

PROPOSED BILL
ON PHILIPPINE CARRIAGE OF PASSENGERS
AND THEIR LUGGAGE BY SEA

A MARITIME LEGISLATION DRAFTING PROJECT
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EXPLANATORY NOTE

The Philippines is an archipelagic state consisting of more than 7,200 islands. Since time immemorial the seas between the islands have served as natural highways that connect the different islands of its vast archipelago. Heavy dependence on water transport as a major means of moving people and cargo is justified on its affordability to the majority of the more than 75 million population. For some far and remote islands crossing the sea is the only mode of transportation by which people can reach the nearest town or city to trade their products and transact other day to day business.

Today, the Philippine international and domestic fleet is composed of more than 10,000 ships of various makes and sizes. Every year sea disasters strike the Philippine maritime industry resulting in loss of lives and property. News report put the official death toll from maritime disasters in the past twelve years at 5,246. In addition the Philippines holds the most number of lives lost in a single maritime disaster during peacetime, the “Dona Paz” tragedy which claimed more than 4,200 lives.

Every time there is a sea disaster in the Philippines it is often accompanied by physical injuries and loss of lives and the victims and relatives of the victims will not only encounter sufferings and loss of their loved ones but will also have to embark into the legal complexities of recovering just compensation without clear cut rules and guidelines. The concerned ship owners on the other hand, will offer amicable settlements, which usually amount to a ridiculous sum of money. The luggage of the passenger is usually totally forgotten or ignored.

This proposed bill therefore which incorporates the Athens Convention Relating to the Carriage of Passengers and their Luggage By Sea, 1974, seek to provide rules and regulations in the maritime transportation in the Philippines, whereby the interest of the passengers and ship owners will be fully protected taking into account the international standards of limits of liabilities of the ship owners and the present state of the shipping industry of the Philippines as a developing country.

It is worth noting that the Legal Committee of the International Maritime Organization (IMO) is on the process of calling an international conference to revise the Athens Conventions Relating to the Carriage of Passengers and their Luggage by Sea, 1974 which would incorporate the following features; strict liability of the ship owner, compulsory insurance and a limit of liability which can go as high to U.S. \$ 600,000.00.

**REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
Metro Manila**

Thirteenth Congress

First Regular Session

**Begun and held in Metro Manila on _____, the _____
day of _____, year two thousand.**

REPUBLIC ACT NO. _____

**“AN ACT ON THE PHILIPPINE CARRIAGE OF
PASSENGERS AND THEIR LUGGAGE”**

**Be it enacted by the Senate and the House of the Representatives
of the Philippines in Congress assembled:**

**Article I
Title**

Section 1 This act shall be known as the “The Philippine Carriage of Passengers
And Their Luggage By Sea Act”.

Article II

Declaration of Policy

Section 2 The policy of the State is hereby declared to be:

- a) To protect and enhance the right of all people to human dignity, reduce social, economic and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good;
- b) To value the dignity of every human person and guarantee full respect of human rights;
- c) To foster the development and regulate merchant marine activities to keep pace with the country's growth and economic development and taking into consideration the active participation of the private sector in the various areas of maritime commerce, industry and development;
- d) To have a merchant marine fleet composed of the best equipped, safest and most suitable types of modern vessels, constructed in the Philippines and manned by well trained and efficient Filipino owners and crew;
- e) To rationalize, integrate and coordinate the various agencies of the Government towards the promotion of safe and efficient transport of goods and people and the upliftment of the quality of standards in shipping operations;
- f) To promote and ensure the safety of life and property at sea, protect and conserve the marine environment and ecology within the country's territorial waters as defined by the 1982 United Nations Law of the Sea Convention, and prevent marine pollution and accident at sea by complying with international standards promulgated by recognized international organizations;
- g) To encourage early and expeditious settlement of disputes in the Philippine maritime industry.

Article III

Interpretation

Section 3 The provisions of this Act should be interpreted liberally in favor of the passenger and in case of doubt the same should always be resolved in favor of the passenger.

Article IV

Definition of Terms

Section 4 The terms as used in this Act, shall have the following meaning, unless the context of the particular usage of the term indicates otherwise:

- a) Cabin Luggage- means luggage which the passenger has in his cabin or otherwise in his possession, custody or control. Except for the application of paragraph i of this Article, and Article VIII, cabin luggage includes luggage, which the passenger has in or on his vehicle.
- b) Carrier-means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by the performing carrier.
- c) Carriage covers the following period;
 - 1. with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, if the cost of such transport is included in the fare or the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in the marine terminal or station of or quay or in or on any other port installation;
 - 2. with regard to cabin luggage, also the period during which the passenger is in the marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or his agent;
 - 3. with regard to the other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent.
- d) Contract of carriage-means a contract made by or on behalf of the carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be.
- e) Domestic Carriage- means any carriage between two places, however short the distance, within the territorial boundaries of the Philippines..
- f) Foreign Flag vessel- means a ship registered under the laws of a State other than the Philippines.
- g) International carriage- means any carriage in which according to the contract of carriage, the place of departure and the place of destination are situated in

two different States, or in a single State if, according to the contract of carriage or schedule of itinerary, there is a port of call in another State.

- h) Loss of or Damage to Luggage- includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried.
- i) Luggage- means any article or vehicle carried by the carrier under a contract of carriage, excluding articles and vehicles carried under a charter party, bill of lading, or other contract primarily concerned with the carriage of goods and live animals.
- j) Passenger- means any person carried in a ship under a contract of carriage or who with the consent of the carrier, accompanies a vehicle or live animals which are covered by the contract for the carriage of goods not covered by this Act or any person who with the consent of the carrier is being carried for free.
- k) Passenger Fund Commission- means the office established in terms of section 24 of Article XIII of this Act.
- l) Performing carrier-means a person other than the carrier, being the owner, charterer or operator of the ship, who actually performs the whole or part of the carriage.
- m) Philippine Flag vessel- shall refer to a ship which is duly registered under Philippine Laws and is owned or controlled or chartered by Philippine citizens or by a corporation or other entity owned or controlled by citizens of the Philippines and is flying the Philippine flag.
- n) Philippine National- means a citizen of the Philippines; or a partnership or association wholly owned by and composed of the citizens of the Philippines or a corporation organized under the laws of the Philippines of which 60% of the capital stock and entitled to vote is owned and held by Philippine citizens. repairs, machine shops, shipping agencies, freight forwarding and similar enterprises.
- o) Philippine Shipping Companies- means Philippine nationals registered and licensed under the laws of the Philippines to engage in the business of overseas and/or domestic water transportation.
- p) Maritime Industry- shall mean all enterprises engaged in the business of managing and/or operating shipping lines, management of ports, stevedoring, custom brokerage and cargo surveys, of ships brokering/chartering, designing, constructing, manufacturing, acquiring, operating, supplying, repairing and or maintaining vessels, or components thereof; of shipyards, dry docks, of providing maritime services such as ship supplies, surveys, ship manning and training, maritime consultancy, ship

repairs, machine shops, shipping agencies, freight forwarding and similar enterprises.

- q) Ship-means a sea going vessel of whatever size and build capable of carrying twenty passengers, luggage and goods.

Article V Application

Section 5 This Act shall apply to any;

- a) international carriage if the ship is a Philippine Flag vessel;
- b) contract of carriage entered into in the Philippines;
- c) contract of carriage whose place of departure or destination is within the Philippine territory;
- d) domestic carriage.

Section 6 Notwithstanding section 5 of this Article, this Act shall not apply when the carriage is subject under any other International Convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention in so far as those provisions of mandatory application to carriage by sea.

Article VI Liability of the Carrier

Section 7 The carrier shall be liable for the damage suffered as a result of or personal injury to a passenger and the loss or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

Section 8 The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage shall lie with the claimant.

Section 9 Fault or neglect on the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage

arose from or in connection with shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In other cases the burden of proving fault or neglect shall lie with the claimant.

Section 10 No action for damages for the death of or personal injury to a passenger or for the loss of or damage to luggage, shall be brought against the carrier or performing carrier other than in accordance with this Act.

Article VII Performing Carrier

Section 11 If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Act. In addition, the performing carrier shall be subjected and entitled to the provisions of this Act for the part of the carriage performed by him.

Section 12 The carrier shall in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants or agents acting within the scope of their employment.

Section 13 Any special agreement under which the carrier assumes obligations not imposed by this Act or any waiver of rights conferred by this Act shall affect the performing carrier only if agreed expressly and in writing.

Section 14 Where, and to the extent that, both the carrier and the performing carrier are liable, their liability shall be joint and several.

Section 15 Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

Article VIII Valuables

Section 16 The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping, in which case the carrier shall be liable up to the limit

provided for in section 25 of Article XII unless a higher limit is agreed upon in accordance with section 26 of Article XIII.

Article IX Contributory Fault

Section 17 If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of the court.

Article X Limit of Liability for Personal Injury

Section 18 The liability of the carrier for death of or personal injury to passenger shall in no case exceed PHP1,500,000.00 per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

Section 19 Where the passenger decides to file an action and the court seized of the case awarded damages to the claimant beyond the amount stated in section 18 of this Article, the Passenger Fund Commission will pay the difference up to the further amount of PHP1,500,000.00. However, if the Fund is satisfied, after investigation, that the ship owner is financially incapable of meeting his obligation under this Act in full, and the insurance is insufficient to satisfy the claims for compensation, the Fund shall pay the claimant in the first instance and without court judgment.

Article XI Limit of Liability for the Loss of or Damage to Luggage

Section 20. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed PHP40,000.00 per passenger per carriage.

Section 21. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed PHP150,000.00 per vehicle per carriage.

Section 22. The liability of the carrier for the loss of or damage to luggage other than those mentioned in section 1 and 2 of this Article shall in no case exceed PHP50,000.00 per passenger per carriage.

Article XII Compromise Agreement and Payment

Section 23 Once the death or the physical injury is satisfactorily established to fall under section 9 of Article VI, or the loss or damage to luggage, the carrier and the passenger or his/her duly authorized representative must in good faith exert all effort to reach a compromise agreement regarding compensation taking into account the limit of liabilities of the carrier in terms of section 18 of Article X and of section 20 of Article XI, and after an agreement is reached the carrier must pay the passenger or his/her duly authorized representative the agreed amount within five working days.

Article XIII Passenger Fund Commission

Section 24 There is hereby created a Passenger Fund Commission, hereinafter referred to as the Commission which will be an attached agency of the Department of Transportation and Communication. It shall be composed of the Passenger Fund Board and the Management.

The Commission shall have a general jurisdiction and control over the planning, collection, coordination and supervision of the distribution and release of funds once an award of the court seize of the case exceeds the limit of liability of the carrier under section 18 of Article X or after investigation it is satisfied that the ship owner is financially incapable of meeting his obligation under this Act and the insurance is insufficient to satisfy the claims for compensation.

The principal office of the Commission shall be in the Greater Manila Area Regional and branch offices may be established at such other place within the Philippines as may be deemed necessary by the Board.

Section 25 The Passenger Fund Board shall be the governing board of the Commission composed of the Secretary of the Department of Transportation and Communication as chairman, two representatives from the Passenger Ship owner's Association, two from the Consumers Association of the Philippines and the Administrator of the Fund as members. The Administrator shall have no voting power.

The Board shall have the following powers, functions, and duties:

- a) To promulgate and prescribe rules and regulations, standards, guidelines and procedures where all Philippine Shipping Companies engaged in the carriage

of passengers and their luggage as defined in section 5 of Article V, will contribute to the fund in according to the number of passengers carried;

- b) To provide comprehensive policy guidance for the planning, collection, investment, coordination and supervision of funds;
- c) To prescribe specific procedures for the release of funds as compensation of successful claimants as determined by the courts;
- d) To approve the organizational structure, staffing pattern and budget of the Commission upon the recommendation of the Administrator;
- e) To perform such other powers, functions and duties as are proper to implement this Act.

Section 26 The Management of the Commission shall be vested in the Fund Administrator who shall be assisted by a Deputy Administrator. They shall be appointed by the President for a term of six years: Provided that upon the expiration of their respective term, they shall continue to serve until their successors shall be appointed and qualified: Provided further that no vacancy shall be filled except for the unexpired portion of the term: Provided, finally that the President may remove the Administrator and Deputy Administrator from office for cause upon recommendation of the Board.

The Fund Administrator and Deputy Administrator shall be citizen of the Philippines, at least thirty five years of age on the date of appointment, of good moral character, of recognized executive ability and competence in previous public or private employment, with adequate training and experience in economics, finance, law, management and other aspects of maritime industry. The Administrator shall receive an annual salary of two hundred fifty thousand pesos (PHP 250,000.00) and a monthly commutable allowance as allowed by law. The Deputy Administrator shall receive an annual salary of two hundred twenty thousand pesos (PHP 230,000.00) and a monthly commutable allowance as allowed by law.

Section 27 Subject to the supervision and control of the Board, the Administrator shall have the following general powers, functions and duties:

- a) To implement, enforce and apply the policies, programs, standards, guidelines and procedures prescribed and adopted by the Board pursuant to this Act;
- b) To undertake researches, studies and other activities and projects, on his own initiatives or upon instructions of the Board and to submit reports, and recommendations to the Board for information and action;
- c) To undertake studies to make the Fund viable and to determine present and future requirements of the Commission;

- d) To manage the affairs of the Commission subject to the provisions of this Act and other applicable laws, orders, rules and regulations of other appropriate government entities.

Article XIV

Supplementary Provisions on Limits of Liability

Section 28 The carrier and the passenger may agree, expressly and in writing, to raise limits of liability above those prescribed in Article X and XI.

Section 29 Interest on damages and legal cost shall not be included in the limits of liability in Article X and XI.

Article XV

Defenses and Limits for Carriers' Servants

Section 30 If an action is brought against a servant or agent of the carrier or of the performing carrier in relation to damage arising from this Act, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defenses and limits of liability which the carrier or the performing carrier is entitled to invoke under this Act.

Article XVI

Aggregation of Claims

Section 31 Where the limits of liability prescribed in Articles X and XI take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

Section 32 In relation to the carriage performed by the performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Act, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to them.

Section 33 In any case where the servant or agent of the carrier or of the performing carrier is entitled under Article XV of this Act, to avail himself of the limits of liability prescribed in Articles X and XI, the aggregate of the amounts

recoverable from the carrier, or the performing carrier as the case maybe and from that servant or agent, shall not exceed those limits.

Article XVII

Loss of Right to Limit of Liability

Section 34 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles X and XI and section 30 of Article XV, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Section 35 The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefits of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article XVIII

Notice of Loss or Damage of Luggage

Section 36 The passenger shall give written notice to the carrier or his agent

- a) in case of apparent damage to luggage:
 - i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - ii) for all other luggage, before or at the time of its re-delivery;
- b) in case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

Section 37 If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

Section 38 The notice in writing need not be given if the condition of luggage has at the time of its receipt been the subject of joint survey or inspection.

Article XIX

Prescription of Actions

Section 39 Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be prescribed after a period of two years.

Section 40 The limitation period shall be calculated as follows:

- a) in the case of personal injury, from the date of disembarkation of the passenger;
- b) in the case of death occurring during carriage, and in the case of personal injury and resulting from death, from the date when the passenger should have disembarked, provided that this period shall not exceed three years from the date of embarkation;
- c) in the case of loss or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

Section 41 The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Act be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

Section 42 Notwithstanding sections 39, 40, and 41 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement between the parties after the cause of action has arisen. The declaration or agreement should be in writing.

Article XX

Competent Jurisdictions

Section 43 Any action arising under this Act shall, at the option of the claimant, be brought before one of the courts listed below:

- a) the court of the place of permanent residence or principal place of business of the defendant, or
- b) the court of the place of departure or that of the destination according to the contract of carriage, or
- c) the court of the domicile or permanent residence of the claimant, or

d) the court where the contract of carriage was made.

Section 44 After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

Article XXI Invalidity of Contractual Provisions

Section 45 Any contractual provisions concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed by this Act, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the options specified in section 43 of Article XX, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Act.

Section 46 Any agreement, contractual provision, waiver of claims or settlement concluded after the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage which involve payment by the carrier to the claimant of a lower amount of money compared to limits contained in this Act shall be null and void.

Article XXII Penal Provisions

Section 47 Any person who shall violate the provisions of this Act, or of the implementing rules and regulations of the Passenger Fund Commission shall be liable to a fine of not less than P. 20,000.00 and not more than P. 100,000.00, or to imprisonment for a period of not less than one nor more than six years, or to both such fine or imprisonment, at the discretion of the court.

Article XXIII Appropriations

Section 48 To carry out the provisions of this Act, there is hereby appropriated the initial sum of five million pesos out of the funds of the National Treasury not otherwise appropriated. Thereafter, the succeeding appropriations of the Commission shall be included in the Annual Appropriations Act.

Article XXIV
Separability Clause

Section 49 If any clause, provision, section or part hereof shall be declared unconstitutional or invalid, such judgment shall not affect, invalidate or impair any other part hereof, but such judgment shall be merely confined to the clause, provision, section or part directly involved in the controversy in which such judgment has been rendered.

Article XXV
Repealing Clause

Section 50 All laws, decrees, executive orders, rules and regulations and other administrative issuances and parts hereof which are inconsistent with the provisions of this Act are hereby modified and/or repealed.

Article XXVI
Effectivity

Section 51 This Act shall take effect fifteen (15) days following its publication in the Official Gazette or any two (2) major newspaper of general circulation, whichever comes earlier.

Approved:

President of the Senate

Speaker of the House of Representatives

President of the Philippines