

108TH CONGRESS
1ST SESSION

H. R. 2847

To amend the Merchant Marine Act, 1920, to allow transportation of certain agricultural goods and livestock in Hawaiian noncontiguous trade on foreign-flag vessels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. CASE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Merchant Marine Act, 1920, to allow transportation of certain agricultural goods and livestock in Hawaiian noncontiguous trade on foreign-flag vessels, 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 “Hawaii Agriculture/
5 Livestock Shipping Open Market Act of 2003”.

1 **SEC. 2. TRANSPORTATION OF CERTAIN MERCHANDISE.**

2 (a) IN GENERAL.—Section 27 of the Merchant Ma-
3 rine Act, 1929 (46 App. U.S.C. 883) is amended by insert-
4 ing “(a) IN GENERAL.—” before the first sentence, and
5 by adding at the end the following:

6 “(b) NONCONTIGUOUS TRADE EXEMPTION.—Sub-
7 section (a) shall not apply with respect to transportation
8 in Hawaiian noncontiguous trade of merchandise that is
9 a forest product (as that term is defined in section 3(11)
10 of the Shipping Act of 1984 (46 App. U.S.C. 1702(11))),
11 agricultural products (as that term is defined in section
12 101(1) of the Agricultural Trade Act of 1978 (7 U.S.C.
13 5602(1))), or livestock (as that term is defined in section
14 2(4) of the Packers and Stockyards Act, 1921 (7 U.S.C.
15 182(4))), on a foreign qualified freight vessel for which
16 the Secretary of Transportation has issued a certificate
17 of documentation.

18 “(c) DEFINITIONS.—In this section:

19 “(1) FOREIGN QUALIFIED FREIGHT VESSEL.—
20 The term ‘foreign qualified freight vessel’ means a
21 freight vessel (as that term is defined in section
22 2101 of title 46, United States Code) of not less
23 than 1,000 gross tons that—

24 “(A) was not built in the United States (or
25 if rebuilt, not rebuilt in the United States);

26 “(B) is registered in a foreign country; and

1 “(C) employs United States citizens to the
2 extent required of vessels registered under sec-
3 tion 12102 of this title.

4 “(2) HAWAIIAN NONCONTIGUOUS TRADE.—The
5 term ‘Hawaiian noncontiguous trade’ means—

6 “(A) trade between a point in the contig-
7 uous 48 States or Alaska and a point in Ha-
8 waii; or

9 “(B) trade between any point in Hawaii
10 and any other point in Hawaii.”.

11 (b) COASTWISE ENDORSEMENTS.—12106(b) of title
12 46, United States Code, is amended—

13 (1) by inserting “(1)” after “(b)”;

14 (2) by inserting “to paragraph (2) and” after
15 “Subject”; and

16 (3) by adding at the end the following:

17 “(2)(A) Paragraph (1) shall not apply with respect
18 to a foreign qualified freight vessel used for transportation
19 referred to in section 27(b) of the Merchant Marine Act,
20 1920 (46 App. U.S.C. 883(b)), for which the Secretary
21 of Transportation has issued a certificate of documenta-
22 tion.

23 “(B) In subparagraph (A) the term ‘foreign qualified
24 freight vessel’ has the meaning given that term in section

1 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.
2 883(c)).”.

3 (c) FOREIGN TRANSFER.—Section 9(c) of the Ship-
4 ping Act, 1916 (46 App. U.S.C. 808) is amended by in-
5 serting “(1)” before the first sentence, and by adding at
6 the end the following:

7 “(2)(A) Notwithstanding paragraph (1), a foreign
8 qualified freight vessel for which the Secretary has issued
9 a certificate of documentation after the date of enactment
10 of this Act and that is used solely for transportation re-
11 ferred to in section 27(b) of the Merchant Marine Act,
12 1920 (46 App. U.S.C. 883(b)) may be placed under for-
13 eign registry without the approval of the Secretary at any
14 time after that vessel is issued a certificate of documenta-
15 tion. At such time as that vessel is placed under foreign
16 registry, the Secretary shall revoke the certificate of docu-
17 mentation issued by the Secretary.

18 “(B) In subparagraph (A) the term ‘foreign qualified
19 freight vessel’ has the meaning given that term in section
20 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.
21 883(c)).”.

22 **SEC. 3. CITIZENSHIP AND TRANSFER PROVISIONS.**

23 (a) CITIZENSHIP OF CORPORATIONS, PARTNERSHIPS,
24 AND ASSOCIATIONS.—Section 2 of the Shipping Act, 1916

1 (46 U.S.C. App. 802) is amended by adding at the end
2 the following:

3 “(d)(1) The following provisions of this section shall
4 not apply to a foreign qualified freight vessel used for
5 transportation referred to in section 27(b) of the Merchant
6 Marine Act, 1920 (46 App. U.S.C. 883(b)):

7 “(A) The text of subparagraph after ‘possession
8 thereof’.

9 “(B) subsection (c).

10 “(2) In paragraph (1) the term ‘foreign qualified
11 freight vessel’ has the meaning given that term in section
12 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.
13 883(c)).”.

14 (b) APPROVAL OF TRANSFER OF REGISTRY OR OP-
15 ERATION UNDER AUTHORITY OF A FOREIGN COUNTRY OR
16 FOR SCRAPPING IN A FOREIGN COUNTRY; PENALTIES.—
17 Section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)
18 is amended by adding at the end the following:

19 “(e)(1) In lieu of the penalty under subsection (d),
20 a person that commits an act described in paragraph (2)
21 in violation of this section is liable to the United States
22 Government for a civil penalty of not more than \$10,000
23 for each violation.

24 “(2) The acts referred to in paragraph (1) are the
25 following:

1 “(A) Charter, sell, or transfer a foreign quali-
2 fied freight vessel used for transportation referred to
3 in section 27(b) of the Merchant Marine Act, 1920
4 (46 App. U.S.C. 883(b)), or interest in or control of
5 such a vessel.

6 “(B) Place under foreign registry a foreign
7 qualified freight vessel used for transportation re-
8 ferred to in section 27(b) of the Merchant Marine
9 Act, 1920 (46 App. U.S.C. 883(b)), that is docu-
10 mented in the United States.

11 “(C) Operate under the authority of a foreign
12 country a foreign qualified freight vessel used for
13 transportation referred to in section 27(b) of the
14 Merchant Marine Act, 1920 (46 App. U.S.C.
15 883(b)).

16 “(f) To promote the transfer of foreign vessels to be
17 documented under chapter 121 of title 46, United States
18 Code, for use for transportation referred to in section
19 27(b) of the Merchant Marine Act, 1920 (46 App. U.S.C.
20 883(b)), the Secretary may grant approval under sub-
21 section (c) with respect to such a vessel before the date
22 the vessel is documented.”.

23 “(g) In subsections (e) and (f), the term ‘foreign
24 qualified freight vessel’ has the meaning given that term

1 in section 27(c) of the Merchant Marine Act, 1920 (46
2 App. U.S.C. 883(c)).”.

3 **SEC. 4. LABOR PROVISIONS.**

4 (a) LIABILITY FOR INJURY OR DEATH OF MASTER
5 OR CREW MEMBER.—Section 20(a) of the Act of March
6 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. App.
7 688(a)), is amended—

8 (1) by inserting “(1)” after “(a)”;

9 (2) by adding at the end of paragraph (1) (as
10 designated under paragraph (1) of this subsection)
11 the following new sentence: “In an action brought
12 under this subsection against a defendant employer
13 that does not reside or maintain an office in the
14 United States (including any territory or possession
15 of the United States) and that engages in any enter-
16 prise that makes use of one or more ports in the
17 United States (as defined in section 2101 of title 46,
18 United States Code), jurisdiction shall be under the
19 district court most proximate to the place of the oc-
20 currence of the personal injury or death that is the
21 subject of the action.”; and

22 (3) by adding at the end the following new
23 paragraph:

24 “(2)(A) The employer of a master or member of the
25 crew of a vessel—

1 “(i) may, at the election of the employer, par-
2 ticipate in an authorized compensation plan under
3 the Longshore and Harbor Workers’ Compensation
4 Act (33 U.S.C. 901 et seq.); and

5 “(ii) if the employer makes an election under
6 clause (i), notwithstanding section 2(3)(G) of the
7 Longshore and Harbor Workers’ Compensation Act
8 (33 U.S.C. 902(3)(G)), shall be subject to that Act.

9 “(B) If an employer makes an election, in accordance
10 with subparagraph (A), to participate in an authorized
11 compensation plan under the Longshore and Harbor
12 Workers’ Compensation Act—

13 “(i) a master or crew member employed by that
14 employer shall be considered to be an employee for
15 the purposes of that Act; and

16 “(ii) the liability of that employer under that
17 Act to the master or crew member, or to any person
18 otherwise entitled to recover damages from the em-
19 ployer based on the injury, disability, or death of the
20 master or crew member, shall be exclusive and in
21 lieu of all other liability.”.

22 (b) MINIMUM REQUIREMENTS.—All vessels, whether
23 documented in the United States or not, operating in the
24 coastwise trade of the United States shall be subject to
25 minimum international labor standards for seafarers

1 under international agreements in force for the United
2 States, as determined by the Secretary of Transportation
3 on the advice of the Secretaries of Labor and Defense.

4 **SEC. 5. REGULATIONS REGARDING VESSELS.**

5 (a) APPLICABLE MINIMUM REQUIREMENTS.—Except
6 as provided in subsection (b), the minimum requirements
7 for vessels engaging in the transportation of cargo or mer-
8 chandise in the United States coastwise trade shall be the
9 recognized international standards in force for the United
10 States (as determined by the Secretary of the department
11 in which the Coast Guard is operating, in consultation
12 with any other official of the Federal Government that the
13 Secretary determines to be appropriate).

14 (b) CONSISTENCY IN APPLICATION OF STAND-
15 ARDS.—In any case in which any minimum requirement
16 for vessels referred to in subsection (a) establishes a lower
17 standard than a minimum that is applicable to vessels that
18 are documented in a foreign country and that are admit-
19 ted to engage in the transportation of cargo and merchan-
20 dise in the United States coastwise trade, the standard
21 applicable to such vessels that are documented in a foreign
22 country shall be the standard to be applied to United
23 States documented vessels.

1 **SEC. 6. ENVIRONMENTAL STANDARDS.**

2 All vessels, whether documented under the laws of the
3 United States or not, engaging in the United States coast-
4 wise trade shall comply with all applicable United States
5 and international environmental standards in force for the
6 United States.

7 **SEC. 7. REQUIREMENTS FOR CERTAIN NONCITIZENS IR-**
8 **REGULARLY ENGAGING IN DOMESTIC COAST-**
9 **WISE TRADE.**

10 (a) IN GENERAL.—Each person or entity that is not
11 a citizen of the United States, as defined in section
12 2101(3a) of title 46, United States Code, that owns or
13 operates vessels that irregularly engage in the United
14 States domestic coastwise trade shall—

15 (1) name an agent upon whom process may be
16 served;

17 (2) abide by all applicable laws of the United
18 States, including applicable environmental and tax
19 laws; and

20 (3) post evidence of documentation and en-
21 dorsements aboard such vessel indicating the owner
22 or owners of such vessel, including any person con-
23 trolling vessels and the number of port calls and
24 coastwise trips made during that calendar year.

25 (b) PERSONS TREATED AS SINGLE EMPLOYER.—For
26 purposes of paragraph (3), all persons treated as a single

1 employer under subsection (a) or (b) of section 52 of the
2 Internal Revenue Code of 1986 shall be treated as 1 per-
3 son.

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