

California Steams Past Federal Maritime Commission on Detention and Demurrage Prohibitions

On September 30, Governor Gavin Newsom signed Assembly Bill 2406 (AB 2406) into law in California. The bill, effective January 1, 2023, significantly limits the ability of marine container providers or terminal operators to impose certain charges and fees on motor carriers or cargo owners for failure to either pick up or return containers within allotted free time periods. AB 2406's passage marks another inflection point in an era of increased regulatory scrutiny of these maritime practices, particularly relating to detention and demurrage (D&D) charges.

AB 2406 identifies ten scenarios in which container providers or terminal operators may not commence/continue free time or impose D&D or similar charges on motor carriers or cargo owners due to circumstances ostensibly beyond those parties' control. These prohibitions apply in scenarios such as:

- When the container provider diverts equipment from its original location without 48 hours' notice to the motor carrier;
- When a loaded container is not available for pick-up upon the motor carrier's arrival at the terminal;
- When the terminal is too congested to accept a container and turns the motor carrier away;
- When a motor carrier documents unsuccessful attempts to make appointments for loaded or empty container transactions;
- When the delay in return or delivery of a container occurs because of receiving date changes for the booked vessel.

The bill also includes a catch-all prohibition if the return or retrieval of equipment "is within the scope of responsibility of the carrier ... and beyond the control of the invoiced or contracting party."

Concurrently with the passage of AB 2406, the Federal Maritime Commission (FMC) continues to push to publish new rulemakings regarding D&D practices pursuant to Congress' passage of the Ocean Shipping Reform Act of 2022 (OSRA). Notably, OSRA included new, immediately-effective requirements for ocean carriers regarding D&D billing practices and further mandated the FMC to issue a final rule regarding prohibited practices relating to D&D charges within one year after OSRA's enactment in July 2022.

Given the continued, significant emphasis on D&D by both California and the FMC, container providers and terminal operators should review current practices to ensure compliance with forthcoming regulatory changes in light of both AB 2406 and OSRA's requirements. Additionally, these parties should continue to closely monitor the announcement and implementation of new procedures from the FMC, with a particular focus on any potential conflicting or unique requirements in California.

Cozen O'Connor's Transportation & Trade Group continues to monitor these developments at the federal and state levels and stands ready to advise clients as they navigate this changing regulatory landscape.



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