

ACT 217

H.B. NO. 422

A Bill for an Act Relating to Cruise Ships.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DISCHARGES FROM COMMERCIAL PASSENGER VESSELS

§342D-A Definitions. As used in this part:

“Commercial passenger vessel” means a vessel that carries passengers for hire. The term does not include a vessel:

- (1) Authorized to carry fewer than fifty passengers;
- (2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or
- (3) Operated by the United States or a foreign government.

“Discharge” means any release, however caused, from a commercial passenger vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

“Hazardous substance” has the same meaning as defined in section 342D-38.

“Hazardous waste” has the same meaning as defined in section 342J-2.

“Large commercial passenger vessel” means a commercial passenger vessel that provides overnight accommodations for two hundred fifty or more passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

“Marine waters of the State” means those waters between the shoreline of the state and any point three nautical miles from the shoreline of the state.

“Offloading” means the removal of a hazardous substance, hazardous waste, or nonhazardous solid waste from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works.

“Other wastewater” means sewage that is stored in or transferred to a ballast tank or other holding area on the vessel that may not be customarily used for storing sewage.

“Passengers for hire” means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

“Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste.

“Small commercial passenger vessel” means a commercial passenger vessel that provides overnight accommodations for two hundred forty-nine or fewer passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

“Treated sewage” means sewage that meets all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same.

“Untreated sewage” means sewage that is not treated sewage.

“Vessel” means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion.

“Voyage” means a vessel trip to or from one or more ports of call in the state with the majority of the passengers for hire completing the entire vessel trip. A vessel trip involving stops at more than one port of call is considered a single voyage so long as the majority of passengers for hire complete the entire trip.

“Wastewater” shall have the same meaning as “other wastewater”.

§342D-B Prohibited discharges; limitations on discharges. (a) Except as provided in subsection (g), a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.

(b) Except as provided in subsection (g) or section 342D-K, a person shall not discharge wastewater from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than one hundred milligrams per liter or a fecal coliform count greater than forty colonies per one hundred milliliters except that the department, by rule, may adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed forty colonies per one hundred milliliters. Upon submission by the owner or operator of a large commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection for a period of time that ends not later than December 31, 2006. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection.

(c) The department, by rule, may establish numeric or narrative standards for other parameters for wastewater discharged from commercial passenger vessels that are more stringent than the effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same. In adopting rules under this subsection, the department shall consider the best available scientific information on the environmental effects of the regulated discharges, the materials and substances handled on the vessels, vessel movement effects, and the availability of new technologies for wastewater.

(d) Except as provided in subsections (f) and (g) or section 342D-K, a person shall not discharge wastewater from a large commercial passenger vessel into the marine waters of the state unless:

- (1) The vessel is underway and proceeding at a speed of not less than six knots;
- (2) The vessel is at least one nautical mile from the nearest shore, except in areas designated by the department;
- (3) The discharge complies with all applicable vessel effluent standards established under federal and state law; provided that the standards established under federal law may be adopted by rule by the department; and
- (4) The vessel is not in an area where the discharge of wastewater is prohibited.

(e) Except as provided in subsection (g) or section 342D-K, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(f) Subsection (d)(1) and (2) do not apply to a discharge permitted under federal law.

(g) Subsections (a) to (e) do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all

reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

§342D-C Prohibited air emissions. (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.

(b) Except as provided under section 342D-F, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:

- (1) When the ship is maneuvering to or from the dock or anchor;
- (2) In the event of a navigational or safety concern on the ship; or
- (3) In the event of an equipment failure; provided that the cruise line shall upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period.

§342D-D Information-gathering requirements. (a) Except as provided under section 342D-K, the owner or operator of a commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the period of operation in the marine waters of the state, detailing the dates, times, and locations, and the volumes or flow-rates of any discharge of sewage or other wastewater into the marine waters of the state, or the opacity of air emissions.

(b) Except as provided under section 342D-K, while a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall collect routine samples of the vessel's treated sewage and other wastewater that are being discharged into the marine waters of the State with a sampling technique approved by the department before the sample is collected. The number of routine samples for each vessel to be collected under this subsection shall be the greater of two per calendar year or the number of samples required to be collected under federal laws and regulations for sewage or other wastewater discharges.

(c) Except as provided under section 342D-K, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may collect additional samples of the vessel's treated sewage that are being discharged into the marine waters of the State, or monitor the opacity of air emissions.

(d) Except as provided under section 342D-K, the owner or operator of a vessel required to collect samples under subsection (b) shall, as required by the department, have the samples tested. Tests required may include tests for fecal coliform, ammonia, residual chlorine, pH (degree of acidity or alkalinity), chemical oxygen demand, biochemical oxygen demand, total suspended solids, and any other parameters as required by the department. An analytical testing method approved by the department before the testing is conducted shall be used. A laboratory used for testing under this subsection shall agree not to disclose the testing results to any person other than to the department, the United States Coast Guard, or the owner or operator of the vessel.

(e) The owner or operator of a commercial passenger vessel shall pay for all routine sampling under subsection (b), additional sampling under subsection (c), and for the testing of routine samples.

(f) If the owner or operator of a commercial passenger vessel, when complying with another state or federal law that requires substantially equivalent information gathering, has gathered the type of information required under subsection (a), (b), or (d), the owner or operator shall be considered to be in compliance

with that subsection so long as the information is also provided to the department. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

§342D-E Recordkeeping requirements. An owner or operator subject to section 342D-D shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was gathered.

§342D-F Reporting requirements. (a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of section 342D-B shall immediately report that discharge to the department. The report shall not be deemed to be privileged information.

(b) Before operating a commercial passenger vessel in the marine waters of the State, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for:

- (1) Offloading in the state or disposing into the marine waters of the state of nonhazardous solid waste other than sewage; and
- (2) Offloading of hazardous waste or a hazardous substance from the vessel while the vessel is operating in the marine waters of the state to the extent that the offloading is not covered by subsection (d).

(c) Within twenty-one days after the testing required under section 342D-D(d), the owner or operator of a commercial passenger vessel shall submit a written report to the department that contains the measurements required under section 342D-D(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

(d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the laws of the United States to file a report or provide notice of a discharge or offloading of a hazardous waste or hazardous substance that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the state, the owner or operator shall submit to the department a copy of the report or notice within twenty-one days after having provided the report or notice to an agency of the United States.

(e) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage or opacity of air emissions and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the sewage or opacity of air emissions is tested, shall submit to the department a copy of the records.

(f) Upon request of the department, the information required under this section shall be submitted electronically.

(g) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

(h) The requirements of this section are subject to alternative terms and conditions established under section 342D-K.

§342D-G Memorandum of understanding; recognition program. (a) Nothing contained in this part shall prevent the State from:

- (1) Entering into voluntary agreements with any owners or operators of commercial passenger vessels, or their representatives, for the purpose of controlling pollution outside the marine waters of the state; or
 - (2) Adopting pollution controls more stringent than those contained in this part.
- (b) The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law.

§342D-H Exemption for vessels in innocent passage. This part does not apply to a commercial passenger vessel that operates in the marine waters of the state solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the state, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

§342D-I Activities of the department. The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the state:

- (1) Direct in-water monitoring of discharges or releases of sewage and direct monitoring of the opacity of air emissions from those vessels;
- (2) Monitoring and studying of direct or indirect environmental effects of those vessels; and
- (3) Researching ways to reduce effects of those vessels on marine waters and other coastal resources.

§342D-J Fine schedules for illegal discharges. (a) Any person who fails to comply with any requirement of this part shall be subject to the fines established by the department pursuant to subsection (b).

(b) The department shall by rule under chapter 91, establish fines for the failure to comply with any requirement of this part.

§342D-K Alternative terms and conditions of vessel discharges. (a) The department may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if:

- (1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;
- (2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

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- (3) An experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges, and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

(b) Alternative terms and conditions of vessel discharges approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342D-B, 342D-C, and 342D-D for the time period that the department determines to be appropriate.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, that can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

SECTION 4. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)