

AUTHORIZING REDUCED FREIGHT RATES IN CASES OF EMERGENCY

MARCH 1, 1927.—Referred to the House Calendar and ordered to be printed

Mr. NEWTON of Minnesota, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 3286]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3286) to authorize reduced freight rates in cases of emergency, having considered the same, report thereon with amendments and as so amended recommend that it pass.

Amend the bill as follows:

After line 3, page 2, insert the following:

That paragraph (2) of section 3 of the interstate commerce act, as amended, is amended to read as follows:

"(2) No carrier by railroad subject to the provisions of this act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia. Where carriers by railroad are instructed by a shipper or consignor to deliver property transported by such carriers to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 or before the expiration of six months

after final judgment against the carrier in an action against the consignee begun within the period provided in paragraph (3) of section 16. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this paragraph. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 or before the expiration of six months after final judgment against the carrier in an action against the beneficial owner named by the consignee begun within the period provided in paragraph (3) of section 16."

SEC. 2. Paragraph (7) of section 15 of the interstate commerce act, as amended, is amended to read as follows:

"(7) Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

SEC. 3. Paragraphs (11) and (12) of section 20 of the interstate commerce act, as amended, are amended to read as follows:

"(11) That any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within in adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported, shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover

thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value and declaring any such limitation to be unlawful and void shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State, through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days, for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when 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: *Provided, however*, That if the loss, damage, or injury complained of was due to carelessness or negligence while the property was in transit, or occurred while the property was being loaded or unloaded, or was due to delay in transit or in loading or unloading, then no notice of claim or filing of claim shall be required as a condition precedent to recovery: *And provided further*, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this act provided.

"(12) That the common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

SEC. 4. Section 204 of the transportation act, 1920, is amended by adding at the end thereof a new subdivision to read as follows:

"(h) This section shall not be applicable to any carrier which has not, on or before the expiration of sixty days after this subdivision takes effect, filed with the commission a statement, compiled substantially in the manner prescribed in this section, showing the amount claimed to be due such carrier under this section."

SEC. 5. Section 206 of the transportation act, 1920, as amended, is amended by adding at the end thereof a new subdivision to read as follows:

"(j) All actions at law and claims by or on behalf of the United States for the recovery of any charges, or any part thereof, for services rendered during the period of Federal control by any railroad or system of transportation possessed, used, or operated by the President (under the provisions of the Federal control act, or the act of August 29, 1916) shall be begun or made before the expiration of ninety days after this subdivision takes effect, and not after."

SEC. 6. Section 22 of the act entitled "An act relating to bills of lading in interstate and foreign commerce," approved August 29, 1916, is amended to read as follows:

"SEC. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, or upon the shipment being made upon the date therein shown, for damages caused by the nonreceipt by the carrier of all or part of the goods upon or prior to the date therein shown, or their failure to correspond with the description thereof in the bill at the time of its issue."

The amendment reported by this committee is the language of H. R. 12065, known as the Newton omnibus bill, amending the interstate commerce act and the transportation act of 1920. The previous report of this committee on H. R. 12065 is No. 1214. The report of the Senate Committee on Interstate and Foreign Commerce on S. 3286 was made March 9, 1926 (S. Rept. No. 309). A report from the Interstate Commerce Commission on S. 3286 is attached. H. R. 12065 was passed by the House on July 2, 1926, by unanimous consent, and is still before the Senate.

INTERSTATE COMMERCE COMMISSION,
Washington, April 27, 1926.

HON. JAMES S. PARKER,
*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington D. C.*

MY DEAR MR. CHAIRMAN: Under date of April 15, 1926, you requested a report on S. 3286, introduced by Senator Mayfield, entitled "A bill to authorize reduced freight rates in cases of emergency." This bill has had the careful consideration of the legislative committee, and I am authorized by it to make the following report:

S. 3286 proposes to add at the end of paragraph (1) of section 22 of the interstate commerce act a sentence to the effect that nothing in the act shall prevent carriers from giving reduced rates for the transportation of property to or from sections of the country affected by earthquake, flood, fire, famine, or other calamitous visitations "if such reduced rates have first been authorized by order of the commission (with or without a hearing)," and provides further that in such order the commission "shall define such section and shall specify the period during which such reduced rates are to remain in effect."

Under the interstate commerce act carriers have the right to initiate their own rates by the publication and filing of tariffs with the commission not less than 30 days prior to the effective date of such proposed rates. The commission is, however, given authority to permit by order the publication of rates on less than 30 days' notice. In administering the section authorizing it to permit rates on short notice the commission has recognized practically all sorts of emergencies, including all those set forth in S. 3286, and it has been its general practice to issue orders permitting the publication of reduced rates to meet public calamities of

the kind indicated on short notice provided only that a reasonable showing be made by the applicant carrier or carriers that no undue prejudice under section 3 or undue discrimination under section 2 would appear to result. Stated otherwise, carriers now have the right to publish, without any permission from the commission, reduced emergency rates on 30 days' notice for the purposes indicated in the bill, which rates will become effective at the end of the notice given unless suspended by the commission upon an informal showing that some section of the law would be likely to be violated thereby. No instance in which the commission has suspended such rates is now recalled. Further, it has been the practice of the commission to permit emergency rates of the kind covered by the bill on short notice, practically all applications of carriers for authority to publish such rates on short notice having been granted by the commission, though there have been a few instances where it appeared that the carriers were proposing to make reduced rates to one drouth-stricken town or section without making like reduced rates for other sections appearing to suffer to substantially the same extent from drouth, or where the carriers have proposed to publish reduced rates on some such commodity as grain to all of a drouth-stricken area from one grain-producing section reached by their lines but not from another, resulting in a strong presumption that the producers and dealers of the area from which the rates were proposed to be applied would be unduly preferred over producers and dealers in other competing producing areas, to the disadvantage and prejudice of such competing producers and dealers. Such instances have, however, been rare and in practically all cases the commission has granted short notice permission to publish emergency rates for it is only rarely that the question of discrimination has been raised, and in those instances where the issue has been raised the commission has given great weight to the needs of the territory suffering from drouth or other calamity in determining whether or not such rates should be permitted.

Having in mind the above facts, it is not clear that the bill will operate as an aid in obtaining emergency rates to meet situations arising out of calamitous visitations covered by the bill, for there now appears nothing in the act which the commission has construed as preventing such emergency rates, provided no undue discrimination or prejudice would result; and, as the proposed bill does not amend either section 2 or section 3, and as it does not authorize the commission to issue any orders which it does not now have the power to issue, it is not clear that should such bill become law the commission should follow any different practice than it has been following in determining whether or not to grant short-notice authority for the publication of reduced rates in cases where undue prejudice or discrimination presumably would result therefrom.

On the other hand, it is quite possible that the effect of the last three lines of the bill would be to retard rather than aid in the establishment of reduced rates for the purposes stated, inasmuch as that portion of the bill would require the commission in any permissive order which it might enter to define the area affected and to specify the period during which the reduced rates should remain in effect. In order to be in position to do these two things, the commission would have to make some more extended investigation than it now makes and in all probability would not be able to pass as expeditiously upon applications for short-notice permission as it now does. Its practice in the past has been to make only a very general investigation of the facts, feeling that expedition in disposing of such applications should be one of the most important factors in dealing therewith, and in the absence of protests it has been customary to grant such applications based primarily upon the allegations of the applicant made under oath. It is, of course, impossible in advance for the commission to decide precisely what weight it would give to this condition in the bill, but should it have any effect at all it would unquestionably be to retard rather than aid in the prompt granting of applications presented by carriers asking for short-notice authority to publish reduced rates to meet emergencies.

The bill commences with the following words, "To authorize reduced freight rates in cases of emergency." Except for these introductory words, the bill contains no statement of the ends which it is sought to accomplish or the reasons for the proposed legislation. Presumably, however, its purpose is as above assumed to aid in obtaining promptly reduced rates in cases of calamitous visitations such as set forth in the bill, but as above noted it is not clear that the bill would accomplish any such purpose. It is true that in some instances carriers have declined to make reduced rates to meet emergencies either on statutory notice or on short notice because they have felt that the benefits of such reduced rates would not accrue to those actually suffering from the calamity

but would accrue principally to dealers who would ship the commodities needed for relief purposes on reduced rates but absorb all or a part of the reduction in the price charged to the needy purchaser. But that the bill would meet such situations is not clear. Section 22 of the act now authorizes the carriers to make free or reduced rates on passengers or property transported for charitable purposes, and also authorizes free or reduced rates on commodities transported "for the United States, State, or municipal governments." Wherever carriers have expressed reluctance to establish reduced rates on the ground that the benefit would accrue to dealers rather than to those suffering directly from the calamity, the commission has made it a point to call attention to the fact that State or municipal governments are now in position to purchase the necessary commodities needed for relief purposes at point of origin and have them transported at such reduced charges as the carriers are willing to make under authority of section 22, thus obviating the possibility of middlemen absorbing all or a part of the reduction made. It does not appear that the proposed bill would aid in this respect though it would of course directly authorize the application of reduced rates even though the commodities transported be not the property of the Federal, State, or municipal Government. But as stated, the commission has never construed existing law as preventing reduced rates provided no undue discrimination or prejudice results and it does not appear that the proposed bill adds anything to the possibility of obtaining reduced rates to meet emergency situations.

Respectfully submitted.

JOHN J. ESCH
(For Legislative Committee).