

1
 2 INTRODUCED BY *House* BILL NO. *537*
 3 *MUIAR* *Conroy* *TERQUE* *Stagwiller*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 8-812,
 5 R.C.M. 1947, TO REQUIRE CARRIERS TO PAY CLAIMS IN FULL
 6 NOTWITHSTANDING ANY LIMITATION OF LIABILITY CONTAINED IN ANY
 7 CONTRACT; TO AUTHORIZE IMPOSITION OF PUNITIVE DAMAGES WHERE
 8 THE AGGRIEVED SHIPPER SUCCESSFULLY PROSECUTES HIS CLAIM IN
 9 COURT; TO PERMIT CONSIGNEES TO INSPECT PACKAGES; AND TO MAKE
 10 INTRASTATE CARRIERS LIABLE TO THE FULL EXTENT OF LOSSES TO
 11 PROPERTY CARRIED BY THEM."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 8-812, R.C.M. 1947, is amended to
 15 read as follows:

16 "8-812. Liability of inland carriers for loss. Unless
 17 the consignor accompanies the freight and retains exclusive
 18 control thereof, an inland common carrier of property is
 19 liable, from the time that he accepts until he relieves
 20 himself from liability, pursuant to sections 8-414 to 8-417,
 21 ~~for--the-loss-or-injury--thereof~~ to the full actual extent of
 22 the loss, damage or injury to such property from any cause
 23 whatever, except:

24 (1) An inherent defect, vice, weakness, or a
 25 spontaneous action of the property itself;

1 (2) The act of a public enemy of the United States, or
 2 of this state;

3 (3) The act of the law;

4 (4) An irresistible superhuman cause. The liability
 5 exists notwithstanding any limitation of liability or
 6 limitation of the amount of recovery or representation or
 7 agreement as to value in any such receipt or bill of lading,
 8 or in any contract, settlement agreement, rule, regulation
 9 or in any tariff filed with the public service commission;
 10 and any such limitation, without respect to the manner or
 11 form in which it is sought to be made, is hereby declared to
 12 be unlawful and void.

13 Claimant within fifteen (15) days after delivery must
 14 call for an inspection upon any damaged shipment and carrier
 15 must make such inspection within five (5) working days
 16 thereafter. A consignee shall have the right, without
 17 charge, to examine the contents of the package at time of
 18 delivery, provided that inspection is completed without
 19 undue delay.

20 Carriers must promptly acknowledge receipt of each
 21 claim, promptly investigate each claim, and dispose of each
 22 claim within one hundred twenty (120) days from the date of
 23 receipt thereof or provide an explanation for the delay in
 24 disposition, provided that an assertion that the claim is
 25 being investigated shall not constitute sufficient

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1 explanation.

2 In the event a shipper successfully prosecutes a claim
3 for loss under this section, when the carrier has not
4 disposed of the shipper's claim within one hundred twenty
5 (120) days or satisfactorily explained the delay the court
6 exercising jurisdiction over the action may, in its
7 discretion, award punitive damages not to exceed five
8 hundred dollars (\$500)."

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 537

INTRODUCED BY QUILICI, LYNCH, FABREGA, MULAR, CASEY,

TROPILA, TEAGUE, STAIGMILLER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~AMEND SECTION 8-812, R.C.M. 1947, TO~~ REQUIRE CARRIERS TO PAY CLAIMS IN FULL NOTWITHSTANDING ANY LIMITATION OF LIABILITY CONTAINED IN ANY CONTRACT EXCEPT AS HEREIN PROVIDED; TO AUTHORIZE IMPOSITION OF ~~PUNITIVE DAMAGES WHERE THE AGGRIEVED SHIPPER SUCCESSFULLY PROSECUTES HIS CLAIM IN COURT~~ ATTORNEY FEES TO THE SUCCESSFUL PARTY WHERE AN AGGRIEVED CONSIGNEE PREDICATES HIS CLAIM IN PART UPON UNJUSTIFIED DELAY IN INVESTIGATION OF THE SAME; TO PERMIT CONSIGNEES TO INSPECT PACKAGES, ~~AND UNDER CERTAIN CONDITIONS;~~ TO MAKE INTRASTATE CARRIERS LIABLE TO THE FULL EXTENT OF LOSSES TO PROPERTY ~~CARRIED COVERED BY THEM;~~ TO ALLOW RECOURSE TO DELIVERING CARRIERS WHO PAY CONSIGNEES' CLAIMS; AND TO ADOPT APPROPRIATE PROVISIONS OF THE INTERSTATE COMMERCE ACT RELATING TO THOSE SUBJECTS; REPEALING SECTION 8-812, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. There is a new R.C.M. section numbered 8-812.1 that reads as follows:

8-812.1. Liability of inland carriers for loss. Any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in Montana to any other point in Montana, 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 state of Montana 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 Montana to a point in Montana, 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 common carrier, railroad, or transportation company to which such property may be

1 delivered or over whose line or lines such property may pass
 2 within the state of Montana when transported on a through
 3 bill of lading, notwithstanding any limitation of liability
 4 or limitation of the amount of recovery or representation or
 5 agreement as to value in any such receipt or bill of lading,
 6 or in any contract, rule, regulation, or in any tariff filed
 7 with the public service commission; and any such limitation,
 8 without respect to the manner or form in which it is sought
 9 to be made is hereby declared to be unlawful and void,
 10 except:

11 (1) An inherent defect, vice, weakness, or a
 12 spontaneous action of the property itself;

13 (2) The act of a public enemy of the United States, or
 14 of this state;

15 (3) The act of the law;

16 (4) An irresistible superhuman cause; or

17 (5) The act or default of the shipper or owner or for
 18 natural shrinkage.

19 Provided that the provisions hereof respecting
 20 liability for full actual loss, damage or injury,
 21 notwithstanding any limitation of liability or recovery or
 22 representation or agreement or release as to value, and
 23 declaring any such limitation to be unlawful and void, shall
 24 not apply, first, to baggage carried on passenger trains or
 25 buses; second, to property, except ordinary livestock,

1 received for transportation concerning which the carrier
 2 shall have been or shall hereafter be expressly authorized
 3 or required by order of the public service commission to
 4 establish and maintain rates dependent upon the value
 5 declared in writing by the shipper or agreed upon in writing
 6 as the released value of the property, in which case such
 7 declaration or agreement shall have no other effect than to
 8 limit liability and recovery to an amount not exceeding the
 9 value so declared or released, and shall not, so far as
 10 related to values, be held to be a violation of this act;
 11 and any tariff schedule which may be filed with the
 12 commission pursuant to such order shall contain specific
 13 reference thereto and may establish rates varying with the
 14 value so declared and agreed upon; and the commission is
 15 hereby empowered to make such order in cases where rates
 16 dependent upon and varying with declared or agreed values
 17 would, in its opinion, be just and reasonable under the
 18 circumstances and conditions surrounding the transportation.
 19 The term "ordinary livestock" shall include all cattle,
 20 swine, sheep, goats, horses, and mules, except such as are
 21 chiefly valuable for breeding, racing, show purposes, or
 22 other special uses.

23 Provided further, that nothing in this section shall
 24 deprive any holder of such receipt or bill of lading of any
 25 remedy or right of action.

1 Provided further, that it shall be unlawful for any
 2 such receiving or delivering common carrier to provide by
 3 rule, contract, regulation, or otherwise, a shorter period
 4 for the filing of claims than nine months, and for the
 5 institution of suits than two years, such period for
 6 institution of suits to be computed from the date when
 7 notice in writing is given by the carrier to the claimant
 8 that the carrier has disallowed the claim or any part or
 9 parts thereof specified in the notice.

10 Provided further, that for the purpose of this section
 11 and section 8-812.2, the delivering carrier shall be
 12 construed to be the carrier performing the linehaul service
 13 nearest to the point of destination.

14 Provided further, that the liability imposed by this
 15 section shall also apply in the case of property reconsigned
 16 or diverted in accordance with the applicable tariffs filed
 17 as in this part provided.

18 Provided further, that the consignee within fifteen
 19 (15) days after delivery must ask for an inspection of any
 20 damaged shipment and the carrier must make an inspection
 21 within five (5) working days thereafter.

22 Provided further, that the consignee shall have the
 23 opportunity to examine the condition of the package in which
 24 the goods are shipped prior to signing the delivery receipt.

25 Provided further, that the consignee may detain the

1 driver at consignee's expense not to exceed a minimum charge
 2 to be fixed by the public service commission while he
 3 examines the shipment for possible concealed damage. During
 4 such examination, the freight bill may still be noted as to
 5 the extent of the damage or loss, if any. If examination
 6 discloses damage, the examination charge may be included in
 7 the consignee's claim for damage in proportion to the amount
 8 of the claim.

9 Provided further, that carriers must acknowledge
 10 receipt of each claim within thirty (30) days and promptly
 11 investigate each claim, and either pay or decline the claim
 12 within one hundred twenty (120) days from the date of
 13 receipt thereof or provide an explanation for the delay in
 14 disposition. An assertion that the claim is still being
 15 investigated shall not constitute sufficient explanation.

16 Provided further, that in the event a claimant or a
 17 carrier successfully prosecutes or defends a claim for loss
 18 or damage under this section, wherein it is alleged the
 19 carrier has not disposed of the claim within one hundred
 20 twenty (120) days or explained the delay, and providing
 21 further, that the claimant has inquired of the carrier
 22 regarding the delay, in writing, within the one hundred
 23 twenty (120) day period, then the court exercising
 24 jurisdiction may, at its discretion, award reasonable
 25 attorney fees to the successful party but not exceed five

1 hundred dollars (\$500).

2 Section 2. There is a new R.C.M. section numbered
3 8-812.2 that reads as follows:

4 8-812.2 Liability between carriers. The common
5 carrier, railroad, or transportation company issuing such
6 receipt or bill of lading, or delivering such property so
7 received and so transported shall be entitled to recover
8 from the common carrier, railroad, transportation company,
9 on whose line the loss, damage or injury shall have been
10 sustained, the amount of such loss, damage, or injury as it
11 may be required to pay to the owners of such property, as
12 may be evidenced by any receipt, judgment, or transcript
13 thereof, and the amount of any expense reasonably incurred
14 by it in defending any action at law brought by the owners
15 of such property.

16 Section 3. Section 8-812, R.C.M. 1947, is repealed.

-End-

HOUSE BILL NO. 537

INTRODUCED BY QUILICI, LYNCH, FABREGA, MULAR, CASEY,
TROPILA, TEAGUE, STAIGMILLER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~AMEND SECTION 8-812, R.C.M. 1947, TO~~ REQUIRE CARRIERS TO PAY CLAIMS IN FULL NOTWITHSTANDING ANY LIMITATION OF LIABILITY CONTAINED IN ANY CONTRACT EXCEPT AS HEREIN PROVIDED; TO AUTHORIZE IMPOSITION OF ~~PUNITIVE DAMAGES WHERE THE AGGRIEVED SHIPPER SUCCESSFULLY PROSECUTES HIS CLAIM IN COURT~~ ATTORNEY FEES TO THE SUCCESSFUL PARTY WHERE AN AGGRIEVED CONSIGNEE PREDICATES HIS CLAIM IN PART UPON UNJUSTIFIED DELAY IN INVESTIGATION OF THE SAME; TO PERMIT CONSIGNEES TO INSPECT PACKAGES; ~~AND UNDER CERTAIN CONDITIONS~~; TO MAKE INTRASTATE CARRIERS LIABLE TO THE FULL EXTENT OF LOSSES TO PROPERTY CARRIED COVERED BY THEM; TO ALLOW RECOURSE TO DELIVERING CARRIERS WHO PAY CONSIGNEES' CLAIMS; AND TO ADOPT APPROPRIATE PROVISIONS OF THE INTERSTATE COMMERCE ACT RELATING TO THOSE SUBJECTS; REPEALING SECTION 8-812, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. There is a new R.C.M. section numbered 8-812.1 that reads as follows:

8-812.1. Liability of inland carriers for loss. Any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in Montana to any other point in Montana, 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 state of Montana 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 Montana to a point in Montana, 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 common carrier, railroad, or transportation company to which such property may be

1 delivered or over whose line or lines such property may pass
 2 within the state of Montana when transported on a through
 3 bill of lading, notwithstanding any limitation of liability
 4 or limitation of the amount of recovery or representation or
 5 agreement as to value in any such receipt or bill of lading,
 6 or in any contract, rule, regulation, or in any tariff filed
 7 with the public service commission; and any such limitation,
 8 without respect to the manner or form in which it is sought
 9 to be made is hereby declared to be unlawful and void,
 10 except:

11 (1) An inherent defect, vice, weakness, or a
 12 spontaneous action of the property itself;

13 (2) The act of a public enemy of the United States, or
 14 of this state;

15 (3) The act of the law;

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17 (5) The act or default of the shipper or owner or for
 18 natural shrinkage.

19 Provided that the provisions hereof respecting
 20 liability for full actual loss, damage or injury,
 21 notwithstanding any limitation of liability or recovery or
 22 representation or agreement or release as to value, and
 23 declaring any such limitation to be unlawful and void, shall
 24 not apply, first, to baggage carried on passenger trains or
 25 buses; second, to property, except ordinary livestock,

1 received for transportation concerning which the carrier
 2 shall have been or shall hereafter be expressly authorized
 3 or required by order of the public service commission to
 4 establish and maintain rates dependent upon the value
 5 declared in writing by the shipper or agreed upon in writing
 6 as the released value of the property, in which case such
 7 declaration or agreement shall have no other effect than to
 8 limit liability and recovery to an amount not exceeding the
 9 value so declared or released, and shall not, so far as
 10 related to values, be held to be a violation of this act;
 11 and any tariff schedule which may be filed with the
 12 commission pursuant to such order shall contain specific
 13 reference thereto and may establish rates varying with the
 14 value so declared and agreed upon; and the commission is
 15 hereby empowered to make such order in cases where rates
 16 dependent upon and varying with declared or agreed values
 17 would, in its opinion, be just and reasonable under the
 18 circumstances and conditions surrounding the transportation.
 19 The term "ordinary livestock" shall include all cattle,
 20 swine, sheep, goats, horses, and mules, except such as are
 21 chiefly valuable for breeding, racing, show purposes, or
 22 other special uses.

23 Provided further, that nothing in this section shall
 24 deprive any holder of such receipt or bill of lading of any
 25 remedy or right of action.

1 Provided further, that it shall be unlawful for any
 2 such receiving or delivering common carrier to provide by
 3 rule, contract, regulation, or otherwise, a shorter period
 4 for the filing of claims than nine months, and for the
 5 institution of suits than two years, such period for
 6 institution of suits to be computed from the date when
 7 notice in writing is given by the carrier to the claimant
 8 that the carrier has disallowed the claim or any part or
 9 parts thereof specified in the notice.

10 Provided further, that for the purpose of this section
 11 and section 8-812.2, the delivering carrier shall be
 12 construed to be the carrier performing the linehaul service
 13 nearest to the point of destination.

14 Provided further, that the liability imposed by this
 15 section shall also apply in the case of property reconsigned
 16 or diverted in accordance with the applicable tariffs filed
 17 as in this part provided.

18 Provided further, that the consignee within fifteen
 19 (15) days after delivery must ask for an inspection of any
 20 damaged shipment and the carrier must make an inspection
 21 within five (5) working days thereafter.

22 Provided further, that the consignee shall have the
 23 opportunity to examine the condition of the package in which
 24 the goods are shipped prior to signing the delivery receipt.

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1 driver at consignee's expense not to exceed a minimum charge
 2 to be fixed by the public service commission while he
 3 examines the shipment for possible concealed damage. During
 4 such examination, the freight bill may still be noted as to
 5 the extent of the damage or loss, if any. If examination
 6 discloses damage, the examination charge may be included in
 7 the consignee's claim for damage in proportion to the amount
 8 of the claim.

9 Provided further, that carriers must acknowledge
 10 receipt of each claim within thirty (30) days and promptly
 11 investigate each claim, and either pay or decline the claim
 12 within one hundred twenty (120) days from the date of
 13 receipt thereof or provide an explanation for the delay in
 14 disposition. An assertion that the claim is still being
 15 investigated shall not constitute sufficient explanation.

16 Provided further, that in the event a claimant or a
 17 carrier successfully prosecutes or defends a claim for loss
 18 or damage under this section, wherein it is alleged the
 19 carrier has not disposed of the claim within one hundred
 20 twenty (120) days or explained the delay, and providing
 21 further, that the claimant has inquired of the carrier
 22 regarding the delay, in writing, within the one hundred
 23 twenty (120) day period, then the court exercising
 24 jurisdiction may, at its discretion, award reasonable
 25 attorney fees to the successful party but not exceed five

1 hundred dollars (\$500).

2 Section 2. There is a new R.C.M. section numbered
3 8-812.2 that reads as follows:

4 8-812.2 Liability between carriers. The common
5 carrier, railroad, or transportation company issuing such
6 receipt or bill of lading, or delivering such property so
7 received and so transported shall be entitled to recover
8 from the common carrier, railroad, transportation company,
9 on whose line the loss, damage or injury shall have been
10 sustained, the amount of such loss, damage, or injury as it
11 may be required to pay to the owners of such property, as
12 may be evidenced by any receipt, judgment, or transcript
13 thereof, and the amount of any expense reasonably incurred
14 by it in defending any action at law brought by the owners
15 of such property.

16 Section 3. Section 8-812, R.C.M. 1947, is repealed.

-End-

1 HOUSE BILL NO. 537
 2 INTRODUCED BY QUILICI, LYNCH, FABREGA, MULAR, CASEY,
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~AMEND SECTION 8-812,~~
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 11 SUCCESSFUL PARTY WHERE AN AGGRIEVED CONSIGNEE PREDICATES HIS
 12 CLAIM IN PART UPON UNJUSTIFIED DELAY IN INVESTIGATION OF THE
 13 SAME; TO PERMIT CONSIGNEES TO INSPECT PACKAGES; ~~AND~~ UNDER
 14 CERTAIN CONDITIONS; TO MAKE INTRASTATE CARRIERS LIABLE TO
 15 THE FULL EXTENT OF LOSSES TO PROPERTY ~~CARRIED~~ COVERED BY
 16 THEM; TO ALLOW RECOURSE TO DELIVERING CARRIERS WHO PAY
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23 (Strike everything after the enacting clause and insert:)

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 7 loss, damage, or injury to such property caused by it or by
 8 any common carrier, railroad or transportation company to
 9 which such property may be delivered or over whose line or
 10 lines such property may pass within the state of Montana
 11 when transported on a through bill of lading, and no
 12 contract, receipt, rule, regulation or other limitation of
 13 any character whatsoever shall exempt such common carrier,
 14 railroad, or transportation company from the liability
 15 hereby imposed; and any such common carrier, railroad, or
 16 transportation company so receiving property for
 17 transportation from a point in Montana to a point in
 18 Montana, or any common carrier, railroad, or transportation
 19 company delivering said property so received and transported
 20 shall be liable to the lawful holder of said receipt or bill
 21 of lading or to any party entitled to recover thereon,
 22 whether such receipt or bill of lading has been issued or
 23 not, for the full actual loss, damage, or injury to such
 24 property caused by it or by any common carrier, railroad, or
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1 delivered or over whose line or lines such property may pass
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 8 limit liability and recovery to an amount not exceeding the
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 23 opportunity to examine the condition of the package in which
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 10 receipt of each claim within thirty (30) days and promptly
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 15 investigated shall not constitute sufficient explanation.

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 17 carrier successfully prosecutes or defends a claim for loss
 18 or damage under this section, wherein it is alleged the
 19 carrier has not disposed of the claim within one hundred
 20 twenty (120) days or explained the delay, and providing
 21 further, that the claimant has inquired of the carrier
 22 regarding the delay, in writing, within the one hundred
 23 twenty (120) day period, then the court exercising
 24 jurisdiction may, at its discretion, award reasonable
 25 attorney fees to the successful party but not exceed five

1 hundred dollars (\$500).

2 Section 2. There is a new R.C.M. section numbered
3 8-812.2 that reads as follows:

4 8-812.2 Liability between carriers. The common
5 carrier, railroad, or transportation company issuing such
6 receipt or bill of lading, or delivering such property so
7 received and so transported shall be entitled to recover
8 from the common carrier, railroad, transportation company,
9 on whose line the loss, damage or injury shall have been
10 sustained, the amount of such loss, damage, or injury as it
11 may be required to pay to the owners of such property, as
12 may be evidenced by any receipt, judgment, or transcript
13 thereof, and the amount of any expense reasonably incurred
14 by it in defending any action at law brought by the owners
15 of such property.

16 Section 3. Section 8-812, R.C.M. 1947, is repealed.

-End-