



1995 ASSEMBLY BILL 495

July 27, 1995 - Introduced by Representatives JOHNSRUD, FREESE, HARSDORF, GRONEMUS, WIRCH, GOETSCH, OTT, BALDUS, KREIBICH, BLACK, HUEBSCH, BOCK, DUEHOLM, CARPENTER, BOYLE, ROBSON, CULLEN, MEYER, OWENS, GARD, KLUSMAN and VRAKAS, cosponsored by Senators RUDE, COWLES, WINEKE, BURKE, CLAUSING, SCHULTZ and MOEN. Referred to Committee on Natural Resources.

1 **AN ACT to renumber and amend** 30.681 (1) (b), 30.681 (2) (b) and 30.681 (2) (d);
2 **to amend** 23.50 (1), 23.65 (1), 144.98, 144.99 and 973.075 (5) (intro.); and **to**
3 **create** 30.50 (3d), 30.681 (1) (b) 2., 30.681 (2) (b) 2., 30.681 (2) (d) 2., 144.78,
4 144.783, 144.985 and 973.075 (1) (d) of the statutes; **relating to:** requiring
5 certain tank vessels to have double hulls or tug escorts, the operation of
6 motorboats for commercial purposes under the intoxicated boating law,
7 prohibiting open burning on vessels operated for commercial purposes,
8 inspecting vessels and providing penalties.

Analysis by the Legislative Reference Bureau

Requiring environmental protection measures for certain tankers

Under federal law, a tank vessel of less than 5,000 gross tons that transports, or is constructed to transport, oil in bulk as cargo, that is delivered on or after January 1, 1994, and that operates in the navigable waters of the United States is required to have a double hull or a double containment system determined by the federal secretary of transportation to be as effective as a double hull for the prevention of a discharge of oil. Under federal law, an oil tank vessel that is delivered before January 1, 1994, and that does not have a double hull or approved double containment system may continue to operate in the navigable waters of the United States until January 1, 2015.

This bill prohibits a tank vessel of less than 5,000 gross tons from transporting oil or hazardous material in bulk on that part of the Mississippi River over which this state has jurisdiction from the northern boundary of the Upper Mississippi River National Wildlife and Fish Refuge to the southernmost point of the Upper

Mississippi River National Wildlife and Fish Refuge in this state unless the tank vessel has a double hull or unless the tank vessel is a barge that is under escort by a tugboat.

Operating a commercial motorboat while intoxicated

Under the current intoxicated boating law, which covers the operation of all motorboats, an operator of a motorboat is in violation of that law if the person's blood alcohol concentration is 0.1% or more by weight of alcohol in the person's blood or 0.1 or more grams of alcohol in 210 liters of the person's breath. This bill changes the blood alcohol concentration for any person who is operating a commercial motorboat to 0.04% or more by weight of alcohol in the person's blood or 0.04 grams or more of alcohol in 210 liters of the person's breath. The bill defines a commercial motorboat as one that is being used to transport property or passengers for hire or that is being used by its operator to earn a livelihood or to gain a profit.

Open burning on commercial vessels

This bill generally prohibits a person from engaging in or permitting open burning on a commercial vessel in the waters of this state. A commercial vessel is a vessel that is used to transport property or persons for hire or used by its operator or owner to earn a livelihood. This bill also authorizes the department of natural resources to board and inspect vessels that are subject to certain environmental laws.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 23.50 (1) of the statutes is amended to read:

2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, penalty assessments, jail assessments, applicable
4 weapons assessments, applicable environmental assessments, applicable wild
5 animal protection assessments, applicable natural resources assessments,
6 applicable fishing shelter removal assessments, applicable snowmobile registration
7 restitution payments and applicable natural resources restitution payments for
8 violations of ss. 77.09, 134.60, 144.421 (2), 144.422 (2), (2m) (c) and (2r), 144.783 (2),
9 146.20 (2) to (5), 147.021, 159.07, 159.08, 159.81, 167.10 (3) and 167.31 (2), subch.
10 VI of ch. 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules
11 promulgated thereunder, violations of rules of the Kickapoo valley governing board

1 under s. 16.21 (7) (k) or violations of local ordinances enacted by any local authority
2 in accordance with s. 23.33 (11) (am) or 30.77.

3 **SECTION 2.** 23.65 (1) of the statutes is amended to read:

4 23.65 (1) When it appears to the district attorney that a violation of s. 134.60,
5 144.421 (2), 144.422 (2), (2m) (c) or (2r), 144.783 (2), 146.20 (2) to (5), 147.021, 159.07,
6 159.08 or 159.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any
7 administrative rule promulgated pursuant thereto, has been committed the district
8 attorney may proceed by complaint and summons.

9 **SECTION 3.** 30.50 (3d) of the statutes is created to read:

10 30.50 (3d) "Commercial motorboat" means a motorboat while it is being
11 operated to transport property or passengers for hire or while it is being used by its
12 operator or owner to earn a livelihood or to gain a profit or both.

13 **SECTION 4.** 30.681 (1) (b) of the statutes is renumbered 30.681 (1) (b) 1. and
14 amended to read:

15 30.681 (1) (b) 1. No person may engage in the operation of a motorboat while
16 the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in
17 his or her blood. No person may engage in the operation of a motorboat while the
18 person has 0.1 grams or more of alcohol in 210 liters of his or her breath. This
19 subdivision does not apply to commercial motorboats.

20 **SECTION 5.** 30.681 (1) (b) 2. of the statutes is created to read:

21 30.681 (1) (b) 2. No person may engage in the operation of a commercial
22 motorboat while the person has a blood alcohol concentration of 0.04% or more by
23 weight of alcohol in his or her blood. No person may engage in the operation of a
24 commercial motorboat while the person has 0.04 grams or more of alcohol in 210
25 liters of his or her breath.

1 **SECTION 6.** 30.681 (2) (b) of the statutes is renumbered 30.681 (2) (b) 1. and
2 amended to read:

3 30.681 (2) (b) 1. No person who has a blood alcohol concentration of 0.1% or
4 more by weight of alcohol in his or her blood may cause injury to another person by
5 the operation of a motorboat. No person who has 0.1 grams or more of alcohol in 210
6 liters of his or her breath may cause injury to another person by the operation of a
7 motorboat. This subdivision does not apply to commercial motorboats.

8 **SECTION 7.** 30.681 (2) (b) 2. of the statutes is created to read:

9 30.681 (2) (b) 2. No person who has a blood alcohol concentration of 0.04% or
10 more by weight of alcohol in his or her blood may cause injury to another person by
11 the operation of a commercial motorboat. No person who has 0.04 grams or more of
12 alcohol in 210 liters of his or her breath may cause injury to another person by the
13 operation of a commercial motorboat.

14 **SECTION 8.** 30.681 (2) (d) of the statutes is renumbered 30.681 (2) (d) 1. and
15 amended to read:

16 30.681 (2) (d) 1. In an action under this subsection for a violation of the
17 intoxicated boating law where the defendant was operating a motorboat that is not
18 a commercial motorboat, the defendant has a defense if he or she proves by a
19 preponderance of the evidence that the injury would have occurred even if he or she
20 had been exercising due care and he or she had not been under the influence of an
21 intoxicant or did not have a blood alcohol concentration of 0.1% or more by weight
22 of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her
23 breath.

24 **SECTION 9.** 30.681 (2) (d) 2. of the statutes is created to read:

1 30.681 **(2)** (d) 2. In an action under this subsection for a violation of the
2 intoxicated boating law where the defendant was operating a commercial motorboat,
3 the defendant has a defense if he or she proves by a preponderance of the evidence
4 that the injury would have occurred even if he or she had been exercising due care
5 and he or she had not been under the influence of an intoxicant or did not have a blood
6 alcohol concentration of 0.04% or more by weight of alcohol in his or her blood or 0.04
7 grams or more of alcohol in 210 liters of his or her breath.

8 **SECTION 10.** 144.78 of the statutes is created to read:

9 **144.78 Environmental protection requirements for tank vessels. (1)**

10 DEFINITIONS. In this section:

11 (a) "Discharge" has the meaning given in s. 144.76 (1) (a).

12 (b) "Double hull" has the meaning given in 33 CFR 157.03 (kk).

13 (c) "Hazardous material" has the meaning given in 46 USC 2101 (14).

14 (d) "Oil" means hydrocarbon, vegetable or mineral oil of any kind or in any form
15 and includes oil mixed with wastes other than dredged spoil.

16 (e) "Tank vessel" means a vessel that is constructed or adapted to carry, or that
17 carries, oil or hazardous material in bulk as cargo or cargo residue.

18 **(2) PROHIBITION.** (a) Except as provided in par. (b) or (c), no tank vessel of under
19 5,000 gross tons may transport oil or hazardous material on that part of the
20 Mississippi River over which this state has jurisdiction from the northern boundary
21 of the Upper Mississippi River National Wildlife and Fish Refuge to the
22 southernmost point of the Upper Mississippi River National Wildlife and Fish
23 Refuge in this state unless the tank vessel has a double hull.

24 (b) Paragraph (a) does not apply to a tank vessel when the tank vessel and its
25 crew are in danger due to extreme weather conditions.

1 (c) Paragraph (a) does not apply to a self-propelled tank barge or an unmanned
2 tank barge that is propelled by a towing vessel if the barge is under escort by a
3 tugboat.

4 **(3) PENALTIES.** (a) Except as provided under par. (b), any person who owns or
5 controls the movement of a tank vessel violating sub. (2) shall be required to forfeit
6 not less than \$5,000 nor more than \$10,000.

7 (b) Any person who owns or controls the movement of a tank vessel violating
8 sub. (2) and who, within 5 years before the commission of the current violation, was
9 previously convicted of violating sub. (2) shall be fined not less than \$10,000 nor more
10 than \$25,000 or imprisoned for not more than 6 months or both.

11 (c) In addition to any penalty under par. (a) or (b), any person who owns or
12 controls the movement of a tank vessel violating sub. (2) from which oil or a
13 hazardous material is discharged shall be required to forfeit triple the amount of the
14 damage to the environment.

15 **SECTION 11.** 144.783 of the statutes is created to read:

16 **144.783 Open burning on commercial vessels.** (1) **DEFINITIONS.** In this
17 section:

18 (a) "Commercial vessel" means a vessel that is operated to transport property
19 or passengers for hire or used by its operator or owner to earn a livelihood.

20 (b) "Open burning" means burning from which the products of combustion are
21 emitted directly into the ambient air.

22 **(2) PROHIBITION.** No person may engage in or permit open burning on a
23 commercial vessel in the waters of the state, except that this subsection does not
24 apply to cooking food on a grill designed specifically for cooking.

1 **(3) CITATIONS.** The department may follow the procedures for the issuance of
2 a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

3 **(4) PENALTY.** Any person who violates sub. (2) shall be required to forfeit no less
4 than \$100 nor more than \$500.

5 **SECTION 12.** 144.98 of the statutes is amended to read:

6 **144.98 Enforcement; duty of department of justice; expenses.** The
7 attorney general shall enforce this chapter, except ss. 144.421 ~~and~~, 144.422 and
8 144.783, and all rules, special orders, licenses, plan approvals and permits of the
9 department, except those promulgated or issued under ss. 144.421 ~~and~~, 144.422 and
10 144.783. The circuit court for Dane county or for any other county where a violation
11 occurred in whole or in part has jurisdiction to enforce this chapter or the rule, special
12 order, license, plan approval or permit by injunctive and other relief appropriate
13 for enforcement. For purposes of this proceeding where this chapter or the rule,
14 special order, license, plan approval or permit prohibits in whole or in part any
15 pollution, a violation is deemed a public nuisance. The expenses incurred by the
16 department of justice in assisting with the administration of this chapter shall be
17 charged to the appropriation made by s. 20.370 (2) (ma).

18 **SECTION 13.** 144.985 of the statutes is created to read:

19 **144.985 Inspecting vessels.** An employe or agent of the department may
20 board and inspect any vessel that is subject to this chapter to determine the state of
21 compliance with this chapter.

22 **SECTION 14.** 144.99 of the statutes is amended to read:

23 **144.99 Penalties.** Any person who violates this chapter, except ss. 144.30 to
24 144.426, 144.48 (4) (b), 144.78 (2), 144.783 (2), 144.941 to 144.944 and 144.96 (1), or
25 any rule promulgated or any plan approval, license or special order issued under this

1 chapter, except under those sections, shall forfeit not less than \$10 nor more than
2 \$5,000, for each violation. Each day of continued violation is a separate offense.
3 While the order is suspended, stayed or enjoined, this penalty does not accrue.

4 **SECTION 15.** 973.075 (1) (d) of the statutes is created to read:

5 973.075 (1) (d) A tank vessel that violates s. 144.78 (2) that is owned by a person
6 who, within 5 years before the commission of the current violation, was previously
7 convicted of violating s. 144.78 (2), but if the tank vessel is encumbered by a bonafide
8 perfected security interest that was perfected before the date of the commission of
9 the current violation and the holder of the security interest neither had knowledge
10 of nor consented to the commission of that violation, the holder of the security
11 interest shall be paid from the proceeds of the forfeiture.

12 **SECTION 16.** 973.075 (5) (intro.) of the statutes is amended to read:

13 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
14 with due provision for the rights of innocent persons under sub. (1) (b) 1. to 3 and (d).
15 Any property seized but not forfeited shall be returned to its rightful owner. Any
16 person claiming the right to possession of property seized may apply for its return
17 to the circuit court for the county in which the property was seized. The court shall
18 order such notice as it deems adequate to be given the district attorney and all
19 persons who have or may have an interest in the property and shall hold a hearing
20 to hear all claims to its true ownership. If the right to possession is proved to the
21 court's satisfaction, it shall order the property returned if:

22 **SECTION 17. Nonstatutory provisions.**

23 (1) LEGISLATIVE FINDINGS. The legislature finds that there is a serious threat
24 to the environment of the Upper Mississippi River National Wildlife and Fish Refuge
25 from discharges of oil and hazardous substances and that requiring double hull

1 construction or tugboat escort of vessels that transport oil and hazardous substances
2 on the portion of the Mississippi River on or along which the Refuge is located is the
3 only effective method of preventing those discharges.

4 **SECTION 18. Initial applicability.**

5 (1) The treatment of sections 30.50 (3d) and 30.681 (1) (b), (2) (b) and (2) (d)
6 of the statutes and the creation of section 30.681 (1) (b) 2., (2) (b) 2. and 2 (d) 2. of the
7 statutes first apply to offenses committed on the effective date of this subsection, but
8 does not preclude the counting of prior convictions when sentencing a person.

9 **SECTION 19. Effective dates.** This act takes effect on the day after
10 publication, except as follows:

11 (1) **REQUIREMENTS FOR TANK VESSELS.** The treatment of sections 144.78 and
12 973.075 (1) (d) and (5) (intro.) of the statutes takes effect on January 1, 1997.

13 (END)