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# A BILL FOR AN ACT

RELATING TO CRUISE SHIPS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 342B, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4           "PART           .   AIR POLLUTION FROM COMMERCIAL PASSENGER VESSELS

5           §342B-A Definitions. As used in this part:

6           "Commercial passenger vessel" means a vessel that carries  
7 passengers for hire. The term does not include a vessel:

- 8           (1) Authorized to carry fewer than fifty passengers;
- 9           (2) That does not provide overnight accommodations for at  
10           least fifty passengers for hire, determined with  
11           reference to the number of lower berths and based on  
12           an average of two persons per cabin; or
- 13           (3) Operated by the United States or a foreign government.

14           "Large commercial passenger vessel" means a commercial  
15 passenger vessel that provides overnight accommodations for two  
16 hundred fifty or more passengers for hire, determined with  
17 reference to the number of lower berths and based on an average  
18 of two persons per cabin.



1 "Marine waters of the State" means those waters between the  
2 shoreline of the State of Hawaii and any point three nautical  
3 miles from the shoreline of the State.

4 "Passengers for hire" means vessel passengers for whom  
5 consideration is contributed as a condition of carriage on the  
6 vessel, whether directly or indirectly flowing to the owner,  
7 charterer, operator, agent, or any other person having an  
8 interest in the vessel.

9 "Small commercial passenger vessel" means a commercial  
10 passenger vessel that provides overnight accommodations for two  
11 hundred forty-nine or fewer passengers for hire, determined with  
12 reference to the number of lower berths and based on an average  
13 of two persons per cabin.

14 "Vessel" means any form or manner of watercraft, other than  
15 a seaplane on the water, whether or not capable of self-  
16 propulsion.

17 "Voyage" means a vessel trip to or from one or more ports  
18 of call in the State with the majority of the passengers for  
19 hire completing the entire vessel trip. A vessel trip involving  
20 stops at more than one port of call is considered a single  
21 voyage so long as the majority of passengers for hire complete  
22 the entire trip.



1           **§342B-B Prohibited air pollution.** (a) No person shall  
2 operate an incinerator of a large commercial passenger vessel in  
3 any Hawaiian port for the combustion of any waste materials.

4           (b) Except as provided under section 342B-G, large  
5 commercial passenger vessels shall limit visible emissions,  
6 excluding condensed water vapor, to no more than twenty per cent  
7 opacity for periods of time exceeding six minutes in any  
8 sixty-minute period except for the following:

9           (1) When the ship is maneuvering to or from the dock or  
10 anchor;

11           (2) In the event of a navigational or safety concern on  
12 the ship; or

13           (3) In the event of an equipment failure; provided that  
14 the cruise line shall, upon request, provide  
15 information to the department that describes the  
16 subject equipment, malfunction, corrective actions  
17 taken, and the start and end times of the  
18 malfunctioning period.

19           **§342B-C Information-gathering requirements.** (a) Except  
20 as provided under section 342B-J, the owner or operator of a  
21 commercial passenger vessel shall maintain records and, upon  
22 request of the department, provide to the department a report,



1 with copies of the records related to the period of operation in  
2 the marine waters of the State, detailing the dates, times, and  
3 locations, and the opacity of air emissions.

4 (b) Except as provided under section 342B-J, while a  
5 commercial passenger vessel is present in the marine waters of  
6 the State, the department through an independent contractor may  
7 monitor the opacity of air emissions.

8 (c) The owner or operator of a commercial passenger vessel  
9 shall pay for all monitoring under subsections (a) and (b).

10 (d) If the owner or operator of a commercial passenger  
11 vessel, when complying with another state or federal law that  
12 requires substantially equivalent information gathering, has  
13 gathered the type of information required under subsections (a)  
14 and (b), the owner or operator shall be considered to be in  
15 compliance with that subsection so long as the information is  
16 also provided to the department. The department shall  
17 establish, by rule, requirements for determining substantially  
18 equivalent information gathering.

19 **§342B-D Recordkeeping requirements.** An owner or operator  
20 subject to section 342B-C shall record the information required  
21 to be gathered under that section and shall maintain the records  
22 for three years after the date the information was gathered.



1           **§342B-E Reporting requirements.** (a) An owner or operator  
2 of a commercial passenger vessel who becomes aware of an air  
3 emission in violation of section 342B-B shall immediately report  
4 that air emission to the department. The report shall not be  
5 deemed to be privileged information.

6           (b) If the owner or operator of a commercial passenger  
7 vessel operating in the marine waters of the State is required  
8 by the administrator of the United States Environmental  
9 Protection Agency or the secretary of the federal department in  
10 which the United States Coast Guard is operating to collect  
11 samples and test the opacity of air emissions and keep records  
12 of the sampling and testing, then the owner or operator, within  
13 twenty-one days after the opacity of air emissions is tested,  
14 shall submit to the department a copy of the records.

15           (c) Upon request of the department, the information  
16 required under this section shall be submitted electronically.

17           (d) This section does not relieve the owner or operator of  
18 a commercial passenger vessel from other applicable reporting  
19 requirements of state or federal law.

20           (e) The requirements of this section are subject to  
21 alternative terms and conditions established under section  
22 342B-J.



1           **§342B-F Memorandum of understanding; recognition program.**

2   (a) Nothing contained in this part shall prevent the State  
3 from:

4           (1) Entering into voluntary agreements with any owners or  
5 operators of commercial passenger vessels, or their  
6 representatives, for the purpose of controlling

7 pollution outside the marine waters of the State; or

8           (2) Adopting pollution controls more stringent than those  
9 contained in this part.

10          (b) The department may engage in efforts to encourage and  
11 recognize superior environmental protection efforts made by the  
12 owners or operators of commercial passenger vessels that exceed  
13 the requirements established by law.

14           **§342B-G Exemption for vessels in innocent passage.** This  
15 part does not apply to a commercial passenger vessel that  
16 operates in the marine waters of the State solely in innocent  
17 passage. For purposes of this section, a vessel is engaged in  
18 innocent passage if its operation in marine waters of the State,  
19 regardless of whether the vessel is a United States or foreign-  
20 flag vessel, would constitute innocent passage under the United  
21 Nations Convention on the Law of the Sea 1982, December 10,



1 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261  
2 (1982), were the vessel a foreign-flag vessel.

3 **§342B-H Activities of the department.** The department may  
4 engage in the following activities relating to commercial  
5 passenger vessels operating in the marine waters of the State:

6 (1) Direct monitoring of the opacity of air emissions from  
7 those vessels;

8 (2) Monitoring and studying of direct or indirect  
9 environmental effects of those vessels; and

10 (3) Researching ways to reduce effects of those vessels on  
11 marine waters and other coastal resources.

12 **§342B-I Fine schedules for illegal air pollution.** (a)

13 Any person who fails to comply with any requirement of this part  
14 shall be subject to the fines established by the department  
15 pursuant to subsection (b).

16 (b) The department shall by rule under chapter 91,  
17 establish fines for the failure to comply with any requirement  
18 of this part.

19 **§342B-J Alternative terms and conditions of vessel**  
20 **discharges.** (a) The department may establish alternative terms  
21 and conditions of vessel air pollution applicable to an owner or  
22 operator of a vessel who cannot practicably comply with the



1 standard terms and conditions of vessel air pollution under  
2 sections 342B-B, 342B-C, 342B-D, and 342B-E or who wishes to use  
3 or test alternative environmental protection equipment or  
4 procedures. Except as specified in alternative terms and  
5 conditions set by the department under this subsection, the  
6 alternative terms and conditions of vessel air pollution shall  
7 require compliance with the standard terms and conditions of  
8 vessel air pollution under sections 342B-B, 342B-C, 342B-D, and  
9 342B-E. The department, on a case-by-case basis, may set  
10 alternative terms and conditions of vessel air pollution if:

- 11 (1) The vessel owner or operator demonstrates to the  
12 department's reasonable satisfaction that equivalent  
13 environmental protection can be attained through other  
14 terms or conditions appropriate for the specific  
15 configuration or operation of the vessel;
- 16 (2) The vessel owner or operator agrees to make necessary  
17 changes to the vessel to allow it to comply with the  
18 standard terms and conditions of vessel air pollution  
19 under sections 342B-B, 342B-C, 342B-D, and 342B-E, but  
20 demonstrates to the department's reasonable  
21 satisfaction that additional time is needed to make  
22 the necessary changes; or





1           (3) An experimental technology or method for pollution  
2           control of air pollution is being used or is proposed  
3           as one of the alternative terms and conditions of  
4           vessel air pollution, and the department determines  
5           that the experimental technology or method has a  
6           reasonable likelihood of success in providing  
7           increased protection for the environment.

8           (b) Alternative terms and conditions of vessel air  
9           pollution approved by the department under subsection (a), if  
10          determined appropriate by the department, may include a waiver  
11          by the department of portions of the requirements of sections  
12          342B-B, 342B-C, and 342B-D for the time period that the  
13          department determines to be appropriate."

14          SECTION 2. Section 342D-104, Hawaii Revised Statutes, is  
15          amended as follows:

16          1. By amending subsection (a) to read:

17          "(a) Except as provided under section 342D-111, the owner  
18          or operator of a commercial passenger vessel shall maintain  
19          records and, upon request of the department, provide to the  
20          department a report, with copies of the records related to the  
21          period of operation in the marine waters of the State, detailing  
22          the dates, times, and locations, and the volumes or flow-rates



1 of any discharge of sewage or other wastewater into the marine  
2 waters of the State [~~or the opacity of air emissions~~]."

3 2. By amending subsection (c) to read:

4 "(c) Except as provided under section 342D-111, while a  
5 commercial passenger vessel is present in the marine waters of  
6 the State, the department through an independent contractor may  
7 collect additional samples of the vessel's treated sewage that  
8 are being discharged into the marine waters of the State [~~or  
9 monitor the opacity of air emissions~~]."

10 SECTION 3. Section 342D-106, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12 "(e) If the owner or operator of a commercial passenger  
13 vessel operating in the marine waters of the State is required  
14 by the administrator of the Environmental Protection Agency or  
15 the secretary of the federal department in which the United  
16 States Coast Guard is operating to collect samples and test  
17 sewage [~~or opacity of air emissions~~] and keep records of the  
18 sampling and testing, then the owner or operator, within twenty-  
19 one days after the sewage [~~or opacity of air emissions~~] is  
20 tested, shall submit to the department a copy of the records."

21 SECTION 4. Section 342D-109, Hawaii Revised Statutes, is  
22 amended to read as follows:



1 " ~~[+]§342D-109[+]~~ **Activities of the department.** The  
2 department may engage in the following activities relating to  
3 commercial passenger vessels operating in the marine waters of  
4 the State:

- 5 (1) Direct in-water monitoring of discharges or releases  
6 of sewage [~~and direct monitoring of the opacity of air~~  
7 ~~emissions~~] from those vessels;
- 8 (2) Monitoring and studying of direct or indirect  
9 environmental effects of those vessels; and
- 10 (3) Researching ways to reduce effects of those vessels on  
11 marine waters and other coastal resources."

12 SECTION 5. Section 342D-111, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 " ~~[+]§342D-111[+]~~ **Alternative terms and conditions of**  
15 **vessel discharges.** (a) The department may establish  
16 alternative terms and conditions of vessel discharges applicable  
17 to an owner or operator of a vessel who cannot practicably  
18 comply with the standard terms and conditions of vessel  
19 discharges under sections 342D-102, [~~342D-103,~~] 342D-104, and  
20 342D-106 or who wishes to use or test alternative environmental  
21 protection equipment or procedures. Except as specified in  
22 alternative terms and conditions set by the department under



1 this subsection, the alternative terms and conditions of vessel  
2 discharges [~~must~~] shall require compliance with the standard  
3 terms and conditions of vessel discharges under sections  
4 342D-102, [~~342D-103,~~] 342D-104, and 342D-106. The department,  
5 on a case-by-case basis, may set alternative terms and  
6 conditions of vessel discharges if:

- 7 (1) The vessel owner or operator demonstrates to the  
8 department's reasonable satisfaction that equivalent  
9 environmental protection can be attained through other  
10 terms or conditions appropriate for the specific  
11 configuration or operation of the vessel;
- 12 (2) The vessel owner or operator agrees to make necessary  
13 changes to the vessel to allow it to comply with the  
14 standard terms and conditions of vessel discharges  
15 under sections 342D-102, [~~342D-103,~~] 342D-104, and  
16 342D-106 but demonstrates to the department's  
17 reasonable satisfaction that additional time is needed  
18 to make the necessary changes; or
- 19 (3) An experimental technology or method for pollution  
20 control of a discharge is being used or is proposed as  
21 one of the alternative terms and conditions of vessel  
22 discharges, and the department determines that the



1 experimental technology or method has a reasonable  
2 likelihood of success in providing increased  
3 protection for the environment.

4 (b) Alternative terms and conditions of vessel discharges  
5 approved by the department under subsection (a), if determined  
6 appropriate by the department, may include a waiver by the  
7 department of portions of the requirements of sections  
8 342D-102 [~~342D-103~~] and 342D-104 for the time period that the  
9 department determines to be appropriate."

10 SECTION 6. Section 342D-103, Hawaii Revised Statutes, is  
11 repealed.

12 [~~§342D-103 Prohibited air emissions.~~ (a) No person  
13 shall operate an incinerator of a large commercial passenger  
14 vessel in any Hawaiian port for the combustion of any waste  
15 materials.

16 (b) ~~Except as provided under section 342D-106, large~~  
17 ~~commercial passenger vessels shall limit visible emissions,~~  
18 ~~excluding condensed water vapor, to no more than twenty per cent~~  
19 ~~opacity for periods of time exceeding six minutes in any sixty-~~  
20 ~~minute period except for the following:~~

21 (1) ~~When the ship is maneuvering to or from the dock or~~  
22 ~~anchor;~~



1       ~~(2) In the event of a navigational or safety concern on~~  
2           ~~the ship, or~~

3       ~~(3) In the event of an equipment failure, provided that~~  
4           ~~the cruise line shall upon request, provide~~  
5           ~~information to the department that describes the~~  
6           ~~subject equipment, malfunction, corrective actions~~  
7           ~~taken, and the start and end times of the~~  
8           ~~malfunctioning period." ]~~

9       SECTION 7. This Act does not affect rights and duties that  
10       matured, penalties that were incurred, and proceedings that were  
11       begun, before its effective date.

12       SECTION 8. If any provision of this Act, or the  
13       application thereof to any person or circumstance is held  
14       invalid, the invalidity does not affect other provisions or  
15       applications of the Act, that can be given effect without the  
16       invalid provision or application and to this end the provisions  
17       of this Act are severable.

18       SECTION 9. In codifying the new sections added to chapter  
19       342B, Hawaii Revised Statutes, by section 1 of this Act, the  
20       revisor of statutes shall substitute appropriate section numbers  
21       for the letters used in the designations of and references to  
22       those new sections in this Act.



1 SECTION 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect on July 1, 2008.



**Report Title:**  
Cruise Ships

**Description:**  
Transfers the cruise ship air emission provisions from HRS,  
chapter 342D, Water Pollution, to HRS, chapter 342B, Air  
Pollution Control. (SD1)

