

MERCANTILE LAW AMENDMENT BILL

AS FURTHER REPORTED FROM THE TRANSPORT COMMITTEE

THIS Bill was recommitted to the Transport Committee on 27 September 1994 for the purpose of considering the amendment to clause 1 proposed by the Minister in charge of the Bill set out on Supplementary Order Paper No. 38.

This Bill was formerly clause 213 of the Maritime Transport Bill, which was divided into separate bills and reported from the Committee of the whole House as follows:

The Maritime Transport Bill, comprising clause 1, Parts I to XVI, Parts XVIII to XXXI, Part XXXIII and the Schedules. This Bill is a consolidation of all maritime legislation and consequentially repeals the Maritime Transport Act 1993 (1993, No. 89).

This Bill, comprising Part XVII.

The Resource Management Amendment Bill, comprising Part XXXII.

The Maritime Transport Bill, as first reported from the Transport Committee, was itself formerly part of the Transport Law Reform Bill. The remainder of the Transport Law Reform Bill was divided and enacted in the previous Parliament as follows:

The Land Transport Act 1993 (1993, No. 88), establishing the Land Transport Safety Authority of New Zealand and providing for the making of rules relating to land transport.

The Maritime Transport Act 1993 (1993, No. 89), establishing the Maritime Safety Authority of New Zealand.

The Civil Aviation Amendment Act 1993 (1993, No. 90), providing for the transfer of the Aviation Security Service to the Civil Aviation Authority of New Zealand.

No. 243—4D

[AS REPORTED FROM THE TRANSPORT COMMITTEE]

House of Representatives, 9 June 1994.

Clauses and Schedules inserted are shown with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 15 September 1994.

[AS FURTHER REPORTED FROM THE TRANSPORT COMMITTEE]

House of Representatives, 13 October 1994.

Words struck out are shown with triple black rule at beginning and after last line; words inserted are shown with triple rule before first line and after last line.

Hon. Maurice Williamson

MERCANTILE LAW AMENDMENT

ANALYSIS

Title	13b. Rights under shipping
1. Short Title and commencement	documents
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A BILL INTITULED

An Act to amend the Mercantile Law Act 1908

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Mercantile Law Amendment Act 1994, and shall be read together with and deemed part of the Mercantile Law Act 1908 (hereinafter referred to as the principal Act).

No. 243—4D

Struck Out

(2) This Act shall come into force on the 1st day of September 1994.

New

(2) This Act shall come into force on a date to be appointed 5
by the Governor-General by Order in Council; and different
dates may be so appointed by one or more Orders in Council
for different provisions and different purposes.

[See note on front page explaining destination of 10
clauses that were formerly part of the Maritime
Transport Bill, as first reported from the Transport
Committee.]

New

213. New sections substituted—The principal Act is 15
hereby amended by repealing section 13, and substituting the
following sections:

“13. **Interpretation**—(1) In this Part of this Act, unless the
context otherwise requires,—

“ ‘Bill of lading’, ‘sea waybill’, and ‘ship’s delivery order’ 20
shall be construed in accordance with section 13A of
this Act:

“ ‘The contract of carriage’, means,—

“(a) In relation to a bill of lading or sea waybill, the
contract contained in or evidenced by that bill or 25
waybill; and

“(b) In relation to a ship’s delivery order, the
contract under or for the purposes of which the
undertaking contained in the order is given:

New

- “ ‘Holder’, in relation to a bill of lading, shall be construed in accordance with **subsection (2)** of this section:
- 5 “ ‘Information technology’ includes any computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form:
- “ ‘Network’ has the same meaning as in section 2 of the Telecommunications Act 1987.
- 10 “(2) References in this Part of this Act to the holder of a bill of lading are references to any of the following persons:
- “ (a) A person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates:
- 15 “ (b) A person with possession of the bill as a result of the completion (by delivery of the bill) of any endorsement of the bill or, in the case of a bearer bill, as a result of any other transfer of the bill:
- 20 “ (c) A person with possession of the bill as a result of any transaction by virtue of which that person would have become a holder under **paragraph (a)** or **paragraph (b)** of this subsection had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to
- 25 possession of the goods to which the bill relates;—
and a person shall be regarded for the purposes of this Act as having become the lawful holder of the bill of lading whenever that person has become the holder of the bill in good faith.
- 30 “(3) References in this Part of this Act to a person’s being identified in a document include references to that person being identified by a description which allows for the identity of that person to be varied, in accordance with the terms of the document, after its issue; and the reference in **section 13A (3) (b)** of this Part of this Act to a document identifying a person shall
- 35 be construed accordingly.
- “ (4) Without prejudice to **section 13B (2)** of this Act, nothing in this Part of this Act shall preclude its operation in relation to a case where the goods to which a document relates—
- 40 “ (a) Cease to exist after the issue of the document; or
“ (b) Cannot be identified (whether because they are mixed with other goods or for any other reason);—

New

and references in this Part of this Act to the goods to which a document relates shall be construed accordingly.

“(5) The Governor-General may, by Order in Council, make regulations for the application of this Part of this Act to cases where a network or other information technology is used for effecting transactions corresponding to— 5

“(a) The issue, endorsement, delivery or other transfer of a document to which this Part of this Act applies; or

“(b) The doing of anything else in relation to such a document. 10

“(6) Regulations made under **subsection (5)** of this section may—

“(a) Make such modifications of the provisions of this Part of this Act as are appropriate in connection with the application of this Part of this Act to any case mentioned in that subsection; and 15

“(b) Contain supplemental, incidental, consequential, and transitional provisions.

“(7) The provisions of this Part of this Act shall have effect without prejudice to the application, in relation to any case, of **section 207** of the Maritime Transport Act 1994. 20

“13A. **Application of Part**—(1) This Part of this Act applies to the following documents:

“(a) Any bill of lading: 25

“(b) Any sea waybill:

“(c) Any ship’s delivery order.

“(2) References in this Act to a bill of lading—

“(a) Do not include references to a document which is incapable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement; but 30

“(b) Subject to **paragraph (a)** of this subsection, include references to a received for shipment bill of lading.

“(3) References in this Act to a sea waybill are references to any document that is not a bill of lading but— 35

“(a) Is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and

“(b) Identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract. 40

New

“(4) References in this Part of this Act to a ship’s delivery order are references to any document that is neither a bill of lading nor a sea waybill, but contains an undertaking that—

5 “(a) Is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and

10 “(b) Is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.

“13B. **Rights under shipping documents**—(1) Subject to this section, a person who becomes—

“(a) The lawful holder of a bill of lading; or

15 “(b) The person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or

20 “(c) The person to whom delivery of the goods to which a ship’s delivery order relates is to be made in accordance with the undertaking contained in the order,—

25 shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him or her all rights of suit under the contract of carriage as if that person had been a party to that contract.

30 “(2) Where a person becomes the lawful holder of a bill of lading when possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him or her by virtue of **subsection (1)** of this section unless that person becomes the holder of the bill—

35 “(a) By virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or

40 “(b) As a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.

New

- “(3) The rights vested in any person by virtue of the operation of **subsection (1)** of this section in relation to a ship’s delivery order—
- “(a) Shall be so vested subject to the terms of the order; and 5
- “(b) Where the goods to which the order relates form a part only of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.
- “(4) Where, in the case of any document to which this Part of this Act applies,— 10
- “(a) A person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but 15
- “(b) **Subsection (1)** of this section operates in relation to that document so that rights of suit in respect of that breach are vested in another person,—
- the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised. 20
- “(5) Where rights are transferred by virtue of the operation of **subsection (1)** of this section in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights that derives— 25
- “(a) Where that document is a bill of lading, from a person’s having been an original party to the contract of carriage; or
- “(b) In the case of any document to which this Act applies, from the previous operation of that subsection in relation to that document;— 30
- but the operation of that subsection shall be without prejudice to any rights which derive from a person’s having been an original party to the contract contained in, or evidenced by, a sea waybill and, in relation to a ship’s delivery order, shall be without prejudice to any rights deriving otherwise than from the previous operation of that subsection in relation to that order. 35
- “13c. **Liabilities under shipping documents**—(1) Where **section 13B (1)** of this Act operates in relation to any document to 40

New

which this Part of this Act applies and the person in whom rights are vested by virtue of that subsection—

5 “(a) Takes or demands delivery from the carrier of any of the goods to which the document relates; or

“(b) Makes a claim under the contract of carriage against the carrier in respect of any of those goods; or

10 “(c) Is a person who, at a time before those rights were vested in him or her, took or demanded delivery from the carrier of any of those goods,—

15 that person shall (by virtue of taking or demanding delivery or making the claim or, in a case to which paragraph (c) of this subsection applies, of having the rights vested in him or her) become subject to the same liabilities under that contract as if that person had been a party to that contract.

20 “(2) Where the goods to which a ship’s delivery order relates form a part only of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this subsection in relation to that order shall exclude liabilities in respect of any goods to which the order does not relate.

25 “(3) This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

Cf. 1908, No. 117, s. 13”

30 [See note on front page explaining destination of clauses and Schedules that were formerly part of the Maritime Transport Bill, as first reported from the Transport Committee.]