

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1710

To amend title 49, United States Code, relating to procedures for resolving claims involving unfiled, negotiated motor carrier transportation rates, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1993

Mr. SHUSTER introduced the following bill; which was referred to the Committee on Public Works and Transportation

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## A BILL

To amend title 49, United States Code, relating to procedures for resolving claims involving unfiled, negotiated motor carrier transportation rates, 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 “Negotiated Rate  
5 Amendments of 1993”.

6 **SEC. 2. PROCEDURE FOR RESOLVING DISPUTES.**

7 (a) GENERAL RULE.—For purposes of section 10701  
8 of title 49, United States Code, it shall be an unreasonable

1 practice for a nonhousehold goods motor carrier, a  
2 nonhousehold goods freight forwarder, or a person rep-  
3 resenting such a carrier or freight forwarder (hereinafter  
4 in this section referred to as a “representative”) to at-  
5 tempt to charge or to charge for a transportation service  
6 the difference between—

7           (1) the rate that is lawfully in effect pursuant  
8           to a tariff that is filed in accordance with chapter  
9           107 of such title by the carrier or freight forwarder  
10          and that is applicable to such transportation service,  
11          and

12          (2) the negotiated rate for such transportation  
13          service,

14 if the carrier or freight forwarder is no longer transporting  
15 property between places describe in section 10521(a)(1)  
16 of such title or is transporting property between places  
17 described in such section for the purpose of avoiding the  
18 application of this subsection.

19          (b) JURISDICTION OF THE COMMISSION.—The Com-  
20 mission shall have exclusive jurisdiction to make a deter-  
21 mination of whether or not the attempting to charge or  
22 the charging of a person for a transportation service a  
23 rate by a carrier, freight forwarder, or a representative  
24 is an unreasonable practice under subsection (a). In mak-  
25 ing such a determination, the Commission shall consider—

1           (1) whether such person was offered a transpor-  
2           tation rate by the carrier or freight forwarder other  
3           than that legally on file with the Commission for  
4           such transportation service,

5           (2) whether such person tendered freight to the  
6           carrier or freight forwarder in reasonable reliance  
7           upon the offered transportation rate,

8           (3) whether the carrier or freight forwarder did  
9           not properly or timely file with the Commission a  
10          tariff providing for such transportation rate or failed  
11          to execute a valid contract for such transportation  
12          service,

13          (4) whether the transportation rate was billed  
14          and collected by the carrier or freight forwarder, and

15          (5) whether the carrier, freight forwarder, or  
16          representative demands additional payment of a  
17          higher rate filed in a tariff.

18          (c) STAY OF ADDITIONAL COMPENSATION.—When a  
19          person proceeds under this section to challenge the reason-  
20          ableness of the practice of, or the legally applicable freight  
21          rate or charges being claimed by, a carrier, freight for-  
22          warder, or representative described in subsection (a) in ad-  
23          dition to those already billed and collected, such person  
24          shall not have to pay any additional compensation to such  
25          carrier, freight forwarder, or representative until the Com-

1 mission has made a determination as to the reasonable-  
2 ness of the challenged rate as applied to the freight of  
3 the person against whom the claim is made.

4 (d) TREATMENT OF SUBSECTION (a).—Subsection  
5 (a) is enacted as an exception, and shall be treated as an  
6 exception, to the requirement of sections 10761(a) and  
7 10762 of title 49, United States Code, relating to a filed  
8 tariff rate for a transportation or service subject to the  
9 jurisdiction of the Commission and other general tariff re-  
10 quirements.

11 (e) DEFINITIONS.—For purposes of this section:

12 (1) COMMISSION, HOUSEHOLD GOODS, AND  
13 HOUSEHOLD GOODS FREIGHT FORWARDER.—The  
14 terms “Commission”, “household goods”, and  
15 “household goods freight forwarder” have the mean-  
16 ing such terms have under section 10102 of title 49,  
17 United States Code.

18 (2) NONHOUSEHOLD GOODS FREIGHT FOR-  
19 WARDER.—The term “nonhousehold goods freight  
20 forwarder” means a freight forwarder as defined in  
21 section 10102 of title 49, United States Code, except  
22 that such term does not include a household goods  
23 freight forwarder.

24 (3) NONHOUSEHOLD GOODS MOTOR CARRIER.—  
25 The term “nonhousehold goods motor carrier”

1 means a motor carrier as defined under section  
2 10102 of title 49, United States Code of property  
3 (other than household goods).

4 (4) NEGOTIATED RATE.—The term “negotiated  
5 rate” means a rate, charge, classification, or rule  
6 agreed upon by a nonhousehold goods motor carrier  
7 or nonhousehold goods freight forwarder and a ship-  
8 per through negotiations pursuant to which no tariff  
9 was lawfully and timely filed with the Commission  
10 and for which there is written evidence of such  
11 agreement.

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 the following: “; except  
16 that a common carrier providing transportation or service  
17 subject to the jurisdiction of the Commission under chap-  
18 ter 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 the enactment of this exception and before  
24 the date that is one year after such date of enact-  
25 ment; and

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

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 the following: “except that a person must begin,  
10          within 24 months after the claim accrues, a civil action  
11          to recover overcharges from a carrier subject to the juris-  
12          diction of the Commission under subchapter II of chapter  
13          105 of this title for transportation or service if such trans-  
14          portation or service takes place on or after the date of  
15          the enactment of this exception and before the date that  
16          is one year after such date of enactment, and a person  
17          must begin, within 18 months after the claim accrues,  
18          such a civil action for transportation or service taking  
19          place on or after the date that is one year following such  
20          date of enactment.”.

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

1 **SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR CAR-**  
2 **RIERS 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) MUTUAL CONSENT.—Subject to 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 incorrect tariff provisions or billing errors 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 chapter 119 of this title.

19 “(b) LIMITATION ON STATUTORY CONSTRUCTION.—  
20 Nothing in this section shall relieve the motor carrier of  
21 the duty to file and adhere to its rates, rules, and classi-  
22 fications as required in sections 10761 and 10762, except  
23 as provided in subsection (a) of this section.

24 “(c) RULEMAKING PROCEEDING.—Not later than 90  
25 days after the date of the enactment of this section, the  
26 Commission shall institute a proceeding to establish rules

1 pursuant to which the tariff requirements of sections  
2 10761 and 10762 of this title shall not apply under cir-  
3 cumstances described in subsection (a) of 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. CUSTOMER ACCOUNT CODES.**

8 Section 10762 of title 49, United States Code, is  
9 amended by adding at the end the following new sub-  
10 section:

11 “(e) CUSTOMER ACCOUNT CODES.—No tariff filed  
12 with the Commission before, on, or after the date of the  
13 enactment of this subsection may be held invalid solely on  
14 the basis that a numerical or alpha account code is used  
15 in such tariff to designate customers or to describe the  
16 applicability of rates. For transportation performed on  
17 and after the 90th day following such date of enactment,  
18 the name of the customer for each account code must be  
19 set forth in the tariff.”.

20 **SEC. 6. EFFECTIVE DATE.**

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

25 (b) EXCEPTION.—Section 2 shall apply to—

1           (1) any proceeding before the Interstate Com-  
2           merce Commission, and

3           (2) any court action,

4           which is pending or commenced on or after the date of  
5           the enactment of this Act.

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