

[STAFF WORKING DRAFT]

September 24, 1999

106 th CONGRESS

1 st 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

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

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(b) TABLE OF SECTIONS.—The table of sections for 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.

SEC. 2. DEFINITIONS.

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

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

(2) CONTRACTING CARRIER.—The term “contracting carrier” means the party who enters into a contract of carriage with a shipper of goods.

(3) PERFORMING CARRIER.—

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

(i) that performs, undertakes to perform, or procures to be performed any of a contracting carrier’s responsibilities under a contract of carriage; but

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

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

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term “performing carrier” does not include any person (other than the contracting carrier) that—

(i) is retained by the shipper or consignee; or

(ii) is an employee, servant, agent, contractor, or subcontractor of a person retained by the shipper or consignee.

(4) OCEAN CARRIER.—The term “ocean carrier” means a performing carrier that owns, operates, or chartered a ship used in the carriage of goods by sea.

(5) CONTRACT OF CARRIAGE.—

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

(i) a contract for the carriage of goods either by sea or partially by sea and partially by one or more other modes of transportation, including a bill of lading (or similar document), whether negotiable or non-negotiable and whether printed or electronic; and

(ii) a bill of lading (or similar document), whether negotiable or non-negotiable and whether printed or electronic, arising under or pursuant to a charter party from the moment at which it regulates the relations between a carrier and the holder of the bill of lading or other contract.

(B) CERTAIN CONTRACTS EXCLUDED.—The term “contract of carriage” does not include—

(i) contracts for transportation in domestic trade exclusively on the Great Lakes, rivers, or other inland waters, or the intracoastal waterways;

(ii) charter parties, contracts of affreightment, and similar agreements that are functionally equivalent; or

(iii) towage agreements.

(C) SPECIAL RULE FOR ELECTRONIC BILLS OF LADING.—An electronic bill of lading may be used in accordance with procedures agreed upon by the parties to the bill.

(6) GOODS.—The term “goods” includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals.

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

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

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

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

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

(10) SERVICE CONTRACT.—The term “service contract” has the meaning given that term by section 3(21) of the Shipping Act of 1984 (46 U.S.C. App. 1702(21)).

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

(b) SPECIAL RULE FOR ELECTRONIC COMMUNICATION.—Whenever in this Act a notice, claim, or other communication is required to be made in writing, it may be transmitted in written form on paper or transmitted by an electronic medium, including electronic data interchange and other computerized media of transmission.

SEC. 3. APPLICATION OF ACT.

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

(b) APPLICATION TO CERTAIN MOTOR CARRIER AND RAIL CARRIER SERVICES.—This Act does not apply to a claim against an interstate or foreign motor carrier, or a rail carrier, that is not a contracting carrier to the extent that the claim relates only to motor carrier services or rail carrier services, respectively. This subsection does not prohibit any extension of rights to a motor or rail carrier by a contract of carriage nor does it adversely affect, or void, any rights so extended.

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

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

(2) the court or other tribunal in which the action is brought.

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

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

SEC. 4. RIGHTS AND LIABILITIES UNDER OTHER LAWS.

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

- (1) sections 4281 through 4289 of the Revised Statutes of the United States (46 U.S.C. App. 181 et seq.);
- (2) the Shipping Act, 1916 (46 U.S.C. App. 801 et seq.);
- (3) the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.); or
- (4) any other law of the United States relating to the limitation of liability of the owners of seagoing vessels.

SEC. 5. DUTIES AND RIGHTS OF CARRIER.

(a) IN GENERAL.—A carrier is subject to the responsibilities and liabilities under this Act, and entitled to the rights and immunities provided by this Act, for receiving, loading, handling, stowage, carriage, custody, care, discharge, and delivery of goods under a contract of carriage.

(b) CONTRACTING CARRIERS.—A contracting carrier is subject to those responsibilities and liabilities, and entitled to those rights and immunities, for the entire period covered by its contract of carriage.

(c) PERFORMING CARRIERS.—A performing carrier is subject to those responsibilities and liabilities, and entitled to those rights and immunities—

- (1) during the period between the time it receives the goods, or takes them in charge, and the time it relinquishes control of the goods under the contract of carriage; and
- (2) at any other time to the extent that it is participating in the performance of any of the activities contemplated by the contract of carriage.

SEC. 6. RESPONSIBILITIES OF CARRIER AND SHIP.

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

- (1) to make the ship seaworthy;
- (2) to man, equip, and supply the ship properly; and
- (3) to make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried fit and safe for the reception, carriage, and preservation of the goods.

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

SEC. 7. CONTRACTS OF CARRIAGE.

(a) ISSUANCE.—After a carrier receives goods into its charge, a contracting carrier shall, on demand of the shipper, issue to the shipper a contract of carriage in the form of—

- (1) a negotiable bill of lading; or
- (2) if the shipper agrees, a non-negotiable bill of lading.

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

(c) CONTENTS.—

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

(A) describe the apparent order and condition of the goods at the time a carrier receives them from the shipper (and an on-board contract of carriage shall also describe the condition of the goods at the time they are loaded on board the ship or other mode of transportation);

(B) show the leading marks necessary for identification of the goods, as furnished in writing by a shipper before a carrier receives the goods, stamped or otherwise shown clearly—

- (i) upon uncovered goods; or
- (ii) on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage; and

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

(2) LIMITATION.—A contracting carrier is not required to state or show any marks, number, quantity, or weight information that a carrier has reasonable ground to suspect does not accurately represent the goods actually received, or which a carrier has no reasonable means of checking.

(d) STATEMENT AS PRIMA FACIE EVIDENCE.—Except as provided in subsections (e), (f), and (g), a contract of carriage issued by or on behalf of a carrier is prima facie evidence of the receipt by that carrier of the goods described in the contract.

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

(1) IN GENERAL.—If—

(A) a contracting carrier issues a contract of carriage for non-containerized goods stating any marks, number, quantity, or weight information furnished by the shipper or its agents; and

(B) the carrier can demonstrate that no carrier had a reasonable means of checking this information before the contract of carriage was issued, then the carrier may qualify the statement of marks, number, quantity, or weight information in writing in a manner that indicates that no carrier has verified its accuracy. The qualification may be made in the form of an expression such as “said to contain” or “shipper’s weight, load, and count”, or other expression of qualification that effectively indicates that no carrier has verified the accuracy of the statement of marks, number, quantity, or weight information.

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

(A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and

(B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.

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

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

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

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

(1) IN GENERAL.—If—

(A) a contracting carrier issues a contract of carriage stating any marks, number, or quantity information furnished by the shipper or its agents for goods shipped in a container loaded and sealed by the shipper or its agents; and

(B) the carrier can demonstrate that no carrier verified the container's contents before the contract of carriage was issued,

then the carrier may qualify the statement of marks, number, or quantity in writing in a manner that indicates that no carrier has verified its accuracy. The qualification may be made in the form of an expression such as “said to contain” or “shipper's load, stow, and count”, or other expression of qualification that effectively indicates that no carrier has verified the accuracy of the statement of marks, number, or quantity.

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

(A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and

(B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.

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

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

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

(g) QUALIFIED STATEMENT OF WEIGHT FOR CONTAINER GOODS.—

(1) IN GENERAL.—If—

(A) a contracting carrier issues a contract of carriage stating the weight of goods shipped in a container loaded and sealed by the shipper or its agents, or the weight of the container including the goods; and

(B) the carrier can demonstrate that no carrier weighed the container before the contract of carriage was issued, then the carrier may qualify the statement of weight in writing with an express statement that the container has not been weighed.

(2) QUALIFIED STATEMENT NOT PRIMA FACIE EVIDENCE.—If a carrier delivers a container intact and undamaged with the seal intact and undamaged, then a statement of weight in the contract of carriage that has been qualified under paragraph (1)—

(A) is not prima facie evidence that a carrier received the goods from the shipper as described in the contract of carriage; and

(B) does not preclude the carrier from proving that no carrier received the goods from the shipper as described in the contract of carriage.

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

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

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

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

(h) RELIEF-FROM-LIABILITY CLAUSES.—

(1) IN GENERAL.—Any provision in a contract of carriage relieving a carrier or ship from liability for loss of, for damage to, or in connection with goods from negligence, fault, or failure in the duties and obligations under this Act, or reducing such liability otherwise than as provided in this Act, is unenforceable as contrary to public policy.

(2) INSURANCE.—A benefit-of-insurance clause in favor of a carrier, or similar clause, shall be considered, for purposes of paragraph (1), to be a provision relieving a carrier from liability.

(i) FOREIGN FORUM PROVISION.—

(1) APPLICATION.—This subsection applies to—

(A) a contract of carriage or other agreement entered into after the date of enactment of this Act governing a claim under this Act; and

(B) a contract of carriage or other agreement entered into before the date of enactment of this Act governing a claim under this Act if the claim arose after that date.

(2) IN GENERAL.—Notwithstanding a provision in a contract of carriage or other agreement to which this subsection applies that specifies a foreign forum for litigation or arbitration of a dispute to which this Act applies, a party to the contract or agreement, at its option, may commence such litigation or arbitration in any appropriate forum in the United States if one or more of the following conditions exists:

(A) The port of loading or the port of discharge is, or was intended to be, in the United States.

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

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

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

(E) A forum specified for litigation or arbitration under a provision in the contract of carriage or other agreement is in the United States.

(3) SUBSEQUENT AGREEMENT OF PARTIES.—Nothing in this subsection precludes the parties to a dispute involving a claim under a contract of carriage or other agreement to which this subsection applies from agreeing to resolve the dispute by litigation or arbitration in a foreign forum if that agreement is executed after the claim arises.

(j) NONAPPLICATION TO SERVICE CONTRACTS.—Neither subsection (h) nor (i) of this section applies to a provision of a service contract to the extent that the provision affects only the rights and liabilities of the parties who entered into the service contract.

(k) SHIPPED CONTRACTS OF CARRIAGE.—

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

(2) SURRENDER OR ANNOTATION OF PREVIOUS CONTRACT.—If the shipper has received a contract of carriage for the goods issued before they were loaded onto the ship or other mode of transportation, then—

(A) the shipper shall surrender that contract to the contracting carrier in exchange for the shipped contract of carriage; or

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

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

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

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

SEC. 8. WEIGHT OF BULK CARGO.

If, under the customs of any trade, the weight of any goods in bulk inserted in a contract of carriage is a weight ascertained or accepted by a third party other than a shipper or a carrier and the fact that the weight is so ascertained or accepted is stated in the contract of carriage, then—

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

(2) the accuracy of that weight at the time of shipment shall not be deemed to have been guaranteed by a shipper.

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

(a) LOSS OR DAMAGE FROM UNSEAWORTHINESS.—Neither a carrier nor a ship is liable for loss or damage from unseaworthiness unless the loss or damage is caused by a failure on the part of the carrier to exercise the due diligence required by section 6(a).

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

(c) SPECIFIC EXCEPTIONS FROM LIABILITY.—

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

- (A) perils, dangers, and accidents of the sea or other navigable waters;
- (B) an act of God;
- (C) an act of war;
- (D) an act of public enemies;
- (E) the arrest or restraint of princes, rulers, or people, or seizure under legal process;
- (F) quarantine restrictions;
- (G) an act or omission of the shipper or owner of the goods, its agent, or representative;
- (H) strikes, lockouts, stoppage, or restraint of labor from whatever cause, except that this paragraph does not relieve a carrier from responsibility for its own acts;
- (I) riots or civil commotions;
- (J) saving, or attempting to save, life or property at sea;
- (K) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (L) insufficiency of packing;
- (M) insufficiency or inadequacy of marks;
- (N) latent defects not discoverable by due diligence; or
- (O) any other cause arising without the fault or privity of the carrier claiming the benefit of the exception under this paragraph, and without the fault or neglect of its agents or servants.

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

(d) BURDENS OF PROOF IN CERTAIN ACTIONS.—

(1) NONSPECIFIC EXCEPTION.—In an action for loss or damage in which a carrier seeks to establish no liability under subsection (c)(1)(O), the burden of proof is on the

carrier to show that neither its fault or privity, nor the fault or neglect of its agents or servants, contributed to the loss or damage.

(2) NEGLIGENCE IN NAVIGATION OR MANAGEMENT.—In an action for loss or damage in which a party alleges that the master, mariner, pilot, or servants of an ocean carrier were negligent in the navigation or management of a ship, the burden of proof is on that party to prove negligence in the navigation or management of the ship.

(e) ALLOCATION OF DAMAGES.—

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

(A) liable for the loss or damage to the extent that the party seeking to recover for the loss or damage proves that it is attributable to that breach, fault, or neglect; and

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

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

(f) SHIPPER'S LIABILITY.—

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

(2) SHIPPER'S GUARANTEE OF ACCURACY.—A shipper is deemed to have guaranteed to each carrier the accuracy at the time of shipment of the marks, number, quantity, and weight furnished by the shipper, and shall indemnify any carrier against loss, damage, and expense arising or resulting from inaccuracy. The right of a carrier to indemnity under this paragraph does not limit the responsibility or liability of a carrier to any person other than the shipper.

(g) DEVIATIONS.—

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

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

(B) any reasonable deviation.

(2) UNREASONABLE DEVIATIONS.—For purposes of this Act—

(A) LOADING AND UNLOADING.—A deviation for the purpose of loading or unloading cargo or passengers is, prima facie, not a reasonable deviation.

(B) EFFECT OF UNREASONABLE DEVIATION.—An unreasonable deviation constitutes a breach of a carrier's obligations under this Act, and the remedies for such a breach shall be determined exclusively under this Act.

(h) LIMITATIONS ON LIABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), the aggregate liability of all carriers and their ships for loss of, for damage to, or in connection with goods under a contract of carriage may not exceed the higher of—

(A) 666.67 Special Drawing Rights (as defined by the International Monetary Fund) per package; or

(B) 2 Special Drawing Rights (as so defined) per kilogram of gross weight of the goods lost or damaged.

(2) SPECIAL RULE FOR CONSOLIDATED GOODS.—If a container, pallet, or similar article of transport is used to consolidate goods, the number of packages enumerated in the contract of carriage as packed in the article of transport shall be deemed to be the number of packages for purposes of paragraph (1)(A). Except as provided in the preceding sentence, such an article of transport shall be considered to be the package for such purposes.

(3) EXCEPTIONS.—

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

(B) AGREEMENT ON GREATER LIMIT.—Paragraph (1) does not apply if the contracting carrier and the shipper agree on a greater amount as the maximum

liability of the carrier and its ship for loss or damage. Any such agreement is binding only on the parties who entered into the agreement.

(C) SERVICE CONTRACTS.—Notwithstanding paragraph (1), the parties to a service contract may agree to a greater or lesser amount as the maximum liability of those parties for such loss or damage.

(D) CERTAIN CULPABLE ACTS OR OMISSIONS OF CARRIER.—Paragraph (1) does not apply if it is proved that the loss or damage resulted from—

(i) an act or omission of the carrier, within the privity or knowledge of the carrier, done with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result; or

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

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

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

(6) BENEFIT OF LIABILITY LIMITATION SEPARATELY DETERMINED.—The loss by a carrier of the benefit of a limitation on liability under paragraph (3)(D) does not affect the application of that limitation to any other carrier.

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

(1) CARRIAGE WITH KNOWING CONSENT.—If—

(A) a carrier has consented to the carriage of goods of an inflammable, explosive, or dangerous nature with knowledge of their nature and character; and

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

then the carrier may land the goods at any place, destroy them, or render them innocuous without liability except to general average, if any.

(2) CARRIAGE WITHOUT KNOWING CONSENT.—If—

(A) a carrier has consented to the carriage of goods of an inflammable, explosive, or dangerous nature without knowledge of their nature and character; and

(B) the goods become a danger to the ship or cargo, then the carrier may land the goods at any place, destroy them, or render them innocuous without compensation of the shipper for the damage or loss. The shipper is liable for all damages and expenses directly or indirectly arising out of or resulting from the shipment of those goods.

SEC. 10. SURRENDER OF RIGHTS; INCREASE OF LIABILITY; GENERAL AVERAGE.

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

(b) **GENERAL AVERAGE PROVISIONS.**—A contract of carriage may contain any lawful provision regarding general average.

SEC. 11. SPECIAL AGREEMENT AS TO PARTICULAR GOODS.

(a) **IN GENERAL.**—A contracting carrier and a shipper may enter into any agreement for the shipment of particular goods setting forth—

- (1) the responsibilities and liabilities of the carrier for the goods;
- (2) the rights and immunities of the carrier with respect to the goods;
- (3) the obligations of the carrier as to seaworthiness (to the extent that the stipulation regarding seaworthiness is not contrary to public policy); and
- (4) the care or diligence of their servants or agents for receiving, loading, handling, stowage, carriage, custody, care, discharge, and delivery of the goods carried by sea.

(b) **LIMITATION.**—Subsection (a)—

(1) applies to shipments where the character or condition of the property to be carried, or the circumstances, terms, and conditions under which the carriage is to be performed, reasonably justify a special agreement under subsection (a), and if—

(A) no bill of lading is issued; and

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

(2) does not apply to ordinary commercial shipments made in the ordinary course of trade.

SEC. 12. NOTICE OF LOSS OR DAMAGE.

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

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

(2) within 3 days after the delivery if the loss or damage is not apparent on delivery,

then the delivery is prima facie evidence of the delivery by the carrier of the goods as described in the contract of carriage.

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

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

(d) REASONABLE ACCESS.—The carriers and the person who receives goods shall give all reasonable facilities to each other for inspecting and tallying loss of, for damage to, delivered goods, including joint surveys where appropriate.

SEC. 13. STATUTE OF LIMITATIONS.

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

(b) ARBITRATION.—If a contract of carriage provides for arbitration, then a carrier or ship is discharged from liability for loss of, for damage to, or in connection with goods unless the

arbitration proceeding is commenced, or suit is brought, within 1 year after the date on which the goods were delivered or should have been delivered.

(c) **ACTIONS FOR CONTRIBUTION OR INDEMNITY.**—Notwithstanding subsections (a) and (b), an action for contribution or indemnity may be brought by a carrier against any other party to a transaction within 3 months after a judgment is entered against that carrier or a settlement is concluded by that carrier.

SEC. 14. DISCRIMINATION BETWEEN COMPETING SHIPPERS.

It is expressly stated to be the intent of the Congress that nothing in this Act may be construed to permit a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances—

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

(2) when issuing contracts of carriage—

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

(B) in increasing any of the carrier's responsibilities and liabilities, under section 10 of this Act; or

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

SEC. 15. REPEAL OF 1936 ACT.

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

SEC. 16. APPLICATION OF BILLS OF LADING RULES TO INBOUND GOODS.

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

(b) **APPLICATION TO INBOUND GOODS.**—Notwithstanding section 80102 of title 49, United States Code, chapter 801 of that title (except for section 80116 of that title) shall be applied to any contract of carriage that covers a shipment of goods from a place in a foreign country to a place in the United States in the same manner as that chapter applies to a bill of lading for the transportation of goods from a place in a State to a place in a foreign country.

(c) **APPLICATION WITH CHAPTER 801 OF TITLE 49.**—If the application of any provision of this Act to any person or circumstance to which this Act applies conflicts with the application

of any provision of chapter 801 of title 49, United States Code, to that person or circumstance, then the provision of this Act shall be applied instead of the provision of that chapter.

SEC. 17. EFFECTIVE DATE.

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

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