

## PASSENGER/CRUISE VESSELS

### HAWAIIAN CRUISE TRADE

Section 8109 of Public Law 105-56, approved October 8, 1997, (111 STAT. 1203, 1244), the DOD Appropriations Act for FY 98, provides:

SEC. 8109. From funds made available by this Act for the Maritime Technology Program up to \$ 250,000 shall be made available to assist with a pilot project that will facilitate the transfer of commercial cruise ship shipbuilding technology and expertise to United States yards, utilize the experience and expertise of existing U.S.-flag cruise ship operators, and enable the operation of a U.S.-flag foreign-built cruise ship, and two newly constructed U.S.-flag cruise ships: *Provided*, That a person (including a related person with respect to that person) who, within 18 months after the date of enactment, enters into a binding contract for construction in the United States of two cruise ships, which contract shall provide for the construction of two cruise ships of equal or greater size than the cruise ship being operated by such person on the date of enactment and shall require the delivery of the first cruise ship no later than January 1, 2005, and the second cruise ship no later than January 1, 2008, may document with a coastwise endorsement a cruise ship constructed pursuant to this section and a foreign-built cruise ship otherwise in compliance with 46 U.S.C. 289, 883, and 12106 until such date which is 24 months after the delivery of the second cruise ship or any subsequently delivered cruise ship: *Provided further*, That a person (including a related person with respect to that person) within the meaning of 46 U.S.C. 801 may not operate a U. S.-flag foreign-built cruise ship, or any other cruise ship, in coastwise trade between or among the islands of Hawaii, upon execution of the contract referred to in this section and continuing throughout the life expectancy (as that term is used in 46 U.S.C. App. 1125) of a newly constructed U.S.-flag cruise ship referred to in this section, unless the cruise ship is operated by a person (including a related person with respect to that person) that is operating a cruise ship in coastwise trade between or among the islands of Hawaii on the date of enactment, except if any cruise ship constructed pursuant to this section operates in regular service other than between or among the islands of Hawaii: *Provided further*, That for purposes of this section the term "cruise ship" means a vessel that is at least 10,000 gross tons (as measured under chapter 143 of title 46, United States Code) and has berth or stateroom accommodations for at least 275 passengers: *Provided further*, That for purposes of this section, unless otherwise defined in this section, the term "person" means a corporation, partnership or association the controlling interest of which is owned by citizens of the United States within the meaning of 46 U.S.C. 802(b): *Provided further*, That for purposes of this section the term "related person" means with respect to a person: (1) a holding company, subsidiary, affiliate or association of the

person, and (2) an officer, director, or agent of the person or of an entity referred to in (1): *Provided further*, That none of the funds provided in this or any other Act may be obligated for the tooling to construct or the construction of vessels addressed by this section.

## **FINANCIAL RESPONSIBILITY**

### **FINANCIAL RESPONSIBILITY OF OWNERS AND CHARTERERS FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS (46 App. U.S.C. 817d (2002)).**

(a) **Amount; Method of Establishment.** Each owner or charterer of an American or foreign vessel having berth or stateroom accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the Federal Maritime Commission, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports, in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

- \$20,000 for each passenger accommodation up to and including five hundred; plus
- \$15,000 for each additional passenger accommodation between five hundred and one and one thousand; plus
- \$10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus
- \$5,000 for each passenger accommodation in excess of one thousand five hundred:

Provided, however, That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations. This amount shall be available to pay any judgment for damages, whether in amount less than or more than \$20,000 for death or injury occurring on such voyages to any passenger or other person. Such financial responsibility may be established by any one of, or a combination of, the following methods which is acceptable to the Commission: (1) policies of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility.

(b) **Issuance of Bond when Filed with Commission.** If a bond is filed with the Commission, then such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of**

**Penalties.** Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its discretion shall deem proper.

(d) **Rules and Regulations.** The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984, shall apply with respect to proceedings conducted by the Commission under this section.

(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

**FINANCIAL RESPONSIBILITY FOR INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION (46 App. U.S.C. 817e (2002)).**

(a) **Filing of Information or Bond with Commission.** No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

(b) **Issuance of Bond when Filed with Commission; Amount of Bond.** If a bond is filed with the Commission, such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of Penalties.** Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its

discretion shall deem proper.

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(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

## **LIMITATION OF VESSEL OWNER'S LIABILITY AMOUNT OF LIABILITY (46 App. U.S.C. 183 (2002)).**

(a) **Privity or Knowledge of Owner; Limitation.** The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) **Seagoing Vessels; Losses Not Covered in Full.** In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than \$420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to \$420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) **Tonnage of Seagoing Vessels.** For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) **Loss of Life or Bodily Injury Arising on Distinct Occasions.**

The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) **Privity Imputed to Owner.** In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) **“Seagoing Vessel” Defined.** As used in subsections (b), (c), (d), and (e) of this section and in section 4283A, the term “seagoing vessel” shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended.

(g) **Applicability of Statutory Limitations.** In a suit by any person in which the operator or owner of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, such operator, owner, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

#### **STIPULATIONS LIMITING TIME FOR FILING CLAIMS AND COMMENCING SUIT (46 App. U.S.C. 183b (2002)).**

(a) **Time Periods.** It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) **Claims Not Barred for Failure to Give Notice.** Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satis-

factory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) **Mental Incompetents; Minors; Wrongful Death Actions.** If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: Provided, however, That such appointment be made within three years after the date of such death or injury.

**STIPULATIONS LIMITING LIABILITY FOR NEGLIGENCE INVALID (46 App. U.S.C. 183c (2002)).**

(a) **Unlawful Stipulations.** It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect.

(b)(1) **Contract Limitations Allowed.** Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a crewmember, manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit such liability if the emotional distress, mental suffering, or psychological injury was—

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and such risk was caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator; or

(C) intentionally inflicted by a crewmember or the manager, agent,

master, owner, or operator.

(2) Nothing in this subsection is intended to limit the liability of a crewmember or the manager, agent, master, owner, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

## TAX DEDUCTION FOR CONVENTION ON CRUISE SHIPS

### DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC. EXPENSES (26 U.S.C. 274 (2002)).

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(h) **Attendance at Conventions, etc.**

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(2) *Conventions on Cruise Ships.* In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

(A) the cruise ship is a vessel registered in the United States; and

(B) all ports of call of such cruise ship are located in the United States or in possessions of the United States. With respect to cruises beginning in any calendar year, not more than \$2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) *Definitions.* For purposes of this subsection—

(A) North American Area. The term “North American area” means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise Ship. The term “cruise ship” means any vessel sailing within or without the territorial waters of the United States.

(4) *Subsection to apply to employer as well as to traveler.*

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual. The preceding sentence shall not apply if the amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) *Reporting Requirements.* No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the meeting, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

(i) a schedule of business activities of each day of the meeting,

(ii) the number of hours which the individual attending the meeting attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.

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(m) **Additional Limitations on Travel Expenses.**

(1) *Luxury Water Transportation.*

(A) In General. No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term “per diem amounts” means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

(B) Exceptions. Subparagraph (A) shall not apply to—

(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

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