

## **Additional Information and Background**

### **Section 11503 of the 2023 National Defense Authorization Act**

A time-tested Maritime Liability law that has been available for more than 170 years to protect owners of passenger-carrying vessels of all sizes, and which was originally enacted to help promote shipping, is at risk of being changed. If these proposed changes are enacted the cost of passenger vessel liability insurance is likely to substantially increase.

#### Protections of the Current Law

Under current U.S. Maritime Liability laws ([46 USC Ch 305 Subtitle III, §30511](#)), after an accident the owner of any seagoing vessel of any size can bring a civil action in a district court of the United States to limit their liability from damage claims to the value of the owner's interest in the vessel. When the owner files for this limitation to liability, all actions and damage claims arising from the accident may be rolled into one action in state court, and if awarded, damages may be equally distributed to all successful claimants.

This limitation is typically acted upon after the owner receives written notice of a claim, and currently, the owner must act on the claim within six months of that notice.

#### Proposed Regulatory Changes

Language was added to the 3600+ page National Defense Authorization Act for Fiscal Year 2023 that will remove these liability protections, BUT ONLY FOR SMALL VESSELS.

The added language removes the liability limitation for vessels **carrying not more than 49 passengers on an overnight domestic voyage; and not more than 150 passengers on any voyage that is not an overnight domestic voyage**. Under this inserted language, owners of small vessels (including dive vessels), could be held legally responsible for compensating accident victims and their families regardless of the value of the vessel after the incident. With the language altered in this way, it is likely that only the first accident claimant will recover damages from the owner, leaving any additional claimants without access to any compensation.

The inserted language also includes an extension to the notice time for bringing action. Under this new language the owner (or master, manager, or agent) of a vessel transporting passengers or property may not use a contract or other instrument to limit the period for giving notice of (or filing a claim for), personal injury or death, to less than two years (currently this period is 6 months) after the date of the injury or death. The owner may not limit the time for bringing a civil action for personal injury or death to less than two years (currently, one year) after the date of the injury or death.

#### This Regulation is Likely to Substantially Increase Liability Insurance Cost

Currently, owners of small passenger-carrying vessels, including owners of dive vessel, pay large fees for liability insurance. The current limitation to liability is factored into these insurance rates. **A change in this liability limit – targeted only at owners of small passenger-carrying vessels - will necessarily cause a substantial increase in liability insurance rates for these small businesses.**

With millions of small passenger-carrying vessels registered in the U.S., DEMA is concerned that any change to this 170+ year-old law, particularly without any comprehensive study on the financial impact to the boating, fishing, and diving industries, would result in an additional cost to all boating-related operations and have a detrimental impact on the national economy. The law will most certainly cause vessel liability insurance premiums to rise substantially, as premiums now factor in the liability limitations provided by current maritime statutes.

The increase in vessel owner liability comes at a time when Congress continues to limit the liability of other businesses. For example, current federal regulations allow motor carriers (trucking companies) to carry liability insurance policies valued as low as \$750,000 to protect trucking accident victims (even if there are multiple victims), while trucking accident damages can often be in the multi-millions of dollars. There are over 15 million trucks operating on U.S. roadways each day, a number much larger than the number of passenger-vessels carrying divers. These very low trucking insurance coverage requirements have been in effect (and unchanged) since 1980. If such liability policy is appropriate for motor carriers, even after more than 40 years, the U.S. Maritime Liability Laws should still be good policy as well.

Through the efforts of associations like DEMA, various boating, fishing, and other recreation trade organizations, as well as the U.S. Coast Guard, boating safety in the U.S. is better than it has ever been. Higher insurance premiums stemming from this new regulation will be damaging to these industries. **Changing this liability limitation would likely benefit plaintiff's personal injury attorneys but is unlikely to further improve small passenger vessel safety.**