

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5938

58th Legislature
2003 Regular Session

Passed by the Senate March 17, 2003
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 9, 2003
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
ENGROSSED SENATE BILL 5938 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5938

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators Finkbeiner and Esser

Read first time 02/21/2003. Referred to Committee on Highways & Transportation.

1 AN ACT Relating to financial responsibility requirements for
2 vessels; amending RCW 88.40.011, 88.40.020, and 88.40.040; and creating
3 a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

5 (~~(+2)~~) (3) "Bulk" means material that is stored or transported in
6 a loose, unpackaged liquid, powder, or granular form capable of being
7 conveyed by a pipe, bucket, chute, or belt system.

8 (~~(+3)~~) (4) "Covered vessel" means a tank vessel, cargo vessel, or
9 passenger vessel.

10 (~~(+4)~~) (5) "Department" means the department of ecology.

11 (~~(+5)~~) (6) "Director" means the director of the department of
12 ecology.

13 (~~(+6)~~) (7)(a) "Facility" means any structure, group of structures,
14 equipment, pipeline, or device, other than a vessel, located on or near
15 the navigable waters of the state that transfers oil in bulk to or from
16 (~~(a tank)~~) any vessel with an oil carrying capacity over two hundred
17 fifty barrels or pipeline, that is used for producing, storing,
18 handling, transferring, processing, or transporting oil in bulk.

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

28 (~~(+7)~~) (8) "Fishing vessel" means a self-propelled commercial
29 vessel of three hundred or more gross tons that is used for catching or
30 processing fish.

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

33 (10) "Hazardous substances" means any substance listed as of March
34 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~(August 14,~~
35 ~~1989,~~) under section 101(14) of the federal comprehensive
36 environmental response, compensation, and liability act of 1980, as
37 amended by P.L. 99-499. The following are not hazardous substances for
38 purposes of this chapter:

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

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

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

5 ~~(9))~~ (11) "Navigable waters of the state" means those waters of
6 the state, and their adjoining shorelines, that are subject to the ebb
7 and flow of the tide and/or are presently used, have been used in the
8 past, or may be susceptible for use to transport intrastate,
9 interstate, or foreign commerce.

10 ~~((10))~~ (12) "Oil" or "oils" means any naturally occurring liquid
11 hydrocarbons at atmospheric temperature and pressure coming from the
12 earth, including condensate and natural gasoline, and any fractionation
13 thereof, including, but not limited to, crude oil, petroleum, gasoline,
14 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
15 other than dredged spoil. Oil does not include any substance listed as
16 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted ~~((August~~
17 ~~14, 1989,))~~ under section 101(14) of the federal comprehensive
18 environmental response, compensation, and liability act of 1980, as
19 amended by P.L. 99-499.

20 ~~((11))~~ (13) "Offshore facility" means any facility located in,
21 on, or under any of the navigable waters of the state, but does not
22 include a facility any part of which is located in, on, or under any
23 land of the state, other than submerged land.

24 ~~((12))~~ (14) "Onshore facility" means any facility any part of
25 which is located in, on, or under any land of the state, other than
26 submerged land, that because of its location, could reasonably be
27 expected to cause substantial harm to the environment by discharging
28 oil into or on the navigable waters of the state or the adjoining
29 shorelines.

30 ~~((13))~~ (15)(a) "Owner or operator" means (i) in the case of a
31 vessel, any person owning, operating, or chartering by demise, the
32 vessel; (ii) in the case of an onshore or offshore facility, any person
33 owning or operating the facility; and (iii) in the case of an abandoned
34 vessel or onshore or offshore facility, the person who owned or
35 operated the vessel or facility immediately before its abandonment.

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

1 (~~(14)~~) (16) "Passenger vessel" means a ship of three hundred or
2 more gross tons with a fuel capacity of at least six thousand gallons
3 carrying passengers for compensation.

4 (~~(15)~~) (17) "Ship" means any boat, ship, vessel, barge, or other
5 floating craft of any kind.

6 (~~(16)~~) (18) "Spill" means an unauthorized discharge of oil into
7 the waters of the state.

8 (~~(17)~~) (19) "Tank vessel" means a ship that is constructed or
9 adapted to carry, or that carries, oil in bulk as cargo or cargo
10 residue, and that:

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

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

14 (~~(18)~~) (20) "Waters of the state" includes lakes, rivers, ponds,
15 streams, inland waters, underground water, salt waters, estuaries,
16 tidal flats, beaches and lands adjoining the seacoast of the state,
17 sewers, and all other surface waters and watercourses within the
18 jurisdiction of the state of Washington.

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

21 (1) Any (~~inland~~) barge that transports hazardous substances in
22 bulk as cargo, using any port or place in the state of Washington or
23 the navigable waters of the state shall establish evidence of financial
24 responsibility in the amount of the greater of (~~one~~) five million
25 dollars, or (~~one~~) three hundred (~~fifty~~) dollars per gross ton of
26 such vessel.

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

32 (b) The director by rule may establish a lesser standard of
33 financial responsibility for (~~barges~~) tank vessels of three hundred
34 gross tons or less. The standard shall set the level of financial
35 responsibility based on the quantity of cargo the (~~barge~~) tank vessel
36 is capable of carrying. The director shall not set the standard for

1 (~~barges~~) tank vessels of three hundred gross tons or less below that
2 required under federal law.

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

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

13 (b) The owner or operator of a cargo vessel or passenger vessel who
14 is a member of an international protection and indemnity mutual
15 organization and is covered for oil pollution risks up to the amounts
16 required under this section is not required to demonstrate financial
17 responsibility under this chapter. The director may require the owner
18 or operator of a cargo vessel or passenger vessel to prove membership
19 in such an organization.

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

22 (a) For a fishing vessel carrying predominantly nonpersistent product,
23 one hundred thirty-three dollars and forty cents per incident, for each
24 barrel of total oil storage capacity, persistent and nonpersistent
25 product, on the vessel or one million three hundred thirty-four
26 thousand dollars, whichever is greater; or (b) for a fishing vessel
27 carrying predominantly persistent product, four hundred dollars and
28 twenty cents per incident, for each barrel of total oil storage
29 capacity, persistent product and nonpersistent product, on the vessel
30 or six million six hundred seventy thousand dollars, whichever is
31 greater.

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

36 (~~(5) The department may by rule set a lesser amount of financial~~
37 ~~responsibility for a tank vessel that meets standards for construction,~~
38 ~~propulsion, equipment, and personnel established by the department.~~

1 ~~The department shall require as a minimum level of financial~~
2 ~~responsibility under this subsection the same level of financial~~
3 ~~responsibility required under federal law.)~~

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

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

8 (1) ~~((The department shall deny entry to the waters of the state to~~
9 ~~any vessel that does not meet the financial responsibility requirements~~
10 ~~of this chapter)) It is unlawful for any vessel required to have~~
11 ~~financial responsibility under this chapter to enter or operate on~~
12 ~~Washington waters without meeting the requirements of this chapter or~~
13 ~~rules adopted under this chapter, except when necessary to avoid injury~~
14 ~~to the vessel's crew or passengers.~~ Any vessel owner or operator that
15 does not meet the financial responsibility requirements of this chapter
16 and any rules prescribed thereunder or the federal oil pollution act of
17 1990 shall be reported by the department to the United States coast
18 guard.

19 (2) The department shall enforce section 1016 of the federal oil
20 pollution act of 1990 as authorized by section 1019 of the federal act.

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