

## American Bar Association Adopts Resolution Seeking Permanent Jones Act Waiver for Puerto Rico

AUGUST 10, 2018

The American Bar Association House of Delegates adopted a resolution on August 7, 2018 which “urges Congress to enact legislation to provide a permanent exemption for the Commonwealth of Puerto Rico from the requirements of the Jones Act, 46 U.S.C. §§ 55101 et seq.” The ABA is the largest not-for profit voluntary professional association of lawyers in the world. The resolution was accompanied by a report which concludes that “[e]xempting Puerto Rico from the Jones Act, much like the U.S. Virgin Islands, would be a way for Congress to help Puerto Rico’s economy at no addition cost to American citizens.”

The statutory citation utilized by the ABA is a section that actually sets forth the terms of exemption for certain U.S. territories, such as American Samoa and the U.S. Virgin Islands. The next section, section 55102, is the provision that mandates that all “merchandise” transported between two “points in the United States” must be transported by a qualified U.S.-flag (*i.e.*, U.S. registered or U.S. documented) vessel.

The term “Jones Act,” although in widespread popular use, is actually a misnomer because that restriction regarding the transportation of “merchandise” contained in the current federal statutes derives from section 27 in an Act—the Merchant Marine Act, 1920. Another section of that Act (section 33) is also called the “Jones Act,” although it has to do with merchant mariner compensation for workplace injuries—not the transportation of “merchandise.” There is also yet another “Jones Act,” which is the 1917 Jones-Shafroth Act. That Act conferred U.S. citizenship upon persons born in Puerto Rico.

In addition, there other laws which restrict towing, dredging, the carriage of passengers and fishing in U.S. waters to qualified U.S.-flag vessels that were not enacted as part of the Merchant Marine Act, 1920. The use of “et seq” in the resolution could mean that it was intended to seek an exemption for Puerto Rico from some of these laws as well since several of the laws have been codified as sections of Title 46 following section 55101.

The report accompanying the resolution implies that the Merchant Marine Act, 1920 was a war time measure. In fact, that Act was enacted primarily to deal with the problem of how to dispose of all of the vessels the U.S. Government built to fight World War I. Section 27 of the Act was not central to the purpose of the 1920 Act and was merely a restatement of a law originating in 1817, which also restricted U.S. domestic commerce to qualified U.S.-flag vessels. Restricting domestic commerce to U.S. vessels has been the law of the land since 1789.

The report also does not appear to recognize that the Jones Act is legislation that applies a fundamental attribute of sovereignty, which is to restrict domestic commerce to domestic citizens. Restrictions similar to the Jones Act apply to other modes of transportation in the U.S. such as aviation.

Finally, the report cites a number of studies to conclude that “the negative impacts of the Jones Act on Puerto Rico are undeniable.” The report does not account for a study released in July 2018 by the American Maritime Partnership entitled “The Impact of the Jones Act on Puerto Rico” which concluded the Jones Act has no impact on either retail prices or the cost of living in Puerto Rico.

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