

103^D CONGRESS
1ST SESSION

S. 412

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1993

Referred to the Committee on Public Works and Transportation

AN ACT

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 1993”.

1 **SEC. 2. DETERMINATIONS OF REASONABLENESS OF CER-**
2 **TAIN RATES.**

3 Section 10701 of title 49, United States Code, is
4 amended by adding at the end the following new sub-
5 section:

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

16 “(A) such carrier or forwarder is no longer
17 transporting property or is transporting property for
18 the purpose of avoiding the application of this sub-
19 section; and

20 “(B) as to the claim at issue, (i) the person was
21 offered a transportation rate or charge by the car-
22 rier or forwarder other than the rate or charge le-
23 gally on file with the Commission for that shipment,
24 (ii) the person tendered freight to the carrier or for-
25 warder in reasonable reliance upon the offered trans-
26 portation rate or charge, (iii) the carrier or for-

1 warder did not properly or timely file with the Com-
2 mission a tariff providing for such transportation
3 rate or charge or failed to execute a valid contract
4 for transportation services, (iv) such transportation
5 rate or charge was billed and collected by the carrier
6 or forwarder, and (v) the carrier or forwarder de-
7 mands additional payment of a higher rate or charge
8 filed in a tariff.

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

12 “(2) If there is a dispute as to paragraph (1)(A) of
13 this subsection, such dispute shall be resolved by the court
14 in which the claim is brought. If there is a dispute as to
15 paragraph (1)(B) (i) through (v) of this subsection, such
16 dispute shall be resolved by the Commission. Pending the
17 resolution of any such dispute, the person shall not have
18 to pay any additional compensation to the carrier or
19 forwarder.

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

24 “(4) A person from whom the additional legally appli-
25 cable tariff rate or charge is sought may elect to satisfy

1 such claim if the shipment weighed 10,000 pounds or less,
2 by payment of 20 percent of the difference between the
3 carrier's or forwarder's legally applicable tariff rate or
4 charge and the rate or charge originally billed and
5 collected.

6 “(5) A person from whom the additional legally appli-
7 cable tariff rate or charge is sought may elect to satisfy
8 such claim if each shipment weighed more than 10,000
9 pounds, by payment of 10 percent of the difference be-
10 tween the carrier's or forwarder's legally applicable tariff
11 rate or charge and the rate or charge originally billed and
12 collected.

13 “(6) Notwithstanding paragraphs (4) and (5) of this
14 subsection, when a claim is made by a carrier or forwarder
15 described in paragraph (1)(A) of this subsection, or by a
16 party representing such carrier or forwarder, regarding
17 the collection of rates or charges in addition to the rate
18 or charge originally billed and collected by the carrier or
19 forwarder, and the person against whom the claim is made
20 is a small-business concern or charitable organization, that
21 person shall not be required to pay the claim and the claim
22 shall be deemed satisfied. Satisfaction of the claim under
23 this paragraph shall be binding on the parties, and the
24 parties shall not be subject to chapter 119 of this title.

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

6 “(8)(A) When a person proceeds under paragraph (7)
7 of this subsection to challenge the reasonableness of the
8 legally applicable rate or charge being claimed by the car-
9 rier or forwarder in addition to the rate or charge origi-
10 nally billed and collected, the person shall not have to pay
11 any additional compensation to the carrier or forwarder
12 until the Commission has made a determination (which
13 shall be made within 1 year after such challenge) as to
14 the reasonableness of the challenged rate or charge as ap-
15 plied to the shipment of the person against whom the
16 claim is made. Subject to subparagraph (B) of this para-
17 graph, the Commission shall require the person to furnish
18 a bond, issued by a surety company found acceptable by
19 the Secretary of the Treasury, or to establish an interest
20 bearing escrow account.

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

24 “(i) 20 percent of the amount claimed by the
25 carrier or forwarder for the additional rate or

1 charge, in the case of a shipment weighing 10,000
2 pounds or less; and

3 “(ii) 10 percent of such claimed amount, in the
4 case of a shipment weighing more than 10,000
5 pounds.

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

11 “(10) If a carrier or forwarder or party representing
12 such carrier or forwarder makes a claim for additional
13 rates or charges as described in paragraph (1) of this sub-
14 section, the person against whom the claim is made must
15 notify such carrier, forwarder, or party as to the person’s
16 election to proceed under paragraph (4) or (5) of this sub-
17 section. Such notification—

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

22 “(B) with respect to any claim not described in
23 subparagraph (A) of this paragraph, shall be not
24 later than the 60th day after the filing of an answer
25 to a complaint in a civil action for the collection of

1 such rates or charges, or not later than the 90th day
2 after the date of enactment of this subsection,
3 whichever is later.

4 “(11) In this subsection—

5 “(A) ‘charitable organization’ means an organi-
6 zation which is exempt from taxation under section
7 503(c)(3) of the Internal Revenue Code of 1986 (26
8 U.S.C. 503(c)(3)); and

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

12 **SEC. 3. STATUTE OF LIMITATIONS.**

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

19 “(1) must begin, within 24 months after the
20 claim accrues, a civil action to recover charges for
21 such transportation or service if such transportation
22 or service is provided by the carrier on or after the
23 date of enactment of this exception and before the
24 date that is 1 year after such date of enactment;
25 and

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

6 (b) MOTOR CARRIER OVERCHARGES.—Section
7 11706(b) of title 49, United States Code, is amended by
8 striking the period at the end of the first sentence and
9 inserting in lieu thereof the following: “; except that a per-
10 son must begin within 24 months after the claim accrues
11 a civil action to recover overcharges from a carrier subject
12 to the jurisdiction of the Commission under subchapter
13 II of chapter 105 of this title for transportation or service
14 taking place on or after the date of enactment of this ex-
15 ception and before the date that is 1 years after such date
16 of enactment, and for transportation or service taking
17 place on or after the date that is 1 year following such
18 date of enactment, a person must begin such a civil action
19 within 18 months after the claim accrues.”.

20 (c) CONFORMING AMENDMENT.—Section 11706(d)
21 of title 49, United States Code, is amended by striking
22 “3-year period” each place it appears and inserting in lieu
23 thereof “limitations period”.

1 **SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR COM-**
 2 **MON CARRIERS OF PROPERTY.**

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

6 **“§11712. Tariff reconciliation rules for motor com-**
 7 **mon carriers of property**

8 “(a) Subject to Interstate Commerce Commission re-
 9 view and approval, motor carriers subject to the jurisdic-
 10 tion of the Commission under subchapter II of chapter
 11 105 of this title and shippers may resolve, by mutual con-
 12 sent, overcharge and undercharge claims resulting from
 13 billing errors or incorrect tariff provisions arising from the
 14 inadvertent failure to properly and timely file and main-
 15 tain agreed upon rates, rules, or classifications in compli-
 16 ance with sections 10761 and 10762 of this title. Resolu-
 17 tion of such claims among the parties shall not subject
 18 any party to the penalties of section 11901, 11902, 11903,
 19 11904, or 11914 of this title.

20 “(b) Nothing in this section shall relieve the motor
 21 carrier of the duty to file and adhere to its rates, rules,
 22 and classifications as required in sections 10761 and
 23 10762, except as provided in subsection (a) of this section.

24 “(c) The Commission shall, within 90 days after the
 25 date of enactment of this section, institute a proceeding
 26 to establish rules pursuant to which the tariff require-

1 ments of section 10761 and 10762 of this title shall not
2 apply under circumstances described in subsection (a) of
3 this section.”.

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

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

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

8 (a) GENERAL RULE.—Except as provided in sub-
9 section (b), the provisions of this Act (including the
10 amendments made by this Act) shall take effect on the
11 date of enactment of this Act.

12 (b) APPLICABILITY OF SECTION 2.—The amend-
13 ments made by section 2 shall apply to any proceeding
14 before the Interstate Commerce Commission, and to any
15 court action, which is pending or commenced on or after
16 the date of enactment of this Act and which pertains to
17 a claim arising from transportation shipments tendered
18 any time prior to the date that is 18 months after such
19 date of enactment. Unless Congress determines a continu-
20 ing need for section 2 and enacts additional legislation,
21 section 2 shall not apply to any such proceeding which
22 pertains to a claim arising from transportation shipments
23 tendered on or after the date that is 18 months following
24 such date of enactment.

1 (c) REPORT.—The Interstate Commerce Commission
2 shall submit a report to Congress, within 1 year after the
3 date of enactment of this Act, regarding whether there ex-
4 ists a justification for extending the applicability of section
5 2 beyond the limitation period specified in subsection (b).

Passed the Senate July 1 (legislative day, June 30),
1993.

Attest:

WALTER J. STEWART,
Secretary.