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## THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

PENDING LEGISLATIVE PROPOSALS

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### SHIPOWNERS' LIABILITY

THE SIROVICH BILL H. R. 4550, COMPARED WITH EXISTING LAWS

*Changes and additions are in italics.*

**Provisions of the existing laws omitted are in square brackets, and in blackface type.**

IN THE HOUSE OF REPRESENTATIVES

74th Congress, 1st Session.

January 23, 1935

Mr. Sirovich introduced the following bill; which was referred to the Committee on Merchant Marine, Radio, and Fisheries and ordered to be printed.

### A BILL

FIXING THE LIABILITY OF OWNERS OF VESSELS.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 8 of title 46 of the Code of Laws of the United States of America, providing for the limitation of vessel-owners' liability, be, and hereby is, amended to read as follows:

[Note: 46 U. S. Code has no sections between 175 and 181.]

[R. S. 4281]

[46 U. S. C., § 181] "176. LIABILITY OF MASTERS AS CARRIERS.—If any shipper of platina, gold, gold dust, silver, bullion, or

other precious metals; coins; jewelry; bills of any bank or public body; diamonds or other precious stones; or any gold or silver in a manufactured or unmanufactured state; watches, clocks, or time-pieces of any description; trinkets; orders, notes, or securities for payment of money, stamps, maps, writings, title deeds, printings, engravings, pictures; gold or silver plate or plated articles; glass; china; silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material; furs, or lace, or any of them, contained in any parcel, or package, or trunk, shall lade the same as freight or baggage on any vessel, without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered, *except that this provision shall not apply to articles carried by a passenger as baggage.*

[R. S. 4282]

[46 U. S. C., § 182] "177. LOSS BY FIRE.—No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner, *or his agents, or employees.*

[R. S. 4283]

[46 U. S. C., § 183] "178. LIABILITY OF OWNER LIMITED.—The liability of the owner *or owners* of any vessel, *whether American or foreign*, for any embezzlement, loss, or destruction, *or damage* by any person, of [any] property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity or knowledge of such owner or owners, shall in no case exceed: **[the amount or value of the interest of such owner in such vessel and her freight then pending].**

"(a) *For loss of life or personal injury, whether or not there be in addition loss or damage to ships, goods, or other things, an aggregate amount of \$100 for each ton of such vessel's tonnage; nor*

“(b) For loss or damage to ships, goods, or other things whether or not there be in addition loss of life or personal injury an aggregate amount of \$50 for each ton of such vessel’s tonnage.

“The owner or owners of such vessel shall be liable as aforesaid in respect of every distinct occasion on which any such event or events occur, to the same extent as if no such event had occurred on any other occasion.

“179. TONNAGE.—The tonnage of a vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels shall be the registered tonnage of such vessel with the addition of its engine-room space. The register tonnage of every vessel, whether foreign or built within the United States or owned by a citizen or citizens thereof, shall be ascertained as prescribed in section 77 of chapter 2 of this Act.\*

[R. S. 4285]

[46 U. S. C., § 185. TRANSFER OF INTEREST OF OWNER TO TRUSTEE.—It shall be deemed a sufficient compliance on the part of such owner with the requirements of this chapter relating to his liability for any embezzlement, loss or destruction, of any property, goods or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease.]

[R. S. 4286]

[46 U. S. C., § 186] “180. CHARTERER MAY BE DEEMED OWNER.—The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter [title] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof.

X “181. PRIVACY OR KNOWLEDGE.—The privacy or knowledge of the master of a vessel, or of the superintendent or managing agent

\*The reference intended is to Title 46 U. S. Code, chapter 2, section 77—“Tonnage.”

of the owner or owners thereof, shall be deemed the privity or knowledge of the owner or owners of such vessel.

“182. SECURITY FOR LIABILITY.—(a) *The owner or owners of a vessel shall secure payment of the full amount of the limited liability within the provisions of this chapter—*

“(1) *By insuring and keeping insured the payment of the full amount of such limited liability with any stock or mutual company or association, or with any other person or fund, while such company, person, or fund is authorized by the Secretary of Commerce to insure payment of the amount of limited liability under this chapter; or*

“(2) *By furnishing satisfactory proof to the Secretary of Commerce of his financial ability to pay such full amount of limited liability and receiving an authorization from the Secretary of Commerce to pay such limited liability directly. The Secretary of Commerce shall, as a condition to such authorization, require such owner or owners to deposit in the depository designated by the Secretary of Commerce either an indemnity bond or securities (at the option of the owner or owners) of a kind and in an amount determined by the Secretary of Commerce but not less than the full amount of limited liability, and that such minimum amount shall at no time be less than the full amount of limited liability, and subject to such conditions as the Secretary of Commerce may prescribe, which shall include authorization to the Secretary of Commerce in cases of default to sell any such securities sufficient to pay approved claims for loss, damage, or injury, or to bring suit upon such bonds, to procure prompt payment of such claims under this chapter. Any owner securing the payment of the amount of limited liability by depositing such securities in accordance with the provisions of this paragraph shall be known as a ‘self-insurer.’*

“(b) *The Secretary of Commerce is authorized and empowered to issue from time to time regulations, not contrary to law, for such purposes, and may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.*

“183. INSURANCE NOTICE.—*Every owner of a vessel who has secured payment of the amount of limited liability under the provisions of this chapter shall file proof of such security with the Secretary of Commerce, in accordance with a form prescribed by the Secretary of Commerce, who shall cause a record of the same to be kept,*

stating that such owner has secured the payment of the full amount of his limited liability in accordance with the provisions of this chapter. Such notice shall contain the name and address of the insurance carrier, if any, with whom the owner has secured payment of the amount of limited liability, and the date and expiration of the policy.

“184. SUBSTITUTION OF INSURANCE CARRIER FOR OWNER OF VESSEL.—*In any case where the owner of a vessel is not a self-insurer, in order that the payment for the amount of limited liability imposed by this chapter may be effectively discharged by such owner, and in order that the administration of this chapter in respect of such liability may be facilitated, the Secretary of Commerce shall by regulation provide for the discharge by the insurance carrier for such owner, of such obligations and duties of such owner in respect of such liability, imposed by this chapter upon such owner, as he considers proper in order to effectuate the provisions of this chapter. For such purposes—*

“(1) *Notice to or knowledge of an owner of a vessel of the occurrence of the injury shall be notice to or knowledge to the carrier;*

“(2) *Any court order, finding, or decision shall be binding upon the insurance carrier in the same manner and to the same extent as upon the owner of the vessel.*

“185. INSURANCE POLICIES.—(a) *Every policy or contract of insurance issued under authority of this chapter shall contain—*

“(1) *A provision that insolvency or bankruptcy of the owner of a vessel and/or discharge therein shall not relieve the insurance carrier from payment of the full amount of the limited liability within the provisions of this chapter during the life of such policy or contract.*

“(b) *No contract or policy of insurance issued by an insurance carrier under this chapter shall be canceled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancelation has been sent to the Secretary of Commerce and to the owner of the vessel, nor in any event shall such cancelation or termination of such contract or policy become effective until after such vessel has returned to the port from which it commenced its voyage.*

“186. CERTIFICATE OF COMPLIANCE WITH CHAPTER.—*Every vessel shall be denied clearance from any port of the United States until the owner of the vessel or his agent shall present to the collector of customs a certificate issued by the Secretary of Commerce that the owner of such vessel has complied with the provisions of this chapter requiring the securing of the full amount of limited lia-*

bility. Such compliance shall be made a condition of entry to any of the ports of the United States.

“187. DUTIES OF CUSTOMS OFFICERS.—All collectors, or other chief officers of the customs, and all inspectors within the several districts, shall enforce the provisions of this chapter against all vessels arriving and departing.

“188. PENALTY FOR VIOLATING PROVISIONS.—(a) Every collector, or other chief officer of the customs, or inspector, who negligently or intentionally omits any duty under the two preceding sections, shall be liable to removal from office and to a penalty of \$1,000 for each offense, to be sued for in an action of debt, and to imprisonment for not more than one year.

“(b) The master or other person being in charge of any such vessel and the owner or owners of such vessel which leaves or attempts to leave any port of the United States in violation of any of the provisions of sections 182, 183, 185, and 186 shall, upon conviction, be fined in a sum not more than \$5,000 or imprisonment for not more than one year, or both such fine and imprisonment, and any such fine shall be a lien upon such vessel and such vessel may be libeled therefor in any district court of the United States within the jurisdiction within which such vessel shall arrive or depart, and the leaving or attempting to leave each and every port of the United States shall constitute a separate offense.

[R. S. 4284]

[46 U. S. C., § 184] “189. APPORTIONMENT OF COMPENSATION.—Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, or by any person suffering personal injury or loss of life, on the same voyage, and the **[whole value of the vessel and her freight for the voyage]** amount of limited liability as prescribed in section 178 of this chapter is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; (a) for personal injury or loss of life, under section 178, subdivision (a); and (b) for all other loss or damage, under section 178, subdivision (b); and for that purpose the freighters and owners of the property and the persons suffering injury or loss, and the owner or owners of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

[R. S. 4287]

[46 U. S. C., § 187] "190. REMEDIES RESERVED.—Nothing *therein* **[in the five preceding sections]** shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.

[R. S. 4289]

[46 U. S. C., § 188] "191. LIMITATION OF LIABILITY OF OWNERS APPLIED TO ALL VESSELS.—The provisions of *this chapter* **[the six preceding sections and of sections 175 and 189]** shall apply to all **[seagoing vessels and also to all]** vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

[Act of June 26, 1884, ch. 121, s. 18]

[46 U. S. C., § 189] "192. LIMITATION OF LIABILITY OF OWNERS OF VESSELS FOR DEBTS.—The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole: and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed this value of such vessel and freight pending: *Provided*, That this provision shall not **[affect the liability of any owner incurred previous to the passage of this Act, nor]**\* prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners.

[Harter Act, February 13, 1893, section 1]

[46 U. S. C., § 190] "193. STIPULATIONS RELIEVING FROM LIABILITY FOR NEGLIGENCE.—It shall not be lawful for the manager, agent, master, or owner of any vessel transporting *passengers* or merchandise or property from or between ports of the United States and foreign ports to insert in any *contract of passage* or bill of lading

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\* These words were dropped upon the compilation of the U. S. Code in 1926.

or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for *personal injury or loss of life or for loss or damage to property* arising from negligence, fault, or failure to transport such passengers or other persons to their proper destinations or arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in such contracts of passage or in bills of lading or shipping receipts shall be null and void and of no effect.

[Harter Act, section 2]

[46 U. S. C., § 191] "194. STIPULATIONS RELIEVING FROM EXERCISE OF DUE DILIGENCE IN EQUIPPING VESSELS.—It shall not be lawful for any vessel transporting *passengers or merchandise or property* from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any contract of passage or in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence to properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same and to safely transport such passengers and other persons to their proper destinations, shall in any wise be lessened, weakened, or avoided.

"195. STIPULATIONS LIMITING TIME FOR FILING CLAIMS AND COMMENCING SUIT.—(a) *It shall not be lawful for the manager, agent, master, or owner of any vessel transporting passengers or merchandise or property from or between ports of the United States and foreign ports to insert in any contract of passage, or in any bill of lading or shipping document any clause, covenant, or agreement prescribing a period of less than six months within which notice of claim shall be delivered to the said owner in writing or a period of less than one year within which suit shall be commenced, after the claim arose. Any and all words or clauses of such import inserted in such contracts of passage or in bills of lading or shipping receipts shall be null and void and of no effect.*

"(b) *Failure to give such notice, where lawfully prescribed in such contract, shall not bar any claim under this chapter—*

"(1) *If the owner or master of the vessel or his agent had knowl-*



*edge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by failure to give such notice; nor*

*“(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor*

*“(3) Unless objection to such failure is raised by the owner.*

*“(c) If a person who is entitled to recover under this chapter is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative.*

[Harter Act, section 3]

[46 U. S. C., § 192] “196. LIMITATION OF LIABILITY FOR ERRORS OF NAVIGATION, DANGERS OF THE SEA, AND ACTS OF GOD.—If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall **[become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master]** be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

[Harter Act, section 4]

[46 U. S. C., § 193] “197. BILLS OF LADING TO BE ISSUED; CONTENTS.—It shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping documents, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or

agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

[Harter Act, section 5]

[46 U. S. C., § 194] "198. PENALTIES; LIEN; RECOVERY.—For a violation of any of the provisions of [**the four preceding**] sections 193, 194, 196, and 197, the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading [**herein**] provided for, shall be liable to a fine not exceeding \$2,000. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

[Harter Act, section 6]

[46 U. S. C., § 195. **This act shall not be held to modify or repeal sections 4281, 4282 and 4283 of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners or representatives.**]

[Harter Act, section 7]

[46 U. S. C., § 195] "199. CERTAIN PROVISIONS INAPPLICABLE TO TRANSPORTATION OF LIVE ANIMALS.—Sections [**1 and 4 of this Act**] 193 and 197 shall not apply to the transportation of live animals.

"200. SEPARABILITY.—*If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby.*"

SEC. 2. *Sections 176 to 181 and 189 to 200 of this chapter shall become effective upon the passage of this Act and sections 182 to 188 of this Act shall become effective six months after the passage of this Act.*