

June, 1935

For Information

**THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES**

PENDING BILLS BEFORE CONGRESS

H. R. 7521 } H. R. 8555 }	LIMITATION OF LIABILITY
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The Subsidy Bill, previously introduced on April 15, 1935, by Mr. Bland, has been the subject of extensive hearings, which have been published in parts, and also in one complete volume. The bill has been greatly amended, and there has been added to it a new title—Title X—concerning Limitation of Shipowners' Liability. The bill as amended was re-introduced into the House of Representatives by Mr. Bland on June 19, 1935, as H. R. 8555, and was referred to the Committee on Merchant Marine, Radio and Fisheries, of which he is Chairman. That Committee, which had previously already approved the amended bill, reported it favorably to the House on the next day, June 20, 1935, without further amendment.

The text of Title X and the passage from the Majority Committee Report relating to Title X are printed herewith. The Minority Committee Report is not completely available; the passages now reported do not deal with Title X.

Attention is called to the rather different proposals of the corresponding Senate Subsidy Bill (S. 2582), as amended and favorably reported, the passages of which, in relation to Limitation of Shipowners' Liability, were recently printed as Document No. 210.

Portions of the Sirovich Bill (H. R. 4550), set out in Document No. 197 (February 4, 1935), appear to have been recast into Title X of H. R. 8555, and it seems that H. R. 4550, in its original form, is no longer under consideration.

TITLE X

of H. R. 8555 as amended, re-introduced June 19, 1935, and favorably reported June 20, 1935.

LIMITATION OF SHIPOWNERS' LIABILITY.

SEC. 1001. Section 4283 of the Revised Statutes (U. S. C., title 46, s. 183) is hereby amended to read as follows:

"SEC. 4283. (a) The liability of the owner of any vessel, for any embezzlement, loss, or destruction 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: Provided, That the limitation of the liability of the owner of any sea-going vessel (other than a sea-going tug or barge) in respect of loss of life or bodily injury, as determined under this section, shall not be less than an amount equal to \$60 for each ton of such vessel's tonnage.

"(b) For the purposes of this section and section 4283A the tonnage of such vessel shall be its gross tonnage after deducting therefrom all deductions (except the deduction for engine-room space) prescribed in section 4153, as amended (U. S. C., title 46, sec. 77), for computing the net or register tonnage of vessels built within the United States or owned by a citizen or citizens thereof.

"(c) The owner of any sea-going vessel (other than a sea-going tug or barge) shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

“(d) If there be more than one owner of a sea-going vessel (other than a sea-going tug or barge) the individual liability of any part-owner in respect of loss of life or bodily injury shall be limited, under the conditions provided in this section, as amended, to the proportion of the aggregate amount thereof for which all owners are liable that his individual share of the vessel bears to such aggregate amount ; but this provision shall not prevent any claimant from joining all the owners in one action.

“(e) In respect of loss of life or bodily injury, the privity or knowledge of the master of a sea-going vessel (other than a sea-going tug or barge), or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.”

SEC. 1002. Chapter 6 of Title 48 of the Revised Statutes is amended by inserting after section 4283, as amended, the following new sections :

“SEC. 4283A. The owner of any sea-going vessel or vessels (other than a sea-going tug or barge) documented under the laws of the United States shall carry protection and indemnity insurance, in an amount not less than an amount equal to \$60 for each ton of the tonnage of such vessel or vessels, to insure such owner against any loss, damage, or expense on account of loss of life or bodily injury which such owner shall become liable to pay in respect of such vessel or vessels. Any such owner may be a self-insurer only if such owner shall satisfy the Secretary of Commerce of his financial ability to make compensation for any such loss, damage, or expense, and shall have deposited with the Secretary of Commerce, or in a depository designated by him, an indemnity bond or, at the option of such owner, securities, of such kind and in such amount and subject to such terms and conditions as the Secretary of Commerce may prescribe as sufficient to provide such compensation, but not less than an amount equal

to \$60 for each ton of the tonnage of such owner's largest vessel. In prescribing the kind and amount of any such bond or securities the Secretary of Commerce shall take into consideration the experience of such owner over a representative period in respect of loss of life or bodily injury. The terms and conditions of any such bond or the deposit of any such securities shall include authorization to the Secretary of Commerce to sell any such securities to an amount sufficient to make such compensation, or to bring suit upon such bond for such purpose. The insurance required by this section to be carried by any owner who is not a self-insurer shall be carried in a stock or mutual company or association, or in any person or fund, which is approved by the Secretary of Commerce.

"SEC. 4283B. Every owner subject to the provisions of section 4283A shall file with the Secretary of Commerce proof of compliance therewith. Such proof shall contain the name and address of the insurance carrier or carriers, if any, with which the owner has insured, and the date of expiration of the policy or policies. The Secretary of Commerce shall keep such proof permanently on file.

"SEC. 4283C. Any owner of a sea-going vessel (other than a sea-going tug or barge), within three months after a claimant shall have given or filed written notice of a claim in respect of loss of life or bodily injury, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of section 4283 (a), as amended, and such owner shall deposit, for the benefit of such claimants, with the court, security for the full amount to which liability is prayed to be limited; and the court may approve as such security the undertaking of the insurer provided for in section 4283A of this chapter, or the court shall require such other security as may be satisfactory to the court; and the court may determine the amount of such owner's liability, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such rules prescribed by the United

States Supreme Court as to making persons interested parties to the proceedings, and as to exclusion of any claimants who do not come in within a certain time, and as to the payment of costs and as to all matters of venue and procedure, as the Supreme Court of the United States by rules shall have prescribed or may hereafter prescribe.

“SEC. 4283D. In any case where the owner of a vessel to which the provisions of section 4283A are applicable is not a self-insurer, and for any reason does not petition the court for limitation of liability, the insurance carrier or carriers shall be liable to any claimant or claimants for loss of life or bodily injury in respect of which such owner is liable up to the amount of insurance required to be carried by such owner under section 4283A. Such liability may be enforced by such claimant or claimants against any such insurance carrier in appropriate proceedings brought against such owner and such insurance carrier in the district within the jurisdiction of which such owner has his principal place of business. All such proceedings shall be instituted within eighteen months after the date upon which the act, matter, or thing giving rise to the loss of life or bodily injury, in respect of which the claim is made, occurred. For the purpose of making any such insurance carrier a party to such proceedings the process of the district court for such district may be served in any other district within the jurisdiction of which such insurance carrier is an inhabitant or may be found. Such district court, upon motion duly made, or upon its own motion, may consolidate all proceedings in relation to the same matter instituted under this section, and may provide for giving reasonable notice to all persons who may be interested in such proceedings, and shall give all such persons a reasonable opportunity to become parties thereto. In case that the amount for which the insurance carrier is liable is not sufficient to pay the sums awarded on all claims in relation to the same matter, the court shall provide for the apportionment of such amount among the claimants as if the owner had deposited a like amount in a proceeding for limitation of liability. Jurisdiction is hereby

conferred upon the several district courts of the United States to hear and determine in appropriate proceedings any claim sought to be enforced against any such insurance carrier under this section. For the purpose of such proceedings notice to or knowledge of such owner of the occurrence of the injury shall be deemed notice to or knowledge of such insurance carrier.

“SEC. 4283E. INSURANCE POLICIES.—(a) Every policy or contract of insurance provided for in section 4283A of this chapter shall contain a provision that insolvency or bankruptcy of the owner of the vessel and/or discharge therein shall not relieve the insurance carrier from payment, up to the amount of insurance required to be carried by such owner under section 4283A, of loss, damage, or expense on account of loss of life or bodily injury arising out of any act, matter, or thing occurring during the life of such policy or contract.

“(b) No contract or policy of insurance issued by an insurance carrier under section 4283A of 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 with respect to any vessel become effective until after such vessel has returned to the port from which it commenced its voyage.

“SEC. 4283F. CERTIFICATE OF COMPLIANCE WITH CHAPTER.—Every vessel to which the provisions of section 4283A are applicable 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 sections 4283A and 4283B of this chapter.

“SEC. 4283G. DUTIES OF CUSTOMS OFFICERS.—All collectors, or other chief officers of the customs, and all in-

spectors within the several districts, shall enforce the provisions of section 4283F of this chapter against all vessels to which such section relates clearing from any port of the United States.

“SEC. 4283H. STIPULATIONS LIMITING TIME FOR FILING CLAIMS AND COMMENCING SUIT.—(a) It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than a sea-going tug or barge) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

“(b) Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

“(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the 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 on any such claim 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.”

SEC. 1003. Section 4285 of the Revised Statutes (U. S. C., title 46, sec. 185) is hereby amended to read as follows:

“SEC. 4285. Except as otherwise provided in this chapter, 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.”

SEC. 1004. Section 4289 of the Revised Statutes, as amended (U. S. C., title 46, sec. 188), is hereby amended to read as follows:

“SEC. 4289. Except as otherwise specifically provided therein, the provisions of the fourteen preceding sections and of section 18 of the Act entitled ‘An Act to remove certain burdens on the American Merchant Marine and encourage the American foreign-carrying trade, and for other purposes,’ approved June 26, 1884 (23 Stat. 57; U. S. C., title 46, sec. 189), shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.”

SEC. 1005. Section 4287 of the Revised Statutes (U. S. C., title 46, sec. 187) is hereby repealed.*

SEC. 1006. The provisions of this title shall take effect thirty days after the date of enactment of this Act.

* R. S. 4287, 46 U. S. C. 187, reads: “REMEDIES RESERVED.—Nothing 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.

HOUSE COMMITTEE REPORT

The favorable report of the majority of the House Committee on Merchant Marine, Radio and Fisheries contains the following passage relating to Title X:

"In view of disclosures incident to recent marine disasters the committee was convinced that provision should be made for an all-American crew, except to a limited extent in the steward's department, for a three-watch system for firemen, oilers, water tenders, and sailors, and for a change in the limited liability laws. The committee was convinced that these changes would remove injustices existing in the past and liberalize our laws.

"The change in the law limiting liability modernizes the law and materially increases the amount recoverable for death and personal injury under such a limitation. We confidently believe that the change will result in greater exercise of caution on the part of ship-owners, secure greater care in the selection of their officials, result in stricter personal attention to matters pertaining to safety, afford greater protection to the passengers and personnel, and prove also of great benefit to the merchant marine in raising American standards of safety above those of any other maritime nation."

NOTE.

The following sections of the existing limitation statutes (46 U. S. C. 183-189) would be unchanged if Title X were enacted:

46 U. S. C. 184, R. S. 4284 (Apportionment of compensation).

46 U. S. C. 186, R. S. 4286 (Charterer who mans, victuals and navigates may be deemed owner).

46 U. S. C. 188, R. S. 4289 (Limitation of liability of owners applied to all vessels).

46 U. S. C. 189 (Limitation of liability of owners of vessels for debts).

H. R. 8597

To maintain discipline on shipboard. Introduced by Mr. Bland. An amended form of H. R. 8457.

H. R. 8598

For inspection of vessels handling dangerous cargoes. Introduced by Mr. Bland. An amended form of H. R. 6043.

H. R. 8456 }
H. R. 8599 } "OMNIBUS" SEA SAFETY BILL

H. R. 8456, introduced by Mr. Bland on June 12, 1935, was re-introduced by him, with amendments, on June 22, 1935, as H. R. 8599 and referred to the Committee on Merchant Marine of which Mr. Bland is chairman. The bill now provides for seven supervising inspectors and ten travelling inspectors; for heavy fine and imprisonment for coercing witnesses before the marine casualty investigation boards; for government approval of ship-building and alteration plans.

SPECIAL MEETING—Wednesday, July 10, 1935.

A tentative date has been set for a Special Meeting to consider:

1. Report of Executive Committee on revision of Articles of Association and By-Laws.
2. Discussion of Safety Laws under leadership of the Committee on Safety Laws, Messrs. FARWELL, GOULD and VAN-DEVENTER.
3. Report on draft convention relating to salvage as between vessels and aircraft.

Definite notice will follow.

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