

CS FOR HOUSE BILL NO. 371(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 3/23/00

Referred: Labor and Commerce, Resources, Finance

Sponsor(s): REPRESENTATIVE KERTTULA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain passenger vessels transacting business in the state or
2 operating in the marine waters of the state."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 46.03 is amended by adding new sections to read:

5 **Article 6A. Large Passenger Vessels.**

6 **Sec. 46.03.460. Registration requirements.** (a) Each calendar year in which
7 the owner or operator of a large passenger vessel intends to operate, or cause or suffer
8 to be operated, the vessel in the marine waters of the state, the owner or operator of
9 the vessel shall register with the department. The registration shall be completed
10 before any large passenger vessel of the owner or operator enters the marine waters
11 of the state. The registration must include the following information:

12 (1) the vessel owner's business name and, if different, the vessel
13 operator's business name for each large passenger vessel of the owner that is scheduled
14 to be in the marine waters of the state during the calendar year;

1 (2) the postal address, electronic mail address, telephone number, and
2 facsimile number for the principal place of each business identified under (1) of this
3 subsection;

4 (3) the name and address of an agent for service of process for each
5 business identified under (1) of this subsection; the owner and operator shall
6 continuously maintain a designated agent for service of process whenever a large
7 passenger vessel of the owner or operator is in the marine waters of the state, and the
8 agent must be an individual resident of this state, a domestic corporation, or a foreign
9 corporation having a place of business in and authorized to do business in this state;

10 (4) the name or call sign of and Port of Registry for each of the
11 owner's or operator's vessels that is scheduled either to call upon a port in this state
12 or otherwise to be in the marine waters of the state during the calendar year occurring
13 after the date of registration; and

14 (5) other information required by the department by regulation.

15 (b) Registration under (a) of this section must be signed under oath by the
16 owner or operator.

17 **Sec. 46.03.465. Information-gathering requirements.** (a) Owners and
18 operators of large passenger vessels shall, for the time during any calendar month in
19 which they operate, or cause or suffer to be operated, a large passenger vessel in the
20 marine waters of the state, record or cause to be recorded all information necessary to
21 completely report as required by AS 46.03.475.

22 (b) At least once during each calendar month in which a large passenger vessel
23 is present in the marine waters of the state, and more often if required by the
24 department under regulations, the owner and operator of the vessel shall measure
25 visible emissions, excluding condensed water vapor, of the vessel while the vessel is
26 at berth or at anchor in a port of this state. If regulations have been adopted to
27 implement this subsection, the measuring technique used to satisfy the requirement of
28 this subsection must have been approved by the department before the measurement
29 was taken.

30 (c) The department may adopt regulations directing owners and operators of
31 large passenger vessels to quantify and qualify the releases of waterborne pollutants

1 from their vessels into the marine waters of the state.

2 (d) In order to reduce inefficiency and minimize unnecessary duplication, the
3 department shall implement the reporting requirements of this section in a manner
4 designed to coordinate the reporting requirements with other reporting requirements
5 that may be applicable to the same vessels.

6 **Sec. 46.03.470. Record keeping requirements.** An owner or operator subject
7 to AS 46.03.465 shall record the information gathered under that section and shall
8 maintain the records for three years after the date the information was gathered.

9 **Sec. 46.03.475. Reporting requirements.** (a) An owner or operator of a
10 large passenger vessel shall, within 10 days after the end of a calendar month in which
11 the owner or operator has operated, or caused or suffered to be operated, a large
12 passenger vessel in the marine waters of the state, submit to the department a report
13 itemizing, among other matters, the offloading or release of pollutants from that vessel
14 that occurred during the time in the previous calendar month that the vessel was
15 located in the marine waters of the state. The report must

16 (1) include the information required by this section; and

17 (2) contain or include copies of the reports concerning pollutants that
18 are required by the department in the department's enforcement of other provisions of
19 this title.

20 (b) For each release of a pollutant for which reporting is required by
21 regulations adopted under AS 46.03.465(c), except for a release by an emission to
22 ambient air from a stack, the report must describe the

23 (1) location of the release, including latitude and longitude;

24 (2) volume and source of the pollutant released;

25 (3) circumstances surrounding and cause of the release, including a
26 statement as to whether the release was intentional or accidental;

27 (4) environmental damage caused by the release, to the extent the
28 damage can be reasonably identified; and

29 (5) remedial efforts taken to prevent accidental recurrence of the
30 release.

31 (c) For hazardous waste,

1 (1) the report must include a copy of each manifest prepared in
2 accordance with 42 U.S.C. 6921 - 6939a (Subtitle C of the Solid Waste Disposal Act);
3 and

4 (2) if hazardous waste was offloaded from the vessel without a manifest
5 while the vessel was in the marine waters of the state, the report must describe the

6 (A) volume and source of the waste;

7 (B) location of offloading;

8 (C) destination of offloaded waste; and

9 (D) reasons why the waste was offloaded without a manifest.

10 (d) For solid waste and industrial waste, the report must describe

11 (1) for waste offloaded in the marine waters of the state, the weight and
12 composition of the offloaded waste, the location of the offloading, and the destination
13 of the offloaded waste; and

14 (2) the solid waste processing facility or treatment works located on the
15 vessel, the quantity of waste processed by the facility or works during the time in that
16 calendar month that the vessel was in the marine waters of the state, and an
17 explanation of whether any processed waste was released or offloaded while the vessel
18 was in the marine waters of the state.

19 (e) For emissions to ambient air from a stack, the report must include the
20 measurements of visible emissions collected under AS 46.03.465(b) and, if a stack on
21 the vessel is equipped with continuous emission monitors, the recordings printed by
22 the monitors for the time during that month that the vessel was in the marine waters
23 of the state.

24 (f) For sewage, the report must describe treatment works located on the vessel,
25 the quantity of waste processed by the works during the time in that calendar month
26 that the vessel was in the marine waters of the state, and an explanation of whether
27 any treated waste was released or offloaded while the vessel was in the marine waters
28 of the state.

29 (g) For graywater and other wastewater other than sewage, the report must
30 describe the location of offloading if the offloading occurred in the marine waters of
31 the state.

1 (h) For medical waste, the report must generally describe any onboard
 2 treatment and the manner or method of ultimate disposal if the treatment or disposal
 3 occurred while the vessel was in the marine waters of the state.

4 (i) The department may by regulation require an owner or operator to submit
 5 supplemental or additional reports concerning the releases or offloading of pollutants
 6 by large passenger vessels while they are in the marine waters of the state.

7 (j) A record or report submitted under this section shall be signed under
 8 penalty of unsworn falsification by the owner, operator, or a responsible official of the
 9 reporting vessel and must include the following statement: "Based on information and
 10 belief formed after reasonable inquiry, I certify that the statements and information in
 11 and attached to this document are true, accurate, and complete."

12 **Sec. 46.03.480. Penalties.** (a) An owner or operator who fails to comply with
 13 AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause
 14 of action that arose during the time that the owner or operator was out of compliance
 15 with AS 46.03.460.

16 (b) An owner or operator who fails to comply with AS 46.03.460 or a
 17 reporting requirement of AS 46.03.475 is subject to an administrative penalty of not
 18 more than \$50 a day for each day of noncompliance with each requirement as
 19 determined by the commissioner subject to right of appeal to the superior court.

20 (c) In addition to other applicable penalties, a person who fails to comply with
 21 AS 46.03.460 or 46.03.475 or who falsifies a registration or report required by
 22 AS 46.03.460 or 46.03.475 is liable for damages under AS 46.03.760(e).

23 **Sec. 46.03.485. Regulations.** The department may adopt regulations that are
 24 necessary for the implementation of AS 46.03.460 - 46.03.490.

25 **Sec. 46.03.490. Definitions.** In AS 46.03.460 - 46.03.490,

26 (1) "agent for service of process" means an agent upon whom process,
 27 notice, or demand required or permitted by law to be served upon the owner or
 28 operator may be served;

29 (2) "air contaminant" means a substance within the meaning given to
 30 "air contaminant" in either AS 46.03.900 or AS 46.14.990;

31 (3) "ambient air" has the meaning given in AS 46.14.990;

1 (4) "ballast water" means water and suspended matter taken on board
2 a vessel to control or maintain trim, draught, stability, or stresses of the vessel,
3 regardless of how the water and suspended matter are carried;

4 (5) "emission" means a release of one or more pollutants into the
5 atmosphere;

6 (6) "graywater" means galley, bath, and shower water;

7 (7) "hazardous waste" has the meaning given in AS 46.03.900 and
8 includes wastes that meet that definition and have been collected from staterooms,
9 crew quarters, and other passenger or crew accommodations;

10 (8) "large passenger vessel" means a vessel of 300 gross registered tons
11 or greater that is engaged in the carrying of passengers for hire, excluding

12 (A) vessels without berths or overnight accommodations for
13 passengers; and

14 (B) noncommercial vessels, warships, vessels operated by
15 nonprofit entities as determined by the United States Internal Revenue Service,
16 and vessels operated by the state, the United States, or a foreign government;

17 (9) "marine waters of the state" has the meaning given to "waters" in
18 AS 46.03.900 except that it includes only marine waters;

19 (10) "medical waste" includes each of the types of solid waste listed
20 in 42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of
21 the Solid Waste Disposal Act);

22 (11) "offloading" means the removal of pollutants from a large
23 passenger vessel onto or into a controlled storage, processing, or disposal facility or
24 treatment works;

25 (12) "oil" has the meaning given in AS 46.04.900;

26 (13) "pollutant" means air contaminant, ballast water, biological
27 materials, chemical wastes, graywater, hazardous waste, industrial waste, incinerator
28 residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge,
29 solid waste, wrecked or discarded equipment, or any other substance that may alter or
30 tend to alter the chemical, physical, biological, or radiological integrity of the marine
31 waters of the state or the air above or submerged land below the marine waters of the

1 state;

2 (14) "release" means spilling, leaking, pumping, pouring, emitting,
3 emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing
4 of pollutants into the environment, including the abandonment or discarding of bags,
5 containers, and other receptacles containing a pollutant, and without regard to whether
6 the pollutants left the vessel through a discrete conveyance or a nonpoint source;

7 (15) "responsible official" means

8 (A) for a corporation, a president, secretary, treasurer, or vice-
9 president of the corporation in charge of a principal business function, or any
10 other person who performs similar policy or decision-making functions for the
11 corporation, or a duly authorized representative of that person if the delegation
12 of authority to the representative is approved in advance by the department;

13 (B) for a partnership, sole proprietorship, or limited liability
14 company, a general partner, the proprietor, or the manager or managing
15 member, respectively;

16 (16) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312,
17 Water Pollution Control Act);

18 (17) "stack" means a chimney or conduit through which air or air
19 contaminants are emitted into the atmosphere;

20 (18) "vessel" means any form or manner of watercraft, other than a
21 seaplane on the water, whether or not capable of self-propulsion.

22 * **Sec. 2.** AS 46.03.760(e) is amended to read:

23 (e) A person who **falsifies a registration or report required by AS 46.03.460**
24 **or 46.03.475 or who** violates or causes or permits to be violated a provision of
25 AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490**, AS 46.14, or a regulation, a lawful
26 order of the department, or a permit, approval, or acceptance, or term or condition of
27 a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, **46.03.460 -**
28 **46.03.490**, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed
29 by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor
30 more than \$10,000 for each day after that on which the violation continues, and that
31 shall reflect, when applicable,

1 (1) reasonable compensation in the nature of liquidated damages for
2 any adverse environmental effects caused by the violation, that shall be determined by
3 the court according to the toxicity, degradability and dispersal characteristics of the
4 substance discharged, the sensitivity of the receiving environment, and the degree to
5 which the discharge degrades existing environmental quality; for a violation relating
6 to AS 46.14, the court, in making its determination under this paragraph, shall also
7 consider the degree to which the discharge causes harm to persons or property; this
8 paragraph may not be construed to limit the right of parties other than the state to
9 recover for personal injuries or damage to their property;

10 (2) reasonable costs incurred by the state in detection, investigation, and
11 attempted correction of the violation;

12 (3) the economic savings realized by the person in not complying with
13 the requirement for which a violation is charged; and

14 (4) the need for an enhanced civil penalty to deter future
15 noncompliance.