

SB 5938 - S AMD 216

By Senators Finkbeiner, Spanel

ADOPTED 03/17/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the current
4 financial responsibility laws for vessels are in need of update and
5 revision. The legislature intends that, whenever possible, the
6 standards set for Washington state provide the highest level of
7 protection consistent with other western states and to ultimately
8 achieve a more uniform system of financial responsibility on the
9 Pacific Coast.

10 **Sec. 2.** RCW 88.40.011 and 2000 c 69 s 30 are each amended to read
11 as follows:

12 (~~Unless the context clearly requires otherwise,~~) The definitions
13 in this section apply throughout this chapter unless the context
14 clearly requires otherwise.

15 (1) "Barge" means a vessel that is not self-propelled.

16 (2) "Cargo vessel" means a self-propelled ship in commerce, other
17 than a tank vessel, fishing vessel, or a passenger vessel, of three
18 hundred or more gross tons(~~(, including but not limited to, commercial~~
19 ~~fish processing vessels and freighters)).~~

20 (~~(+2)~~) (3) "Bulk" means material that is stored or transported in
21 a loose, unpackaged liquid, powder, or granular form capable of being
22 conveyed by a pipe, bucket, chute, or belt system.

23 (~~(+3)~~) (4) "Covered vessel" means a tank vessel, cargo vessel, or
24 passenger vessel.

25 (~~(+4)~~) (5) "Department" means the department of ecology.

26 (~~(+5)~~) (6) "Director" means the director of the department of
27 ecology.

1 ~~((6))~~ (7)(a) "Facility" means any structure, group of structures,
2 equipment, pipeline, or device, other than a vessel, located on or near
3 the navigable waters of the state that transfers oil in bulk to or from
4 ~~((a tank))~~ any vessel with an oil carrying capacity over two hundred
5 fifty barrels or pipeline, that is used for producing, storing,
6 handling, transferring, processing, or transporting oil in bulk.

7 (b) A facility does not include any: (i) Railroad car, motor
8 vehicle, or other rolling stock while transporting oil over the
9 highways or rail lines of this state; (ii) retail motor vehicle motor
10 fuel outlet; (iii) facility that is operated as part of an exempt
11 agricultural activity as provided in RCW 82.04.330; (iv) underground
12 storage tank regulated by the department or a local government under
13 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
14 more than three thousand gallons of fuel to a ship that is not a
15 covered vessel, in a single transaction.

16 ~~((7))~~ (8) "Fishing vessel" means a self-propelled commercial
17 vessel of three hundred or more gross tons that is used for catching or
18 processing fish.

19 (9) "Gross tons" means tonnage as determined by the United States
20 coast guard under 33 C.F.R. section 138.30.

21 (10) "Hazardous substances" means any substance listed as of March
22 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted ~~((August 14,~~
23 ~~1989,))~~ under section 101(14) of the federal comprehensive
24 environmental response, compensation, and liability act of 1980, as
25 amended by P.L. 99-499. The following are not hazardous substances for
26 purposes of this chapter:

27 (a) Wastes listed as F001 through F028 in Table 302.4; and

28 (b) Wastes listed as K001 through K136 in Table 302.4.

29 ~~((8) "Inland barge" means any barge operating on the waters of the~~
30 ~~state and certified by the coast guard as an inland barge.~~

31 ~~(9))~~ (11) "Navigable waters of the state" means those waters of
32 the state, and their adjoining shorelines, that are subject to the ebb
33 and flow of the tide and/or are presently used, have been used in the
34 past, or may be susceptible for use to transport intrastate,
35 interstate, or foreign commerce.

36 ~~((10))~~ (12) "Oil" or "oils" means any naturally occurring liquid
37 hydrocarbons at atmospheric temperature and pressure coming from the
38 earth, including condensate and natural gasoline, and any fractionation

1 thereof, including, but not limited to, crude oil, petroleum, gasoline,
2 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
3 other than dredged spoil. Oil does not include any substance listed as
4 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August~~
5 ~~14, 1989,~~) under section 101(14) of the federal comprehensive
6 environmental response, compensation, and liability act of 1980, as
7 amended by P.L. 99-499.

8 (~~(11)~~) (13) "Offshore facility" means any facility located in,
9 on, or under any of the navigable waters of the state, but does not
10 include a facility any part of which is located in, on, or under any
11 land of the state, other than submerged land.

12 (~~(12)~~) (14) "Onshore facility" means any facility any part of
13 which is located in, on, or under any land of the state, other than
14 submerged land, that because of its location, could reasonably be
15 expected to cause substantial harm to the environment by discharging
16 oil into or on the navigable waters of the state or the adjoining
17 shorelines.

18 (~~(13)~~) (15)(a) "Owner or operator" means (i) in the case of a
19 vessel, any person owning, operating, or chartering by demise, the
20 vessel; (ii) in the case of an onshore or offshore facility, any person
21 owning or operating the facility; and (iii) in the case of an abandoned
22 vessel or onshore or offshore facility, the person who owned or
23 operated the vessel or facility immediately before its abandonment.

24 (b) "Operator" does not include any person who owns the land
25 underlying a facility if the person is not involved in the operations
26 of the facility.

27 (~~(14)~~) (16) "Passenger vessel" means a ship of three hundred or
28 more gross tons with a fuel capacity of at least six thousand gallons
29 carrying passengers for compensation.

30 (~~(15)~~) (17) "Ship" means any boat, ship, vessel, barge, or other
31 floating craft of any kind.

32 (~~(16)~~) (18) "Spill" means an unauthorized discharge of oil into
33 the waters of the state.

34 (~~(17)~~) (19) "Tank vessel" means a ship that is constructed or
35 adapted to carry, or that carries, oil in bulk as cargo or cargo
36 residue, and that:

37 (a) Operates on the waters of the state; or

1 (b) Transfers oil in a port or place subject to the jurisdiction of
2 this state.

3 ~~((18))~~ (20) "Waters of the state" includes lakes, rivers, ponds,
4 streams, inland waters, underground water, salt waters, estuaries,
5 tidal flats, beaches and lands adjoining the seacoast of the state,
6 sewers, and all other surface waters and watercourses within the
7 jurisdiction of the state of Washington.

8 **Sec. 3.** RCW 88.40.020 and 2000 c 69 s 31 are each amended to read
9 as follows:

10 (1) Any ~~((inland))~~ barge that transports hazardous substances in
11 bulk as cargo, using any port or place in the state of Washington or
12 the navigable waters of the state shall establish evidence of financial
13 responsibility in the amount of the greater of ~~((one))~~ five million
14 dollars, or ~~((one))~~ three hundred ~~((fifty))~~ dollars per gross ton of
15 such vessel.

16 (2)(a) Except as provided in (b) or (c) of this subsection, a tank
17 vessel that carries oil as cargo in bulk shall demonstrate financial
18 responsibility to pay at least five hundred million dollars. The
19 amount of financial responsibility required under this subsection is
20 one billion dollars after January 1, 2004.

21 (b) The director by rule may establish a lesser standard of
22 financial responsibility for ~~((barges))~~ tank vessels of three hundred
23 gross tons or less. The standard shall set the level of financial
24 responsibility based on the quantity of cargo the ~~((barge))~~ tank vessel
25 is capable of carrying. The director shall not set the standard for
26 ~~((barges))~~ tank vessels of three hundred gross tons or less below that
27 required under federal law.

28 (c) The owner or operator of a tank vessel who is a member of an
29 international protection and indemnity mutual organization and is
30 covered for oil pollution risks up to the amounts required under this
31 section is not required to demonstrate financial responsibility under
32 this chapter. The director may require the owner or operator of a tank
33 vessel to prove membership in such an organization.

34 (3)(a) A cargo vessel or passenger vessel that carries oil as fuel
35 shall demonstrate financial responsibility to pay ~~((the greater of at~~
36 ~~least six hundred dollars per gross ton or five hundred thousand))~~ at
37 least three hundred million dollars.

1 (b) The owner or operator of a cargo vessel or passenger vessel who
2 is a member of an international protection and indemnity mutual
3 organization and is covered for oil pollution risks up to the amounts
4 required under this section is not required to demonstrate financial
5 responsibility under this chapter. The director may require the owner
6 or operator of a cargo vessel or passenger vessel to prove membership
7 in such an organization.

8 (4) A fishing vessel while on the navigable waters of the state
9 must demonstrate financial responsibility in the following amounts:

10 (a) For a fishing vessel carrying predominantly nonpersistent product,
11 one hundred thirty-three dollars and forty cents per incident, for each
12 barrel of total oil storage capacity, persistent and nonpersistent
13 product, on the vessel or one million three hundred thirty-four
14 thousand dollars, whichever is greater; or (b) for a fishing vessel
15 carrying predominantly persistent product, four hundred dollars and
16 twenty cents per incident, for each barrel of total oil storage
17 capacity, persistent product and nonpersistent product, on the vessel
18 or six million six hundred seventy thousand dollars, whichever is
19 greater.

20 (5) The documentation of financial responsibility shall demonstrate
21 the ability of the document holder to meet state and federal financial
22 liability requirements for the actual costs for removal of oil spills,
23 for natural resource damages, and for necessary expenses.

24 ~~((5) The department may by rule set a lesser amount of financial~~
25 ~~responsibility for a tank vessel that meets standards for construction,~~
26 ~~propulsion, equipment, and personnel established by the department.~~
27 ~~The department shall require as a minimum level of financial~~
28 ~~responsibility under this subsection the same level of financial~~
29 ~~responsibility required under federal law.))~~

30 (6) This section shall not apply to a covered vessel owned or
31 operated by the federal government or by a state or local government.

32 **Sec. 4.** RCW 88.40.040 and 2000 c 69 s 33 are each amended to read
33 as follows:

34 (1) ~~((The department shall deny entry to the waters of the state to~~
35 ~~any vessel that does not meet the financial responsibility requirements~~
36 ~~of this chapter)) It is unlawful for any vessel required to have~~
37 ~~financial responsibility under this chapter to enter or operate on~~

1 Washington waters without meeting the requirements of this chapter or
2 rules adopted under this chapter, except when necessary to avoid injury
3 to the vessel's crew or passengers. Any vessel owner or operator that
4 does not meet the financial responsibility requirements of this chapter
5 and any rules prescribed thereunder or the federal oil pollution act of
6 1990 shall be reported by the department to the United States coast
7 guard.

8 (2) The department shall enforce section 1016 of the federal oil
9 pollution act of 1990 as authorized by section 1019 of the federal
10 act."

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11 On page 1, line 2 of the title, after "vessels;" strike the
12 remainder of the title and insert "amending RCW 88.40.011, 88.40.020,
13 and 88.40.040; and creating a new section."

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