

A BILL BY INITIATIVE

FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA

Be it enacted by the People of the State of Alaska;

* Section 1. Findings and Purpose. (a) The people of Alaska, acting in their legislative capacity, find that passengers traveling to and through Alaska as a result of the extensive cruise ship industry operating in Alaska have a direct and obvious connection with the State of Alaska and cause the State of Alaska and local governments to incur significant costs related to health, safety and other social activities and obligations. These passengers should also contribute their fair share to the costs of the general government of the State of Alaska, as those costs are borne by other visitors to the state and by the residents of the state. There also exists a need to enact a comprehensive passenger ship fee system that will rationalize fees and avoid proliferation of local passenger ship fees in a manner that will adversely impact the cruise ship industry.

(b) The people of Alaska, acting in their legislative capacity, find: (1) that use of gaming or gambling devices within the state is generally prohibited under AS 11.66.200 -11.66.280. However, certain "charitable gaming" is authorized under AS 05.15, conditioned upon the dedication of the net proceeds from such gaming to charitable or civic organizations. Pull tab activity is the most popular and lucrative activity authorized by that chapter. Under AS 05.15.128, the operator of a pull tab operation must ensure that at least 30% of the net proceeds of the operation are disbursed to the charitable or civic organization for which it is operating. Additionally, the distributor of a pull tab game must pay to the state a tax of three percent of an amount equal to the gross receipts less prizes awarded on each series of pull-tabs distributed.

(2) That notwithstanding the general prohibition on gambling within the state, a federal statute purports to permit the use of gambling devices on certain vessels, including cruise ships, while those vessels are operating within the jurisdiction of Alaska. Although, 15 U.S.C. Section 1175, generally prohibits the use of gambling devices in areas within federal jurisdiction, including federal waters, that statute contains an exemption for Alaska. That exemption states that, with respect to a vessel operating in Alaska, "this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board [certain vessels]."

(3) That 15 U.S.C. Section 1175 implicitly recognizes the constitutional impropriety of attempting to authorize gambling within the sovereign jurisdiction of a state without a state's consent. That section defines its applicability to waters "out of the jurisdiction of any particular state." Nonetheless, this new federal law creates a loophole that purports to authorize gambling in waters within the jurisdiction of Alaska.

(4) That under 15 U.S.C. 1175, other exceptions to the general prohibition on gambling require the specific assent, by act of the legislature, of the state in which the vessel is operating. Only in Alaska does federal law purport to permit gambling notwithstanding a general state law to the contrary. Only the Alaska legislature is purportedly prohibited from enacting a state law affecting only matters within the jurisdiction of the state.

(5) That 15 U.S.C. 1175, by legislating in an area reserved by the United States Constitution to the exclusive control of the state, has violated the rights of the State of Alaska.

(6) That many passenger cruise ships operating in waters under the jurisdiction of the state conduct gambling activities in reliance on the federal statute. While the people find that the federal law exceeds appropriate federal authority, the validity of the federal statute has not been tested in court. It is appropriate for the State of Alaska to tax this gambling activity.

(7) Because the operators of other gaming or gambling activities in the state must pay their net proceeds to charitable or civic organizations, it is appropriate that the operators of gambling activities taking place in waters adjacent to the state pay a like amount to the state as a tax so that the state can use the funds to benefit the citizens of the state. Because the

distributors of pull tab games pay a tax to the state, it is also appropriate that the operators of gambling activities taking place in waters adjacent to the state pay a like amount in tax to the state.

(c) The people of Alaska, acting in their legislative capacity, find that cruise ship operations taking place in Alaska were exempted from the apportioned corporate income tax laws in 1997 as a result of a clever lobbying effort mounted by the cruise ship industry. Other industries operating in Alaska pay apportioned income tax as required by law without untoward economic consequences. Subjecting the cruise ship industry to the apportioned income tax requirements previously sanctioned by Alaska law is justified and proper.

(d) The people of Alaska, acting in their legislative capacity, find that cruise ship and other large vessel operations taking place in Alaska have potential for causing significant marine, air and other pollution. Accordingly, a registration and reporting program for large vessels plying the pristine waters of Alaska is deemed necessary to protect the fishing, subsistence and other marine resources that are integral to Alaska residents.

* Section 2. AS 43 is amended by adding a new chapter to read:
Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.

Sec. 43.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water.

Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of \$50 a passenger per voyage.

Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 - 43.52.095. The tax shall be collected and is due and payable to the department

(1) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

Sec. 43.52.040. Disposition of receipts. (a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section and for state-owned port and harbor facilities.

(b) For each sailing of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call \$5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall distribute \$2.50 per passenger to the city and \$2.50 to the borough.

(c) A "Regional Cruise Ship Impact Fund" consisting of 20% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast, Alaska or any other distinctive region of the state directly or indirectly impacted by tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above.

Sec. 43.52.050. Administration. (a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations

for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter .

Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include

(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

* Sec. 3. AS 05, is amended by adding a new chapter to read: Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.

Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities, except those conducted under AS 05.15, in the state.

Sec. AS 05.16.020. Tax on gambling activities not operated under AS 05.15. There is imposed on the operator of a gaming or gambling activities in the state other than those conducted under AS 01.15 a

tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

* Sec. 4. AS 43.20 is amended to repeal Section 3, chapter 35, Session Law of Alaska (1998), and reenacted to read as follows:

Sec. 43.20.021 (a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

* Sec. 5. AS 46.03 is amended by adding new sections to read: Article 6A. Large Passenger Vessels.

Sec. 46.03.460. Registration requirements. Each calendar year in which the owner or operator of a large passenger vessel intends to operate, or cause or allow to be operated, the vessel in the marine waters of the state, the owner or operator of the vessel shall register with the department. The registration shall be completed in a manner and on a form adopted by the department prior to the arrival of the vessel in state waters.

Sec. 46.03.462. Permitting requirements. Each calendar year in which the owner or operator of a large passenger vessel intends to operate, or cause or allow to be operated, the vessel in the marine waters of the state, the owner or operator of the vessel shall apply for and receive a wastewater discharge permit from the department in conformity with AS 46.03.100--110, and other applicable law.

Sec. 46.03.465. Information-gathering requirements. (a) Owners and operators of large passenger vessels shall record or cause to be recorded all information necessary to completely report as required by AS 46.03.475.

(b) At least twice during each calendar month in which a large passenger vessel is present in the marine waters of the state, the owner and operator of the vessel shall measure visible emissions, excluding condensed water vapor, of the vessel while the vessel is at berth or at anchor in a port of this state. The measuring technique and the duration of the measurement used to satisfy the requirement of this subsection must have been approved by the department before the measurement was taken.

(c) The department shall adopt regulations directing owners and operators of large passenger vessels to quantify, qualify and characterize the constituents of waterborne pollutants released from their vessels into the marine waters of the state sufficient to insure compliance with state water quality standards, and to identify the receiving water locations of all discharges.

Sec. 46.03.470. Record keeping requirements. An owner or operator subject to AS 46.03.465 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.

Sec. 46.03.475. Reporting requirements. (a) An owner or operator of a large passenger vessel shall, within 10 days after the end of a calendar month in which the owner or operator has operated, or caused or allowed to be operated, a large passenger vessel in the marine waters of the state, submit to the department a report concerning the offloading or release of pollutants from that vessel that occurred during the previous calendar month. The report shall include all information required by AS 46.03.465, be sufficient to insure compliance with state water and air quality standards and be in a manner and on a form required by the department and must include the following sentence: "Based on information and belief formed after reasonable inquiry, I certify under the penalty of perjury that the statements and information in and attached to this document are true, accurate and complete, and serve to certify that all pollutants offloaded or released meet or exceed all applicable state water and air quality standards or any other applicable state or federal law or regulation."

(b) The information in the report required under this section may be provided by referring to, or including copies of, other reports concerning pollutants that are required by substantially equivalent state or federal reporting requirements.

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

Sec. 46.03.480. Penalty for failing to register, report, keep records or obtain a permit. (a) An owner or operator who fails to comply with AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause of action that arose during the time that the owner or operator was out of compliance with AS 46.03.460.

(b) An owner or operator who fails to comply with AS 46.03.460, AS 46.03.462, AS 46.03.465, AS 46.03.470 or AS 46.03.475 is subject to an administrative penalty of not less than \$500 a day or more than \$5000 a day for each day of noncompliance with each requirement as determined by the commissioner subject to right of appeal to the superior court.

(c) Any permit issued under AS 46.03.462 shall expire when an owner or operator fails to file a report 10 days after required by this chapter.

46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act of duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

Sec. 46.03.485. Regulations. The department shall adopt regulations necessary for the implementation of AS 46.03.460 - 46.03.490.

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

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

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

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

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

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

(6) "graywater" means galley, laundry, bath, and shower water and does not include other wastes or waste streams;

(7) "hazardous substance" has the meaning given in AS 46.03.826;

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

(9) "large passenger vessel" in this chapter means a boat or vessel that is used in the common carriage of passengers in commerce; "large passenger vessel" does not include:

(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government, or;

(C) vessels without berths or overnight accommodations for passengers;

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

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

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

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

(14) "pollutant" means air contaminant, biological materials, chemical wastes, graywater, hazardous substances, hazardous waste, industrial waste, incinerator residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge, solid waste, toxic waste, and wrecked or discarded equipment, except that "pollutant" does not include ballast water, a consumer product in consumer use, or, with respect to offloading, a product that remains capable of being put to the beneficial use for which the product was intended;

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

(16) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312, 31 Water Pollution Control Act);

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

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

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

(e) A person who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5000 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades

existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

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

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

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

* Sec. 6. AS 45.50.474 is repealed and reenacted to read as follows:

Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships. (a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14 point typeface and in a contrasting color calculated to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14 point typeface and in a contrasting color calculated to draw attention to the disclosure.

(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than \$100 for

each violation. In this section, "cruise ship" means a ship that operates at least 72 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

* Sec. 7. Severability. It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

* Sec. 8. Effective Date. This Act takes effect 30 days after enactment.