



COMMONWEALTH ACT No. 65

IN ACT TO DECLARE THAT PUBLIC ACT NUMBERED FIVE HUNDRED AND TWENTY-ONE, KNOWN AS "CARRIAGE OF GOODS BY SEA ACT," ENACTED BY THE SEVENTY-FOURTH CONGRESS OF THE UNITED STATES, BE ACCEPTED, AS IT IS HEREBY ACCEPTED BY THE NATIONAL ASSEMBLY

WHEREAS, the Seventy-fourth Congress of the United States enacted Public Act Numbered Five hundred and twenty-one, entitled:

"Carriage of Goods by Sea Act";

WHEREAS, the primordial purpose of the said Acts is to bring about uniformity in ocean bills of lading and to give effect to the Brussels Treaty, signed by the United States with other powers;

WHEREAS, the Government of the United States has left it to the Philippine Government to decide whether or not the said Act shall apply to carriage of goods by sea in foreign trade to and from Philippine ports;

WHEREAS, the said Act of Congress contains advanced legislation, which is in consonance with modern maritime rules and the practices of the great shipping countries of the world;

WHEREAS, shipping companies, shippers, and marine insurance companies, and various chambers of commerce, which are directly affected by such legislation, have expressed their desire that said Congressional Act be made applicable and extended to the Philippines; therefore,

Be it enacted by the National Assembly of the Philippines:

Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: *Provided*, That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application.

Section 2. This Act shall take effect upon its approval.

Approved: October 22, 1936.

An Act Relating to the Carriage of Goods by Sea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of the Act.

TITLE I

Section 1. When used in this Act —

- (a) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) The term "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) The term "goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) The term "ship" means any vessel used for the carriage of goods by sea.
- (e) The term "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

RISKS

Section 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

RESPONSIBILITIES AND LIABILITIES

Section 3. (1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to —

- (a) Make the ship seaworthy;
- (b) Properly man, equip, and supply the ship;
- (c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception carriage and preservation.

(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

(3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things —

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or 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.

(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods: Provided, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3) (a), (b), and (c) of this section: Provided, That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled "An Act relating to bills of lading in interstate and foreign commerce," approved August 29, 1916 (U. S. C. title 49, secs. 81-124), commonly known as the "Pomerene Bills of Lading Act."

(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage or to any person other than the shipper.

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading Provided, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with name or name the names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a "shipped" bill of lading.

(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

RIGHTS AND IMMUNITIES

Section 4. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make to the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under the section.

(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from —

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
- (b) Fire, unless caused by the actual fault or privity of the carrier;
- (c) Perils, dangers, and accidents of the sea or other navigable waters;
- (d) Act of God;
- (e) Act of war,
- (f) Act of public enemies;
- (g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;
- (h) Quarantine restrictions;
- (i) Act or omission of the shipper or owner of the goods, his agent or representative;
- (j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general; *Provided*, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;
- (k) Riots and civil commotions
- (l) Saving or attempting to save life or property at sea;
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (n) Insufficiency of packing;
- (o) Insufficiency of inadequacy of marks;
- (p) Latent defects not discoverable by due diligence; and
- (q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

(3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising from any cause without the act, fault, or neglect of the shipper, his agents, or servants.

(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided*, however, That if the deviation is for the purpose of loading cargo or unloading cargo or passengers it shall, *prima facie*, be regarded as unreasonable.

(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$600 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Provided*, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

(6) Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before

discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

SURRENDER OF RIGHTS AND IMMUNITIES AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

Section 5. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this Act, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this Act shall not be applicable to charter parties; but if bills of lading are issued in the case of a ship under charter party, they shall comply with the terms of this Act. Nothing in this Act shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

SPECIAL CONDITIONS

Section 6. Notwithstanding the provisions of the preceding sections, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling stowage, carriage, custody, care, and discharge of the goods carried by sea: Provided, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect: *Provided*, That this section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other 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 are such as reasonably to justify a special agreement.

Section 7. Nothing contained in this Act shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Section 8. The provisions of this Act shall not affect the rights and obligations of the carrier under the provisions of the Shipping Act, 1916, or under the provisions of section 4281 to 4289, inclusive, of the Revised Statutes of the United States, or of any amendments thereto; or under the provisions of any other enactment for the time being in force relating to the limitation of the liability of the owners of seagoing vessels.

TITLE II

Section 9. Nothing contained in this Act shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either (a) with respect to the right to demand and receive bills of lading subject to the provisions of this Act; or (b) when issuing such bills of lading, either in the surrender of any of the carrier's rights and immunities or in the increase of any of the carrier's responsibilities and liabilities pursuant to section 6, title I, of this Act or (c) in any other way prohibited by the Shipping Act, 1916, as amended.

Section 10. Section 25 of the Interstate Commerce Act is hereby amended by adding the following proviso at the end of paragraph 4 thereof: "Provided, however, That insofar as any bill of lading authorized hereunder relates to the carriage of goods by sea, such bill of lading shall be subject to the provisions of the Carriage of Goods by Sea Act."

Section 11. Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding any thing in this Act, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Section 12. Nothing in this Act shall be construed as superseding any part of the Act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February 13, 1893, or of any other law which would be applicable in the absence of this Act, insofar as they relate to the duties, responsibilities, and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship.

Section 13. This Act shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this Act the term "United States" includes its districts, territories, and possessions: *Provided, however*, That the Philippine legislature may by law exclude its application to transportation to or from ports of the Philippine Islands. The term "foreign trade" means the transportation of goods between the ports of the United States and ports of foreign countries. Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possession: *Provided, however*, That any bill of lading or similar document of title which is evidence of a contract for

the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this Act, shall be subjected hereto as fully as if subject hereto as fully as if subject hereto by the express provisions of this Act: Provided, further, That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea from ports of the United States, in foreign trade, shall contain a statement that it shall have effect subject to the provisions of this Act.

Section 14. Upon the certification of the Secretary of Commerce that the foreign commerce of the United States in its competition with that of foreign nations is prejudiced the provisions, or any of them, of Title I of this Act, or by the laws of any foreign country or countries relating to the carriage of goods by sea, the President of the United States, may, from time to time, by proclamation, suspend any or all provisions of Title I of this Act for such periods of time or indefinitely as may be designated in the proclamation. The President may at any time rescind such suspension of Title I hereof, and any provisions thereof which may have been suspended shall thereby be reinstated and again apply to contracts thereafter made for the carriage of goods by sea. Any proclamation of suspension or rescission of any such suspension shall take effect on a date named therein, which date shall be not less than ten days from the issue of the proclamation.

Any contract for the carriage of goods by sea, subject to the provisions of this Act, effective during any period when title I hereof, or any part thereof, is suspended, shall be subject to all provisions of law now or hereafter applicable to that part of Title I which may have thus been suspended.

Section 15. This Act shall take effect ninety days after the date of its approval; but nothing in this Act shall apply during a period not to exceed one year following its approval to any contract for the carriage of goods by sea, made before the date on which this Act is approved, nor to any bill of lading or similar document of title issued, whether before or after such date of approval in pursuance of any such contract as aforesaid.

Section 16. This Act may be cited as the "Carriage of Goods by Sea Act."

Approved, April 16, 1936.