commerce of the United States unless the shipping exchange is registered as a national shipping exchange under the terms and conditions provided in this section and the regulations issued pursuant to this section.

(b) REGISTRATION.—A person shall register a shipping exchange by filing with the Federal Maritime Commission (referred to in this section as the ‘Commission’) an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest.

(c) EXEMPTION.—The Commission may exempt, conditionally or unconditionally, a shipping exchange from registration under this section if the Commission finds that the shipping exchange is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in a foreign country where the shipping exchange is headquartered.
“(d) REGULATIONS.—Not later than 3 years after the date of enactment of the Ocean Shipping Reform Act of 2022, the Commission shall issue regulations pursuant to subsection (a), which shall set standards necessary to carry out subtitle IV of this title for registered national shipping exchanges, including the minimum requirements for service contracts established under section 40502 of this title.

“(e) DEFINITION OF SHIPPING EXCHANGE.—In this section, the term ‘shipping exchange’ means a service or platform for shippers to communicate freight traffic and capacity information to common carriers.”.

(b) APPLICABILITY.—The registration requirement under section 40504 of title 46, United States Code (as added by subsection (a)), shall take effect on the date on which the Federal Maritime Commission states the rule is effective in the regulations issued under such section.

(c) CLERICAL AMENDMENT.—The analysis for chapter 405 of title 46, United States Code, is amended by adding at the end the following:

“40504. Shipping exchange registry.”.

SEC. 5. PROHIBITION ON RETALIATION.

Section 41102 of title 46, United States Code, is amended by adding at the end the following:

“(d) PROHIBITION ON RETALIATION.—
“(1) IN GENERAL.—A common carrier, marine terminal operator, or ocean transportation intermediary, either alone or in conjunction with any other person, directly or indirectly, may not retaliate against a shipper, a motor carrier, or an agent of such a shipper or carrier by taking any action described in paragraph (2) because the shipper or motor carrier has patronized another common carrier, marine terminal operator, or ocean transportation intermediary, or has filed a complaint, or for any other reason.

“(2) ACTIONS.—The actions described in this paragraph are—

“(A) refusing, or threatening to refuse, cargo space accommodations when available; or

“(B) resorting to any other prohibited actions under section 41104(a)(3).”.

SEC. 6. PUBLIC DISCLOSURE.

Section 46106 of title 46, United States Code, is amended by adding at the end the following:

“(d) PUBLIC DISCLOSURES.—The Federal Maritime Commission shall publish, and annually update, on the website of the Commission—

“(1) all findings by the Commission of false certifications by common carriers or marine terminal
operators under section 41104(a)(15) of this title;

and

“(2) all penalties imposed or assessed against common carriers or marine terminal operators, as applicable, under sections 41107, 41108, and 41109, listed by each common carrier or marine terminal operator.”.

SEC. 7. COMMON CARRIERS.

(a) IN GENERAL.—Section 41104 of title 46, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “may not” and inserting “shall not”;

(B) by striking paragraph (3) and inserting the following:

“(3) with due regard being given to the proper loading of the vessel and the available tonnage, refuse cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods;”;

(C) in paragraph (5), by striking “in the matter of rates or charges” and inserting “against any commodity group or type of shipment or in the matter of rates or charges”;

”
(D) in paragraph (9), by inserting “against any commodity group or type of shipment or in the matter of rates or charges” after “disadvantage”; 

(E) in paragraph (10), by adding “, including with respect to vessel space accommodations” after “negotiate”; 

(F) in paragraph (12) by striking “; or” and inserting a semicolon; 

(G) in paragraph (13) by striking the period and inserting a semicolon; and 

(H) by adding at the end the following: “(14) assess any party for a charge that is inconsistent or does not comply with all applicable provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); or 

“(15) invoice any party for demurrage or detention charges, unless accompanied by an accurate certification that such charges comply with— 

“(A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and 

“(B) the findings of the final rule published on May 18, 2020, entitled ‘Interpretive
Rule on Demurrage and Detention Under the Shipping Act (85 Fed. Reg. 29638).”; and
(2) by adding at the end the following:
“(d) VIOLATION OF PROHIBITION.—If the Commission determines, after an investigation in response to a submission under section 41310, that a certification under subsection (a)(15) was inaccurate or false, penalties under section 41107 shall be applied.
“(e) CERTIFICATION.—Failure to include a certification under subsection (a)(15) alongside any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.”.

(b) RULEMAKING ON DEMURRAGE OR DETENTION.—
(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Federal Maritime Commission shall issue rulemaking further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under section 41102(c) of title 46, United States Code, regarding the assessment of demurrage or detention charges.
(2) CONTENTS.—The rulemaking under paragraph (1) shall seek to further clarify reasonable rules and practices related to the assessment of detention and demurrage charges to address the issues
identified in the final rule published on May 18, 2020, titled “Interpretive Rule on Demurrage and Detention Under the Shipping Act” (85 Fed. Reg. 29638), including a determination of which parties may be appropriately billed for any demurrage, detention, or other similar per container charges.

(c) Rulemaking on Unfair or Unjustly Discriminatory Methods.—Not later than 1 year after the date of enactment of this Act, the Federal Maritime Commission shall issue rulemaking defining unfair or unjustly discriminatory methods under section 41104(a)(3) of title 46, as amended by this section.

(d) Rulemaking on Unreasonably Refuse to Deal or Negotiate With Respect to Vessel Space Accommodations.—Not later than 1 year after the date of enactment of this Act, the Federal Maritime Commission shall issue rulemaking defining unreasonable refusal to deal or negotiate with respect to vessel space under section 41104(a)(10) of title 46, as amended by this section.

SEC. 8. ASSESSMENT OF PENALTIES OR REFUNDS.

(a) In General.—Title 46, United States Code, is amended—

(1) in section 41107—

(A) in the section heading, by inserting “or refunds” after “penalties”;
(B) in subsection (a), by inserting “or, in addition to or in lieu of a civil penalty, is liable for the refund of a charge” after “civil penalty”; and

(C) in subsection (b), by inserting “or, in addition to or in lieu of a civil penalty, the refund of a charge,” after “civil penalty”; and

(2) in section 41109—

(A) in the section heading, by inserting “or refunds” after “penalties”;

(B) in subsection (a)—

(i) by inserting “or, in addition to or in lieu of a civil penalty, order the refund of a charge” after “this part”; and

(ii) by inserting “or refund of such charge” after “conditions, a civil penalty”;

(C) by striking subsection (c);

(D) by redesignating subsections (d) through (g) as subsections (e) through (f);

(E) in subsection (d), as redesignated by subparagraph (D), by inserting “or order a refund of a charge” after “civil penalty”;

(F) in subsection (e), as redesignated by subparagraph (D), by inserting “or who is or-
dered to refund a charge” after “civil penalty is assessed”; and

(G) in subsection (f), as redesignated by subparagraph (D)—

(i) by inserting “or pay a refund of a charge” after “of a civil penalty”; and

(ii) by inserting “or the amount ordered to be refunded” after “amount assessed”.

(b) Clerical Amendments.—The analysis for chapter 411 of title 46, United States Code, is amended—

(1) by striking the item relating to section 41107 and inserting the following:

“41107. Monetary penalties or refunds.”; and

(2) by striking the item relating to section 41109 and inserting the following:

“41109. Assessment of penalties or refunds.”.

SEC. 9. DATA COLLECTION.

(a) In General.—Chapter 411 of title 46, United States Code, is amended by adding at the end the following:

“SEC. 41110. DATA COLLECTION.

“(a) In General.—Common carriers covered under this chapter shall submit to the Federal Maritime Commission a calendar quarterly report that describes the total import and export tonnage and the total loaded and
empty 20-foot equivalent units per vessel (making port in
the United States, including any territory or possession
of the United States) operated by such common carrier.

“(b) PROHIBITION ON DUPLICATION.—Data required
to be reported under subsection (a) may not duplicate in-
formation—

“(1) submitted to the Corps of Engineers pur-
suant to section 11 of the Act entitled ‘An Act au-
thorizing the construction, repair, and preservation
of certain public works on rivers and harbors, and
for other purposes’, approved September 22, 1922
(33 U.S.C. 555), by an ocean common carrier acting
as a vessel operator; or

“(2) submitted pursuant to section 481 of the
Tariff Act of 1930 (19 U.S.C. 1481) to Customs
and Border Protection by merchandise importers.”.

(b) CLERICAL AMENDMENT.—The analysis for chap-
ter 411 of title 46, United States Code, is amended by
adding at the end the following:

“41110. Data collection.”.

SEC. 10. CHARGE COMPLAINTS.

(a) IN GENERAL.—Chapter 413 of title 46, United
States Code, is amended by adding at the end the fol-
lowing:
§ 41310. Charge complaints

(a) In general.—A person may submit to the Federal Maritime Commission, and the Commission shall accept, information concerning charges. The information submitted to the Commission may include the bill of lading numbers, certifications, or any other relevant information.

(b) Investigation.—Upon receipt of a submission under subsection (a), with respect to a charge assessed by a common carrier, the Commission shall promptly investigate the charge with regard to compliance with section 41104(a). The common carrier shall—

(1) be provided an opportunity to submit additional information related to the charge in question; and

(2) bear the burden of establishing the reasonableness of any demurrage or detention charges which are the subject of any complaint proceeding challenging a common carrier or marine terminal operator demurrage or detention charge pursuant to section 545.5 of title 46, Code of Federal regulations (or successor regulations).

(c) Refund.—Upon receipt of submissions under subsection (a), if the Commission determines that a charge does not comply with section 41104(a), the Commission shall promptly order the refund of any demurrage and detention charges paid.
“(d) Penalties.—In the event of a finding that a charge does not comply with section 41104(a) after submission under subsection (a), a civil penalty under section 41107 shall be applied to the common carrier making such charge.”.

(b) Clerical Amendment.—The analysis for chapter 413 of title 46, United States Code, is amended by adding at the end the following:

“41310. Charge complaints.”.

SEC. 11. INVESTIGATIONS.

(a) Amendments.—Section 41302 of title 46, United States Code, is amended—

(1) in subsection (a), in the first sentence, by striking “or agreement” and inserting “agreement, fee, or charge”; and

(2) in subsection (b)—

(A) in the subsection heading, by striking “Agreement” and inserting “Agreement, fee, or charge”; and

(B) by inserting “, fee, or charge” after “agreement”.

(b) Report.—The Federal Maritime Commission shall publish on a publicly available website of the Commission a report containing the results of the investigation entitled “Fact Finding No. 29, International Ocean Transportation Supply Chain Engagement”.
SEC. 12. AWARD OF ADDITIONAL AMOUNTS.

Section 41305 of title 46, United States Code, is amended—

(1) in subsection (e)—

(A) by striking “section 41102(b),” through “or (3)” and inserting “subsection (b), (c), or (d) of section 41102, paragraph (3) or (6) of section 41104(a), or paragraph (1) or (3) of section 41105”; and

(B) by inserting “or if the Commission determined that a violation of section 41104(a) of this title was made,” after “of this title”; and

(2) in subsection (d), by striking “section 41104(4)(A) or (B)” and inserting “subparagraph (A) or (B) of section 41104(a)(4)’’.

SEC. 13. ENFORCEMENT OF REPARATION ORDERS.

(a) In general.—Section 41309 of title 46, United States Code, is amended—

(1) in the section heading, by inserting “or refund” after “reparation”;

(2) in subsection (a)—

(A) by inserting “or refund of a charge” after “payment of reparation”; and

(B) by inserting “or to whom the refund of the charge was ordered” after “award was made”; and
(3) in subsection (b), by inserting “or refund of such a charge” after “award of reparation”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 413 of title 46, United States Code, is amended by striking the item relating to section 41309 and inserting the following:

“41309. Enforcement of reparation or refund orders.”.

SEC. 14. ANNUAL REPORT TO CONGRESS.

Section 46106(b) of title 46, United States Code, is amended—

(1) in paragraph (5) by striking “and” at the end;

(2) in paragraph (6), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(7) an identification of any otherwise concerning practices by ocean common carriers, particularly such carriers that are controlled carriers, that are—

“(A) State-owned or State-controlled enterprises; or

“(B) owned or controlled by, a subsidiary of, or otherwise related legally or financially (other than a minority relationship or investment) to a corporation based in a country—
“(i) identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this paragraph;

“(ii) identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a priority foreign country under subsection (a)(2) of that section; or

“(iii) subject to monitoring by the United States Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).”.

SEC. 15. TECHNICAL AMENDMENTS.

(a) ADDITIONAL PENALTIES.—Section 41108(a) of title 46, United States Code, is amended by striking “section 41104(1), (2), or (7)” and inserting “paragraphs (1), (2), or (7) of section 41104(a)”.

(b) ASSESSMENT OF PENALTIES.—Section 41109(c) of title 46, United States Code, is amended by striking “section 41104(1) or (2)” and inserting “paragraph (1) or (2) of section 41104(a)”.