

[STAFF WORKING DRAFT]

SEPTEMBER 24, 1999

106TH CONGRESS
1ST SESSION

S. _____

To revise the Carriage of Goods by Sea Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER —, 1999

Mr. _____ (for himself, Mr. _____, and Mr. _____) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To revise the Carriage of Goods by Sea Act, 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; TABLE OF SECTIONS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Carriage of Goods by Sea Act of 1999”.

6 (b) **TABLE OF SECTIONS.**—The table of sections for
7 this Act is as follows:

- Sec. 1. Short title; table of sections.
- Sec. 2. Definitions.
- Sec. 3. Application of Act.
- Sec. 4. Rights and liabilities under other laws.
- Sec. 5. Duties and rights of carrier.
- Sec. 6. Responsibilities of carrier and ship.
- Sec. 7. Contracts of carriage.
- Sec. 8. Weight of bulk cargo.
- Sec. 9. Rights and immunities of carrier and ship.
- Sec. 10. Surrender of rights; increase of liability; general average.
- Sec. 11. Special agreement as to particular goods.
- Sec. 12. Notice of loss or damage.
- Sec. 13. Statute of limitations.
- Sec. 14. Discrimination between competing shippers.
- Sec. 15. Repeal of 1936 Act.
- Sec. 16. Application of bills of lading rules to inbound goods.
- Sec. 17. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—When used in this Act:

3 (1) CARRIER.—The term “carrier” means a
4 contracting carrier, a performing carrier, or an
5 ocean carrier.

6 (2) CONTRACTING CARRIER.—The term “con-
7 tracting carrier” means the party who enters into a
8 contract of carriage with a shipper of goods.

9 (3) PERFORMING CARRIER.—

10 (A) IN GENERAL.—The term “performing
11 carrier” means a person—

12 (i) that performs, undertakes to per-
13 form, or procures to be performed any of
14 a contracting carrier’s responsibilities
15 under a contract of carriage; but

16 (ii) only to the extent that the person
17 described in clause (i) acts, either directly
18 or indirectly, at the request of, or under
19 the supervision or control of, a contracting
20 carrier,

1 regardless of whether that person is a party to,
2 identified in, or has legal responsibility under
3 the contract of carriage.

4 (B) EXCLUSION.—Notwithstanding sub-
5 paragraph (A), the term “performing carrier”
6 does not include any person (other than the
7 contracting carrier) that—

8 (i) is retained by the shipper or con-
9 signee; or

10 (ii) is an employee, servant, agent,
11 contractor, or subcontractor of a person re-
12 tained by the shipper or consignee.

13 (4) OCEAN CARRIER.—The term “ocean car-
14 rier” means a performing carrier that owns, oper-
15 ates, or charters a ship used in the carriage of goods
16 by sea.

17 (5) CONTRACT OF CARRIAGE.—

18 (A) IN GENERAL.—The term “contract of
19 carriage” means—

20 (i) a contract for the carriage of goods
21 either by sea or partially by sea and par-
22 tially by one or more other modes of trans-
23 portation, including a bill of lading (or
24 similar document), whether negotiable or

1 non-negotiable and whether printed or elec-
2 tronic; and

3 (ii) a bill of lading (or similar docu-
4 ment), whether negotiable or non-nego-
5 tiable and whether printed or electronic,
6 arising under or pursuant to a charter
7 party from the moment at which it regu-
8 lates the relations between a carrier and
9 the holder of the bill of lading or other
10 contract.

11 (B) CERTAIN CONTRACTS EXCLUDED.—

12 The term “contract of carriage” does not
13 include—

14 (i) contracts for transportation in do-
15 mestic trade exclusively on the Great
16 Lakes, rivers, or other inland waters, or
17 the intracoastal waterways;

18 (ii) charter parties, contracts of af-
19 freightment, and similar agreements that
20 are functionally equivalent; or

21 (iii) towage agreements.

22 (C) SPECIAL RULE FOR ELECTRONIC BILLS

23 OF LADING.—An electronic bill of lading may
24 be used in accordance with procedures agreed
25 upon by the parties to the bill.

1 (6) GOODS.—The term “goods” includes goods,
2 wares, merchandise, and articles of every kind what-
3 soever, except live animals.

4 (7) SHIP.—The term “ship” means any vessel
5 used for the carriage of goods by sea.

6 (8) CARRIAGE OF GOODS.—The term “carriage
7 of goods” covers the period from the time goods are
8 received by a carrier to the time they are delivered
9 by a carrier to a person authorized to receive them.

10 (9) SHIPPER.—The term “shipper” means—

11 (A) the person by whom, in whose name,
12 or on whose behalf a contract of carriage has
13 been concluded with a contracting carrier; and

14 (B) any person by whom, in whose name,
15 or on whose behalf the goods are delivered to a
16 carrier under a contract of carriage.

17 (10) SERVICE CONTRACT.—The term “service
18 contract” has the meaning given that term by sec-
19 tion 3(21) of the Shipping Act of 1984 (46 U.S.C.
20 App. 1702(21)).

21 (11) UNITED STATES.—The term “United
22 States” has the meaning given that term by section
23 2101(44) of title 46, United States Code.

24 (b) SPECIAL RULE FOR ELECTRONIC COMMUNICA-
25 TION.—Whenever in this Act a notice, claim, or other com-

1 munication is required to be made in writing, it may be
2 transmitted in written form on paper or transmitted by
3 an electronic medium, including electronic data inter-
4 change and other computerized media of transmission.

5 **SEC. 3. APPLICATION OF ACT.**

6 (a) IN GENERAL.—This Act applies to any contract
7 of carriage covering transportation to or from the United
8 States.

9 (b) APPLICATION TO CERTAIN MOTOR CARRIER AND
10 RAIL CARRIER SERVICES.—This Act does not apply to a
11 claim against an interstate or foreign motor carrier, or
12 a rail carrier, that is not a contracting carrier to the ex-
13 tent that the claim relates only to motor carrier services
14 or rail carrier services, respectively. This subsection does
15 not prohibit any extension of rights to a motor or rail car-
16 rier by a contract of carriage nor does it adversely affect,
17 or void, any rights so extended.

18 (c) APPLICATION IN ACTIONS AGAINST CARRIER OR
19 SHIP.—The defenses and limitations of liability provided
20 for in this Act and the responsibilities imposed by this Act
21 apply in any action against a carrier or a ship for loss
22 of, for damage to, or in connection with goods covered by
23 a contract of carriage without regard to—

24 (1) the form or theory of the action; or

1 (2) the court or other tribunal in which the ac-
2 tion is brought.

3 (d) REMEDIES.—The remedies available under this
4 Act constitute the complete and exclusive remedy against
5 a carrier for loss of, for damage to, or in connection with
6 goods covered by a contract of carriage.

7 (e) ADMIRALTY JURISDICTION.—This Act provides
8 an independent basis for admiralty jurisdiction.

9 **SEC. 4. RIGHTS AND LIABILITIES UNDER OTHER LAWS.**

10 This Act does not affect the rights and obligations
11 of a carrier under—

12 (1) sections 4281 through 4289 of the Revised
13 Statutes of the United States (46 U.S.C. App. 181
14 et seq.);

15 (2) the Shipping Act, 1916 (46 U.S.C. App.
16 801 et seq.);

17 (3) the Shipping Act of 1984 (46 U.S.C. App.
18 1701 et seq.); or

19 (4) any other law of the United States relating
20 to the limitation of liability of the owners of sea-
21 going vessels.

22 **SEC. 5. DUTIES AND RIGHTS OF CARRIER.**

23 (a) IN GENERAL.—A carrier is subject to the respon-
24 sibilities and liabilities under this Act, and entitled to the
25 rights and immunities provided by this Act, for receiving,

1 loading, handling, stowage, carriage, custody, care, dis-
2 charge, and delivery of goods under a contract of carriage.

3 (b) CONTRACTING CARRIERS.—A contracting carrier
4 is subject to those responsibilities and liabilities, and enti-
5 tled to those rights and immunities, for the entire period
6 covered by its contract of carriage.

7 (c) PERFORMING CARRIERS.—A performing carrier
8 is subject to those responsibilities and liabilities, and enti-
9 tled to those rights and immunities—

10 (1) during the period between the time it re-
11 ceives the goods, or takes them in charge, and the
12 time it relinquishes control of the goods under the
13 contract of carriage; and

14 (2) at any other time to the extent that it is
15 participating in the performance of any of the activi-
16 ties contemplated by the contract of carriage.

17 **SEC. 6. RESPONSIBILITIES OF CARRIER AND SHIP.**

18 (a) IN GENERAL.—A contracting carrier and an
19 ocean carrier shall each exercise due diligence before and
20 at the beginning of a voyage—

21 (1) to make the ship seaworthy;

22 (2) to man, equip, and supply the ship properly;

23 and

24 (3) to make the holds, refrigerating and cooling
25 chambers, and all other parts of the ship in which

1 goods are carried fit and safe for the reception, car-
2 riage, and preservation of the goods.

3 (b) RECEIPT, HANDLING, AND DELIVERY OF
4 GOODS.—A carrier (as defined in section 2(a)(1)) shall,
5 properly and carefully, receive, load, handle, stow, carry,
6 keep, care for, discharge, and deliver goods.

7 **SEC. 7. CONTRACTS OF CARRIAGE.**

8 (a) ISSUANCE.—After a carrier receives goods into its
9 charge, a contracting carrier shall, on demand of the ship-
10 per, issue to the shipper a contract of carriage in the form
11 of—

12 (1) a negotiable bill of lading; or

13 (2) if the shipper agrees, a non-negotiable bill
14 of lading.

15 (b) CONTRACT TO STATE APPLICATION OF ACT.—
16 A contract of carriage issued under subsection (a) covering
17 a shipment of goods from a port of the United States shall
18 contain a statement that the contract is subject to the pro-
19 visions of this Act.

20 (c) CONTENTS.—

21 (1) IN GENERAL.—A contract of carriage issued
22 under subsection (a) shall—

23 (A) describe the apparent order and condi-
24 tion of the goods at the time a carrier receives
25 them from the shipper (and an on-board con-

1 tract of carriage shall also describe the condi-
2 tion of the goods at the time they are loaded on
3 board the ship or other mode of transpor-
4 tation);

5 (B) show the leading marks necessary for
6 identification of the goods, as furnished in writ-
7 ing by a shipper before a carrier receives the
8 goods, stamped or otherwise shown clearly—

9 (i) upon uncovered goods; or
10 (ii) on the cases or coverings in which

11 such goods are contained,
12 in such a manner as should ordinarily remain legible
13 until the end of the voyage; and

14 (C) show the number of packages or
15 pieces, or the quantity or weight, as furnished
16 in writing by the shipper.

17 (2) LIMITATION.—A contracting carrier is not
18 required to state or show any marks, number, quan-
19 tity, or weight information that a carrier has reason-
20 able ground to suspect does not accurately represent
21 the goods actually received, or which a carrier has
22 no reasonable means of checking.

23 (d) STATEMENT AS PRIMA FACIE EVIDENCE.—Ex-
24 cept as provided in subsections (e), (f), and (g), a contract
25 of carriage issued by or on behalf of a carrier is prima

1 facie evidence of the receipt by that carrier of the goods
2 described in the contract.

3 (e) QUALIFIED STATEMENT FOR NON-CONTAINER
4 GOODS.—

5 (1) IN GENERAL.—If—

6 (A) a contracting carrier issues a contract
7 of carriage for non-containerized goods stating
8 any marks, number, quantity, or weight infor-
9 mation furnished by the shipper or its agents;
10 and

11 (B) the carrier can demonstrate that no
12 carrier had a reasonable means of checking this
13 information before the contract of carriage was
14 issued,

15 then the carrier may qualify the statement of marks,
16 number, quantity, or weight information in writing
17 in a manner that indicates that no carrier has
18 verified its accuracy. The qualification may be made
19 in the form of an expression such as “said to con-
20 tain” or “shipper’s weight, load, and count”, or
21 other expression of qualification that effectively indi-
22 cates that no carrier has verified the accuracy of the
23 statement of marks, number, quantity, or weight in-
24 formation.

1 (2) QUALIFIED STATEMENT NOT PRIMA FACIE
2 EVIDENCE.—A statement qualified under paragraph
3 (1)—

4 (A) is not prima facie evidence that a car-
5 rier received the goods from the shipper as de-
6 scribed in the contract of carriage; and

7 (B) does not preclude the carrier from
8 proving that no carrier received the goods from
9 the shipper as described in the contract of car-
10 riage.

11 (3) EXCEPTIONS.—Paragraph (2) does not
12 apply if—

13 (A) the carrier was not entitled to qualify
14 the statement under paragraph (1); or

15 (B) a person relying on the statement
16 proves that the carrier did not act in good faith
17 when issuing the contract of carriage.

18 (f) QUALIFIED STATEMENT OF MARKS, NUMBER, OR
19 QUANTITY FOR CONTAINER GOODS.—

20 (1) IN GENERAL.—If—

21 (A) a contracting carrier issues a contract
22 of carriage stating any marks, number, or
23 quantity information furnished by the shipper
24 or its agents for goods shipped in a container

1 loaded and sealed by the shipper or its agents;
2 and

3 (B) the carrier can demonstrate that no
4 carrier verified the container's contents before
5 the contract of carriage was issued,
6 then the carrier may qualify the statement of marks,
7 number, or quantity in writing in a manner that in-
8 dicates that no carrier has verified its accuracy. The
9 qualification may be made in the form of an expres-
10 sion such as "said to contain" or "shipper's load,
11 stow, and count", or other expression of qualifica-
12 tion that effectively indicates that no carrier has
13 verified the accuracy of the statement of marks,
14 number, or quantity.

15 (2) QUALIFIED STATEMENT NOT PRIMA FACIE
16 EVIDENCE.—If a carrier delivers the container intact
17 and undamaged with the seal intact and undamaged,
18 then a statement specifying any marks, number, or
19 quantity in the contract of carriage that has been
20 qualified under paragraph (1)—

21 (A) is not prima facie evidence that a car-
22 rier received the goods from the shipper as de-
23 scribed in the contract of carriage; and

24 (B) does not preclude the carrier from
25 proving that no carrier received the goods from

1 the shipper as described in the contract of car-
2 riage.

3 (3) EXCEPTIONS.—Paragraph (2) does not
4 apply if—

5 (A) the carrier was not entitled to qualify
6 the statement under paragraph (1); or

7 (B) a person relying on the statement
8 proves that the carrier did not act in good faith
9 when issuing the contract of carriage.

10 (g) QUALIFIED STATEMENT OF WEIGHT FOR CON-
11 TAINER GOODS.—

12 (1) IN GENERAL.—If—

13 (A) a contracting carrier issues a contract
14 of carriage stating the weight of goods shipped
15 in a container loaded and sealed by the shipper
16 or its agents, or the weight of the container in-
17 cluding the goods; and

18 (B) the carrier can demonstrate that no
19 carrier weighed the container before the con-
20 tract of carriage was issued,

21 then the carrier may qualify the statement of weight
22 in writing with an express statement that the con-
23 tainer has not been weighed.

24 (2) QUALIFIED STATEMENT NOT PRIMA FACIE
25 EVIDENCE.—If a carrier delivers a container intact

1 and undamaged with the seal intact and undamaged,
2 then a statement of weight in the contract of car-
3 riage that has been qualified under paragraph (1)—

4 (A) is not prima facie evidence that a car-
5 rier received the goods from the shipper as de-
6 scribed in the contract of carriage; and

7 (B) does not preclude the carrier from
8 proving that no carrier received the goods from
9 the shipper as described in the contract of car-
10 riage.

11 (3) EXCEPTIONS.—Paragraph (2) does not
12 apply if—

13 (A) a contracting carrier and the shipper
14 agreed in writing before a carrier received the
15 goods for shipment that the carrier would weigh
16 the container;

17 (B) the carrier was not entitled to qualify
18 the statement under paragraph (1); or

19 (C) a person relying on the statement
20 proves that the carrier did not act in good faith
21 when issuing the contract of carriage.

22 (h) RELIEF-FROM-LIABILITY CLAUSES.—

23 (1) IN GENERAL.—Any provision in a contract
24 of carriage relieving a carrier or ship from liability
25 for loss of, for damage to, or in connection with

1 goods from negligence, fault, or failure in the duties
2 and obligations under this Act, or reducing such li-
3 ability otherwise than as provided in this Act, is un-
4 enforceable as contrary to public policy.

5 (2) INSURANCE.—A benefit-of-insurance clause
6 in favor of a carrier, or similar clause, shall be con-
7 sidered, for purposes of paragraph (1), to be a provi-
8 sion relieving a carrier from liability.

9 (i) FOREIGN FORUM PROVISION.—

10 (1) APPLICATION.—This subsection applies
11 to—

12 (A) a contract of carriage or other agree-
13 ment entered into after the date of enactment
14 of this Act governing a claim under this Act;
15 and

16 (B) a contract of carriage or other agree-
17 ment entered into before the date of enactment
18 of this Act governing a claim under this Act if
19 the claim arose after that date.

20 (2) IN GENERAL.—Notwithstanding a provision
21 in a contract of carriage or other agreement to
22 which this subsection applies that specifies a foreign
23 forum for litigation or arbitration of a dispute to
24 which this Act applies, a party to the contract or
25 agreement, at its option, may commence such litiga-

1 tion or arbitration in any appropriate forum in the
2 United States if one or more of the following condi-
3 tions exists:

4 (A) The port of loading or the port of dis-
5 charge is, or was intended to be, in the United
6 States.

7 (B) The place where the goods are received
8 by a carrier or the place where the goods are
9 delivered to a person authorized to receive them
10 is, or was intended to be, in the United States.

11 (C) The principal place of business or, in
12 the absence thereof, the habitual residence of
13 the defendant is in the United States.

14 (D) The place where the contract was
15 made is in the United States.

16 (E) A forum specified for litigation or arbi-
17 tration under a provision in the contract of car-
18 riage or other agreement is in the United
19 States.

20 (3) SUBSEQUENT AGREEMENT OF PARTIES.—
21 Nothing in this subsection precludes the parties to
22 a dispute involving a claim under a contract of car-
23 riage or other agreement to which this subsection
24 applies from agreeing to resolve the dispute by liti-

1 gation or arbitration in a foreign forum if that
2 agreement is executed after the claim arises.

3 (j) NONAPPLICATION TO SERVICE CONTRACTS.—

4 Neither subsection (h) nor (i) of this section applies to
5 a provision of a service contract to the extent that the
6 provision affects only the rights and liabilities of the par-
7 ties who entered into the service contract.

8 (k) SHIPPED CONTRACTS OF CARRIAGE.—

9 (1) ISSUED ON REQUEST.—After goods are
10 loaded onto a ship or other mode of transportation,
11 the contracting carrier shall issue a shipped contract
12 of carriage if such a contract is requested by the
13 shipper.

14 (2) SURRENDER OR ANNOTATION OF PREVIOUS
15 CONTRACT.—If the shipper has received a contract
16 of carriage for the goods issued before they were
17 loaded onto the ship or other mode of transpor-
18 tation, then—

19 (A) the shipper shall surrender that con-
20 tract to the contracting carrier in exchange for
21 the shipped contract of carriage; or

22 (B) the contracting carrier, at its option,
23 may annotate that contract by noting—

1 (i) the name of the ship or other mode
2 of transportation upon which the goods
3 have been shipped; and

4 (ii) the date on which the goods were
5 shipped.

6 A contract annotated under subparagraph (B) shall
7 be deemed to be a shipped contract of carriage.

8 **SEC. 8. WEIGHT OF BULK CARGO.**

9 If, under the customs of any trade, the weight of any
10 goods in bulk inserted in a contract of carriage is a weight
11 ascertained or accepted by a third party other than a ship-
12 per or a carrier and the fact that the weight is so
13 ascertained or accepted is stated in the contract of car-
14 riage, then—

15 (1) the contract of carriage is not prima facie
16 evidence against a carrier of the receipt of goods of
17 that weight; and

18 (2) the accuracy of that weight at the time of
19 shipment shall not be deemed to have been guaran-
20 teed by a shipper.

21 **SEC. 9. RIGHTS AND IMMUNITIES OF CARRIER AND SHIP.**

22 (a) LOSS OR DAMAGE FROM UNSEAWORTHINESS.—
23 Neither a carrier nor a ship is liable for loss or damage
24 from unseaworthiness unless the loss or damage is caused

1 by a failure on the part of the carrier to exercise the due
2 diligence required by section 6(a).

3 (b) BURDEN OF PROOF.—If it is proved in an action
4 that loss or damage resulted from unseaworthiness, then
5 the burden of proving due diligence is on the carrier or
6 other person asserting no liability under subsection (a) of
7 this section.

8 (c) SPECIFIC EXCEPTIONS FROM LIABILITY.—

9 (1) IN GENERAL.—Neither a carrier nor a ship
10 is responsible for loss or damage from—

11 (A) perils, dangers, and accidents of the
12 sea or other navigable waters;

13 (B) an act of God;

14 (C) an act of war;

15 (D) an act of public enemies;

16 (E) the arrest or restraint of princes, rul-
17 ers, or people, or seizure under legal process;

18 (F) quarantine restrictions;

19 (G) an act or omission of the shipper or
20 owner of the goods, its agent, or representative;

21 (H) strikes, lockouts, stoppage, or re-
22 straint of labor from whatever cause, except
23 that this paragraph does not relieve a carrier
24 from responsibility for its own acts;

25 (I) riots or civil commotions;

1 (J) saving, or attempting to save, life or
2 property at sea;

3 (K) wastage in bulk or weight or any other
4 loss or damage arising from inherent defect,
5 quality, or vice of the goods;

6 (L) insufficiency of packing;

7 (M) insufficiency or inadequacy of marks;

8 (N) latent defects not discoverable by due
9 diligence; or

10 (O) any other cause arising without the
11 fault or privity of the carrier claiming the ben-
12 efit of the exception under this paragraph, and
13 without the fault or neglect of its agents or
14 servants.

15 (2) FIRE ON A SHIP.—Neither an ocean carrier
16 nor a ship is responsible for loss or damage from
17 fire on a ship unless the fire was caused by the
18 ocean carrier's fault or privity, with respect to a fire
19 on a ship that it furnished. A contracting carrier is
20 not responsible for loss or damage from fire on a
21 ship unless the fire was caused by the contracting
22 carrier's actual fault or privity.

23 (d) BURDENS OF PROOF IN CERTAIN ACTIONS.—

24 (1) NONSPECIFIC EXCEPTION.—In an action
25 for loss or damage in which a carrier seeks to estab-

1 lish no liability under subsection (c)(1)(O), the bur-
2 den of proof is on the carrier to show that neither
3 its fault or privity, nor the fault or neglect of its
4 agents or servants, contributed to the loss or dam-
5 age.

6 (2) NEGLIGENCE IN NAVIGATION OR MANAGE-
7 MENT.—In an action for loss or damage in which a
8 party alleges that the master, mariner, pilot, or serv-
9 ants of an ocean carrier were negligent in the navi-
10 gation or management of a ship, the burden of proof
11 is on that party to prove negligence in the naviga-
12 tion or management of the ship.

13 (e) ALLOCATION OF DAMAGES.—

14 (1) IN GENERAL.—If loss or damage is caused
15 in part by a breach of a carrier’s obligations, or the
16 fault or neglect of a carrier, and in part by one or
17 more of the exceptions described in subsection (c),
18 then the carrier or ship is—

19 (A) liable for the loss or damage to the ex-
20 tent that the party seeking to recover for the
21 loss or damage proves that it is attributable to
22 that breach, fault, or neglect; and

23 (B) not liable for the loss or damage to the
24 extent the carrier proves that it is attributable
25 to one or more of those exceptions.

1 (2) INSUFFICIENT EVIDENCE.—If there is no
2 evidence upon which the trier of fact in an action for
3 loss or damage can base a determination of the ex-
4 tent to which the loss or damage is attributable
5 under paragraph (1), and a carrier or ship is found
6 liable for an undetermined portion of such loss or
7 damage, then the aggregate liability of all the car-
8 riers and ships is one-half of the loss or damage.

9 (f) SHIPPER'S LIABILITY.—

10 (1) IN GENERAL.—A shipper is not responsible
11 for loss or damage sustained by a carrier or a ship
12 from any cause without the act, fault, or neglect of
13 the shipper, its agents, or its servants.

14 (2) SHIPPER'S GUARANTEE OF ACCURACY.—A
15 shipper is deemed to have guaranteed to each carrier
16 the accuracy at the time of shipment of the marks,
17 number, quantity, and weight furnished by the ship-
18 per, and shall indemnify any carrier against loss,
19 damage, and expense arising or resulting from inac-
20 curacy. The right of a carrier to indemnity under
21 this paragraph does not limit the responsibility or li-
22 ability of a carrier to any person other than the
23 shipper.

24 (g) DEVIATIONS.—

1 (1) IN GENERAL.—Neither a carrier nor a ship
2 is liable for damage or loss from—

3 (A) a deviation to save or attempt to save
4 life or property at sea; or

5 (B) any reasonable deviation.

6 (2) UNREASONABLE DEVIATIONS.—For pur-
7 poses of this Act—

8 (A) LOADING AND UNLOADING.—A devi-
9 ation for the purpose of loading or unloading
10 cargo or passengers is, prima facie, not a rea-
11 sonable deviation.

12 (B) EFFECT OF UNREASONABLE DEVI-
13 ATION.—An unreasonable deviation constitutes
14 a breach of a carrier’s obligations under this
15 Act, and the remedies for such a breach shall
16 be determined exclusively under this Act.

17 (h) LIMITATIONS ON LIABILITY.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (3), the aggregate liability of all carriers and
20 their ships for loss of, for damage to, or in connec-
21 tion with goods under a contract of carriage may not
22 exceed the higher of—

23 (A) 666.67 Special Drawing Rights (as de-
24 fined by the International Monetary Fund) per
25 package; or

1 (B) 2 Special Drawing Rights (as so de-
2 fined) per kilogram of gross weight of the goods
3 lost or damaged.

4 (2) SPECIAL RULE FOR CONSOLIDATED
5 GOODS.—If a container, pallet, or similar article of
6 transport is used to consolidate goods, the number
7 of packages enumerated in the contract of carriage
8 as packed in the article of transport shall be deemed
9 to be the number of packages for purposes of para-
10 graph (1)(A). Except as provided in the preceding
11 sentence, such an article of transport shall be con-
12 sidered to be the package for such purposes.

13 (3) EXCEPTIONS.—

14 (A) DECLARED VALUE.—Paragraph (1)
15 does not apply if the nature and value of the
16 goods have been declared by the shipper before
17 shipment and the declaration is contained in
18 the contract of carriage, but the declaration
19 shall be only prima facie evidence of the nature
20 and value of the goods.

21 (B) AGREEMENT ON GREATER LIMIT.—
22 Paragraph (1) does not apply if the contracting
23 carrier and the shipper agree on a greater
24 amount as the maximum liability of the carrier
25 and its ship for loss or damage. Any such

1 agreement is binding only on the parties who
2 entered into the agreement.

3 (C) SERVICE CONTRACTS.—Notwith-
4 standing paragraph (1), the parties to a service
5 contract may agree to a greater or lesser
6 amount as the maximum liability of those par-
7 ties for such loss or damage.

8 (D) CERTAIN CULPABLE ACTS OR OMIS-
9 SIONS OF CARRIER.—Paragraph (1) does not
10 apply if it is proved that the loss or damage re-
11 sulted from—

12 (i) an act or omission of the carrier,
13 within the privity or knowledge of the car-
14 rier, done with the intent to cause such
15 loss or damage, or recklessly and with
16 knowledge that such loss or damage would
17 probably result; or

18 (ii) an unreasonable deviation if the
19 carrier knew, or should have known, that
20 the deviation would result in such loss or
21 damage.

22 (4) LIABILITY CAP.—Neither a carrier nor a
23 ship is liable for more than the amount of loss or
24 damage sustained.

1 (5) MISSTATEMENT BY SHIPPER.—Neither a
2 carrier nor a ship is liable for loss of, for damage
3 to, or in connection with goods if the nature or value
4 of the goods was knowingly and fraudulently mis-
5 stated by the shipper in the contract of carriage.

6 (6) BENEFIT OF LIABILITY LIMITATION SEPA-
7 RATELY DETERMINED.—The loss by a carrier of the
8 benefit of a limitation on liability under paragraph
9 (3)(D) does not affect the application of that limita-
10 tion to any other carrier.

11 (i) INFLAMMABLE, EXPLOSIVE, OR DANGEROUS
12 CARGO.—

13 (1) CARRIAGE WITH KNOWING CONSENT.—If—

14 (A) a carrier has consented to the carriage
15 of goods of an inflammable, explosive, or dan-
16 gerous nature with knowledge of their nature
17 and character; and

18 (B) the goods become a danger to the ship
19 or cargo,

20 then the carrier may land the goods at any place,
21 destroy them, or render them innocuous without li-
22 ability except to general average, if any.

23 (2) CARRIAGE WITHOUT KNOWING CONSENT.—

24 If—

1 (A) a carrier has consented to the carriage
2 of goods of an inflammable, explosive, or dan-
3 gerous nature without knowledge of their na-
4 ture and character; and

5 (B) the goods become a danger to the ship
6 or cargo,

7 then the carrier may land the goods at any place,
8 destroy them, or render them innocuous without
9 compensation of the shipper for the damage or loss.
10 The shipper is liable for all damages and expenses
11 directly or indirectly arising out of or resulting from
12 the shipment of those goods.

13 **SEC. 10. SURRENDER OF RIGHTS; INCREASE OF LIABILITY;**
14 **GENERAL AVERAGE.**

15 (a) IN GENERAL.—A carrier may surrender its rights
16 and immunities, or increase its responsibilities and liabil-
17 ities, under this Act, in whole or in part, under the terms
18 of any contract. Any such contract shall be binding only
19 on the parties who entered into it.

20 (b) GENERAL AVERAGE PROVISIONS.—A contract of
21 carriage may contain any lawful provision regarding gen-
22 eral average.

1 **SEC. 11. SPECIAL AGREEMENT AS TO PARTICULAR GOODS.**

2 (a) IN GENERAL.—A contracting carrier and a ship-
3 per may enter into any agreement for the shipment of par-
4 ticular goods setting forth—

5 (1) the responsibilities and liabilities of the car-
6 rier for the goods;

7 (2) the rights and immunities of the carrier
8 with respect to the goods;

9 (3) the obligations of the carrier as to sea-
10 worthiness (to the extent that the stipulation regard-
11 ing seaworthiness is not contrary to public policy);
12 and

13 (4) the care or diligence of their servants or
14 agents for receiving, loading, handling, stowage, car-
15 riage, custody, care, discharge, and delivery of the
16 goods carried by sea.

17 (b) LIMITATION.—Subsection (a)—

18 (1) applies to shipments where the character or
19 condition of the property to be carried, or the cir-
20 cumstances, terms, and conditions under which the
21 carriage is to be performed, reasonably justify a spe-
22 cial agreement under subsection (a), and if—

23 (A) no bill of lading is issued; and

24 (B) the terms agreed upon are contained
25 in a receipt that is a nonnegotiable document,
26 marked as such; but

1 (2) does not apply to ordinary commercial ship-
2 ments made in the ordinary course of trade.

3 **SEC. 12. NOTICE OF LOSS OR DAMAGE.**

4 (a) IN GENERAL.—Unless notice of loss or damage
5 and the general nature of the loss or damage is given in
6 writing to the contracting carrier or its agent or to the
7 performing carrier making the delivery or its agent—

8 (1) before or at the time of the delivery of the
9 goods to the person entitled to receive them under
10 the contract of carriage; or

11 (2) within 3 days after the delivery if the loss
12 or damage is not apparent on delivery,
13 then the delivery is prima facie evidence of the delivery
14 by the carrier of the goods as described in the contract
15 of carriage.

16 (b) NOTICE BY ENDORSEMENT.—Notice of loss or
17 damage by endorsement on the receipt for goods by the
18 person taking delivery constitutes notice in writing for
19 purposes of subsection (a).

20 (c) WAIVER OF NOTICE-IN-WRITING REQUIRE-
21 MENT.—Notice of damage or loss need not be given in
22 writing if the state of the goods at the time of their receipt
23 is the subject of joint survey or inspection.

24 (d) REASONABLE ACCESS.—The carriers and the
25 person who receives goods shall give all reasonable facili-

1 ties to each other for inspecting and tallying loss of, for
2 damage to, delivered goods, including joint surveys where
3 appropriate.

4 **SEC. 13. STATUTE OF LIMITATIONS.**

5 (a) SUITS.—A carrier or ship is discharged from li-
6 ability for loss of, for damage to, or in connection with
7 goods unless suit is brought within 1 year after the date
8 on which the goods were delivered or should have been
9 delivered. The failure to give notice of loss or damage, ei-
10 ther apparent or concealed, does not affect or prejudice
11 any party's right to bring suit within that 1-year period.

12 (b) ARBITRATION.—If a contract of carriage provides
13 for arbitration, then a carrier or ship is discharged from
14 liability for loss of, for damage to, or in connection with
15 goods unless the arbitration proceeding is commenced, or
16 suit is brought, within 1 year after the date on which the
17 goods were delivered or should have been delivered.

18 (c) ACTIONS FOR CONTRIBUTION OR INDEMNITY.—
19 Notwithstanding subsections (a) and (b), an action for
20 contribution or indemnity may be brought by a carrier
21 against any other party to a transaction within 3 months
22 after a judgment is entered against that carrier or a settle-
23 ment is concluded by that carrier.

1 **SEC. 14. DISCRIMINATION BETWEEN COMPETING SHIP-**
2 **PERS.**

3 It is expressly stated to be the intent of the Congress
4 that nothing in this Act may be construed to permit a
5 common carrier by water to discriminate between com-
6 peting shippers similarly placed in time and
7 circumstances—

8 (1) with respect to their right to demand and
9 receive bills of lading subject to the provisions of
10 this Act;

11 (2) when issuing contracts of carriage—

12 (A) in surrendering any of the carrier's
13 rights and immunities; or

14 (B) in increasing any of the carrier's re-
15 sponsibilities and liabilities,
16 under section 10 of this Act; or

17 (3) in any other way prohibited by the Shipping
18 Act, 1916 (46 U.S.C. App. 801 et seq.) or the Ship-
19 ping Act of 1984 (46 U.S.C. App. 1701 et seq.).

20 **SEC. 15. REPEAL OF 1936 ACT.**

21 The Carriage of Goods By Sea Act (46 U.S.C. App.
22 1300 et seq.) is repealed.

1 **SEC. 16. APPLICATION OF BILLS OF LADING RULES TO IN-**
2 **BOUND GOODS.**

3 (a) IN GENERAL.—Chapter 801 of title 49, United
4 States Code, applies to any contract of carriage that is
5 subject to this Act.

6 (b) APPLICATION TO INBOUND GOODS.—Notwith-
7 standing section 80102 of title 49, United States Code,
8 chapter 801 of that title (except for section 80116 of that
9 title) shall be applied to any contract of carriage that cov-
10 ers a shipment of goods from a place in a foreign country
11 to a place in the United States in the same manner as
12 that chapter applies to a bill of lading for the transpor-
13 tation of goods from a place in a State to a place in a
14 foreign country.

15 (c) APPLICATION WITH CHAPTER 801 OF TITLE
16 49.—If the application of any provision of this Act to any
17 person or circumstance to which this Act applies conflicts
18 with the application of any provision of chapter 801 of
19 title 49, United States Code, to that person or cir-
20 cumstance, then the provision of this Act shall be applied
21 instead of the provision of that chapter.

22 **SEC. 17. EFFECTIVE DATE.**

23 This Act shall take effect 90 days after the date of
24 enactment and shall apply to goods received for shipment
25 after that effective date.

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