

By: Noriega

H.B. No. 3448

A BILL TO BE ENTITLED

AN ACT

relating to the transport of intermodal containers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 621, Transportation Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PORT TERMINAL INTERMODAL CONTAINER REGULATION.

Sec. 621.601. DEFINITIONS. In this subchapter:

(1) "Department" means the Texas Department of Transportation.

(2) "Vehicle" means the same as Sec. 621.001(9), Transportation Code.

(3) "Weight enforcement officer" means the same as Sec. 621.401, Transportation Code.

Sec. 621.602. APPLICABILITY. Any ocean marine terminal that receives and dispatches intermodal containers shall implement and carry out the intermodal container safety program, as described in this Act.

Sec. 621.603. INTERMODAL CONTAINER SAFETY PROGRAM. (a) No ocean marine terminal operator shall tender to, or interchange with, a motor carrier an intermodal container that when loaded upon a vehicle shall cause the motor carrier's vehicle to exceed the state's axle weight restrictions or the Federal gross vehicle weight restrictions. Any ocean marine terminal operator tendering to a motor carrier such a container shall be fined \$500 per

1 occurrence.

2 (b) No ocean marine terminal operator shall tender to, or  
3 interchange with, a motor carrier, an intermodal container that,  
4 upon inspection, is determined to be improperly packed or unsafely  
5 loaded. Any ocean marine terminal operator tendering to a motor  
6 carrier such a container shall be fined \$500 per occurrence.

7 (c) Nothing in this Act is meant to supercede the Federal  
8 weight restrictions provided in 49 C.F.R. Section 5903. Rather,  
9 this Act imposes compliance with both the state's axle weight  
10 restrictions and the Federal gross vehicle weight restrictions.

11 (d) Ocean marine terminal operators shall weigh and inspect  
12 all containers upon the container's arrival at the terminal.  
13 Containers that weigh less than or equal to an amount that when  
14 loaded upon a vehicle, shall not cause the vehicle to exceed the  
15 state's axle weight restrictions, and are determined upon  
16 inspection to be safely loaded and properly packed, shall be  
17 green-tagged and placed in an area designated for interchange to a  
18 motor carrier. The tag shall contain:

19 (1) the name(s) of the person(s) who weighed and  
20 inspected the container;

21 (2) the date and time that the container was weighed  
22 and inspected;

23 (3) the weight of the container and the determination  
24 of inspection; and

25 (4) since a vehicle's weight-bearing capacity varies  
26 depending upon the number of axles that a vehicle has, each green  
27 tag shall designate the appropriate vehicle, with the necessary

1 number of axles, that may transport that container.

2 (e) The tag shall be provided by the ocean marine terminal  
3 operator and shall meet specifications determined by the Department  
4 of Public Safety.

5 (f) If, however, a container weighs more than an amount that  
6 when loaded upon a vehicle shall cause the vehicle to exceed the  
7 State's axle weight restrictions, or is determined upon inspection  
8 to be improperly packed or unsafely loaded, it shall be red-tagged  
9 and transported to a facility located at the ocean marine terminal  
10 to be unloaded and re-packed until the container can be safely  
11 operated on the public highways and falls within a weight that when  
12 loaded upon a vehicle, the vehicle's weight is within the State's  
13 axle weight restrictions. Alternatively, the ocean marine terminal  
14 operator shall return the overweight container to its original  
15 sender.

16 (1) The ocean marine terminal shall bear the costs of  
17 transporting the container to the facility, and unloading and  
18 re-packing the container.

19 (2) To ensure both compliance and reimbursement, a  
20 container may be embargoed until payment is received.

21 (g) Once a container has been unloaded and re-packed, it  
22 shall be green-tagged and transported to an area designated for  
23 interchange to a motor carrier.

24 (h) In the event that an overweight, improperly packed or  
25 unsafely loaded container, regardless of whether it has been green-  
26 or red-tagged, is interchanged to a motor carrier, and the motor  
27 carrier has not yet left the terminal, the driver:

1           (1) may request that the container be re-weighed or  
2 re-packed by the entity responsible for weighing and inspecting the  
3 container pursuant to this Act;

4           (2) shall be compensated by the ocean marine terminal  
5 at \$100 per hour for time spent transporting the container to the  
6 unloading/re-packing facility; and locating a container that when  
7 loaded upon the vehicle shall not cause the vehicle to exceed the  
8 State's axle weight restrictions or highway safety regulations; and

9           (3) any such request, any corrective action taken,  
10 and/or the reason why corrective action was not taken shall be  
11 recorded in the intermodal container maintenance file as described  
12 in Section 621.604 of this Act. Alternatively, the driver may  
13 contact a law enforcement agency with regard to the weight of the  
14 container.

15           (i) No driver shall be threatened, coerced, or otherwise  
16 retaliated against by an ocean marine terminal operator for  
17 requesting that a container be re-weighed or re-packed or for  
18 contacting a law enforcement agency with regard to the weight or  
19 safety of an intermodal container. In the event that a driver is so  
20 threatened, coerced, or otherwise retaliated against, the driver  
21 shall be protected by and afforded all rights and remedies provided  
22 in Chapter 554, Government Code. Accordingly, any person who  
23 violates this Section of the Act shall be subject to the penalties  
24 provided in Chapter 554, Government Code.

25           (j) In the event that an overweight, improperly packed or  
26 unsafely loaded container is interchanged to a motor carrier, and  
27 the motor carrier has left the terminal, the ocean marine terminal

1 operator shall be held responsible for any time during which the  
2 motor carrier is detained by State officials for violations of the  
3 provisions of this Act. The driver shall be paid by the ocean  
4 marine terminal at the rate specified in the contract plus \$100 per  
5 hour for all time spent related to such infraction(s).

6 (k) Any citation, summons or complaint issued as a result of  
7 a violation of a state axle weight violation shall be issued to the  
8 ocean marine terminal operator responsible for weighing and  
9 inspecting the container.

10 Sec. 621.604. MAINTENANCE AND INSPECTION OF RECORDS. (a)  
11 Records regarding the weight and inspection of each container  
12 entering an ocean marine terminal shall be:

13 (1) maintained for 90 days at the ocean marine  
14 terminal where each container is weighed and inspected;

15 (2) made available upon request by any authorized  
16 employee of the Texas Department of Transportation, port of entry  
17 supervisor, or weight enforcement officer; and

18 (3) made available during normal business hours to any  
19 motor carrier or driver or the authorized representative thereof  
20 who has been engaged to transport a container from the ocean marine  
21 terminal.

22 (b) Records shall be kept for any container that must be  
23 unloaded and re-packed pursuant to the requirements set forth in  
24 Section 621.603(f). Such records shall be:

25 (1) maintained for two years at the ocean marine  
26 terminal; and

27 (2) made available upon request by any authorized

1 employee of the Texas Department of Transportation, port of entry  
2 supervisor, or weight enforcement officer; and

3 (3) made available during normal business hours to any  
4 motor carrier or driver, or the authorized representative thereof,  
5 who has been engaged to transport a container from the ocean marine  
6 terminal.

7 (c) Requests made pursuant to Section 621.603(e)(1) that a  
8 container be re-weighed or re-packed shall be recorded in the  
9 intermodal container safety file and shall be maintained and made  
10 available pursuant to Section 621.604(a).

11 (d) All above-described records may be kept in a computer  
12 system if printouts of those records are provided upon request.

13 Sec. 621.605. COMPLIANCE AND ENFORCEMENT. (a) The  
14 Department of Public Safety, port of entry supervisor, or weight  
15 enforcement officer shall conduct random, but at least annual  
16 on-site reviews of ocean marine terminals to determine whether the  
17 terminal is complying with the requirements of this Act, including  
18 but not limited to weighing and inspecting intermodal containers;  
19 their tagging, quarantine and/or re-packing; and record-keeping  
20 requirements. Following an inspection in which the Department  
21 determines that an ocean marine terminal operator has failed to  
22 comply with any of the requirements of this Act, the Department  
23 shall:

24 (1) require the ocean marine terminal to comply  
25 immediately with the requirements of the Act;

26 (2) fine the ocean marine terminal operator \$100 for  
27 every day, after the day of inspection, that the terminal fails to

1 comply with the requirements of this Act;

2 (3) after 10 days of non-compliance, immediately  
3 forward a recommendation to the Texas Department of Transportation  
4 to suspend the terminal's motor carrier property permit, and  
5 forward a recommendation to the Federal Motor Carrier Safety  
6 Administration for administrative or other action deemed necessary  
7 against the ocean marine terminal's interstate operating  
8 authority; and

9 (4) after 20 days of non-compliance, the ocean marine  
10 terminal's property permit shall be revoked.

11 (b) If any inspection results in an unsatisfactory rating  
12 due to conditions presenting an imminent danger to the public  
13 safety, the Department of Transportation shall take actions  
14 pursuant to Section 621.605(a)(3) and/or Section 621.605(a)(4) of  
15 the Act.

16 (c) In addition, any port of entry supervisor or weight  
17 enforcement officer, while in the performance of the duties of  
18 office, is authorized to enter at any time an ocean marine terminal  
19 to weigh and/or inspect any intermodal containers that have been  
20 green-tagged. If any green-tagged container that when loaded upon  
21 a vehicle, with the appropriate number of axles as specified on the  
22 green tag, shall cause the motor carrier's vehicle to exceed the  
23 State's axle weight restrictions or the Federal gross vehicle  
24 weight restrictions, or is determined to be improperly packed or  
25 unsafely loaded, the ocean marine terminal operator shall be  
26 subject to a \$1000 fine per overweight or unsafe container as well  
27 as any of the penalties set forth in Section 621.605 of the Act.

1           Sec. 621.606. RULES. The Department shall adopt rules  
2 necessary to administer Subchapter H.

3           SECTION 3. This Act takes effect September 1, 2003.