

Introduced: 2/25/74
Referred: Commerce, Judiciary
and Finance

1 IN THE HOUSE

BY SPECKING, CARROL AND
TILLION

2 HOUSE BILL NO. 710

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the issuance of certificates of
7 insurance to oil terminal facilities and carriers
8 engaged in the marine transportation of oil, petroleum
9 products and their by-products and for the regulation
10 of the transfer of oil, petroleum products and their
11 by-products; and providing for an effective date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. AS 30 is amended by adding a new chapter to read:

14 TITLE 30. HARBORS, NAVIGATION AND SHIPPING.

15 CHAPTER 20. OIL TERMINAL FACILITIES: TRANSFER OF OIL,
16 PETROLEUM PRODUCTS AND THEIR BY-PRODUCTS.

17 ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

18 Sec. 30.20.010. DECLARATION OF POLICY AND PURPOSE. (a) The
19 legislature finds and declares that the highest and best uses of the
20 seacoast of the state are as a source of public and private recreation
21 and as a source of public use and private commerce in fishing and the
22 gathering of other marine life used and useful in food production and
23 other commercial activities.

24 (b) The legislature further finds and declares that the preser-
25 vation of these uses is a matter of the highest urgency and priority
26 and that these uses can only be served effectively by maintaining the
27 coastal and inside coastal waters, estuaries, wetlands, beaches and
28 public lands adjoining the seacoast in as close to pristine condition
29 as possible taking into account multiple use accommodations necessary

1 to provide the broadest possible protection of public and private
2 interests with the least possible conflicts in such diverse uses.

3 (c) The legislature further finds and declares that the transfer
4 of oil, petroleum products and their by-products between vessels, and
5 between vessels and onshore or offshore facilities within the jurisdic-
6 tion of the state is a hazardous undertaking. Spills, discharges and
7 escape of oil, petroleum and their by-products occurring as a result
8 of procedures involved in the transfer and storage of these products
9 pose threats of great danger and damage to the marine, estuarine and
10 adjacent terrestrial environment of the state, to owners and users of
11 shorefront property, to public and private recreation, to residents of
12 the state and other interests deriving livelihood from marine-related
13 activities, and to the beauty of the state's coastline. These hazards
14 frequently have occurred in the past, are occurring now and present
15 future threats of potentially catastrophic proportions, all of which
16 are expressly declared to be inimical to the paramount interests of the
17 state as set forth in this section. These state interests outweigh any
18 economic burdens imposed by the legislature upon those engaged in
19 transferring oil, petroleum products and their by-products and related
20 activities.

21 (d) The legislature intends by the enactment of this legislation:

22 (1) to exercise the policepower of the state through the
23 Alaska State Port Commission (AS 30.15) by conferring upon the commis-
24 sion the power to deal with the hazards and threats of danger and
25 damage posed by these transfers and related activities and to encourage
26 and ensure cooperation with the Department of Environmental Conserva-
27 tion and the United States Coast Guard;

28 (2) to require the prompt containment and removal of the
29 pollution occasioned by oil spills;

1 (3) to provide procedures whereby persons suffering damage
2 from these occurrences may be made whole promptly; and

3 (4) to establish a fund to provide for the inspection and
4 supervision of oil transfer activities and guarantee the prompt payment
5 of reasonable damage claims resulting from oil spills.

6 (e) The legislature further finds and declares that the preserva-
7 tion of the public uses referred to in this section is of grave public
8 interest and concern to the state in promoting its general welfare,
9 preventing disease, promoting health and providing for the public safety,
10 and that the state's interest in the preservation of these interests
11 outweighs any burdens of strict liability imposed by the legislature
12 upon those engaged in transferring oil, petroleum products and their
13 by-products and related activities.

14 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE

15 CARRIERS; ISSUANCE OF CERTIFICATES OF INSURANCE

16 Sec. 30.20.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
17 THE STATE PROHIBITED. The discharge of oil, petroleum products or their
18 by-products into or upon any coastal or inside coastal waters, estuaries,
19 tidal flats, beaches and lands adjoining the seacoast of the state, or
20 into any river, stream, sewer, surface water drain or other waters that
21 drain into the coastal or inside coastal waters of the state is pro-
22 hibited.

23 Sec. 30.20.030. AUTHORITY OF COMMISSION. (a) The authority of
24 the Alaska State Port Commission under this chapter extends to the
25 areas described in sec. 20 of this chapter, and to a distance of 12
26 miles from the coastline of the state as defined in AS 44.03.

27 (b) Certificates of insurance required under this chapter shall
28 be obtained from the commission subject to the terms and conditions
29 that are prescribed in this chapter or in the regulations promulgated

1 under it.

2 Sec. 30.20.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED. (a)
3 No person may operate, or cause to be operated in the state, an oil
4 terminal facility used or capable of being used in the transfer of oil,
5 petroleum products or their by-products without a certificate of
6 insurance issued by the commission under this chapter.

7 (b) No person may operate, or cause to be operated, a carrier
8 engaged in, used or capable of being used for, the marine transporta-
9 tion of oil, petroleum products or their by-products

10 (1) to or from oil terminal facilities located onshore in
11 the ports, harbors or elsewhere in the state;

12 (2) to or from deepwater port facilities located offshore
13 in the waters of the state; or

14 (3) through the waters of the state without a certificate
15 of insurance issued by the commission under this chapter.

16 (c) Certificates of insurance shall be issued on an annual basis
17 and shall expire on December 31, subject to those terms and conditions
18 the commission considers necessary and prescribes by regulation to
19 carry out the purposes of this chapter.

20 (d) As a condition precedent to the issuance or renewal of a
21 certificate of insurance the commission shall require payment of an
22 annual insurance premium and submission of satisfactory evidence that
23 the applicant has, or is in the process of, implementing state and
24 federal plans and regulations for control of pollution related to oil,
25 petroleum products and their by-products and the abatement of the
26 pollution when a discharge occurs.

27 (e) In addition to the evidence supplied under (d) of this section,
28 applicants for an oil terminal facility certificate shall demonstrate
29 that they can provide all necessary equipment, personnel and supplies

1 to prevent, contain, and remove discharges of oil and other pollutants,
2 and shall submit information to the commission, in a form satisfactory
3 to it, describing the following:

4 (1) the barrel or other measurement capacity of the terminal
5 facility;

6 (2) all containment and removal equipment, including but not
7 limited to vehicles, vessels, pumps, skimmers, booms, chemicals and
8 communications devices to which the facility has access, whether through
9 direct ownership or by contract or membership in an oil clean-up
10 organization; and

11 (3) the terms of agreement and operation plan of any dis-
12 charge cleanup organization to which the owner or operator of the
13 terminal facility belong.

14 (f) In addition to the evidence supplied under (d) of this section,
15 applicants for a marine carrier certificate shall demonstrate that
16 they can provide all necessary equipment, personnel and supplies to
17 prevent, contain, and remove discharges of oil and other pollutants,
18 and shall submit information to the commission, in a form satisfactory
19 to it, describing the following:

20 (1) the name and description of each vessel for which a
21 certificate is sought, engaged in, used or capable of being used by
22 the carrier for the marine transportation of oil, petroleum products
23 or their by-products to and from onshore and offshore oil terminal
24 facilities in this state; the vessel description shall include, but is
25 not limited to, the overall length, beam, draft, gross tonnage, net
26 tonnage, and design capacity for transporting oil, petroleum products
27 or their by-products, and a detailed statement as to the vessel's sea-
28 worthiness; however, the commission may require that the carrier furnish
29 a marine survey of the vessel's condition;

1 (2) a projection of the number of visits each vessel will
2 make annually to or from an oil terminal facility in this state, or
3 through the waters of this state;

4 (3) all containment and removal equipment, including but not
5 limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and
6 communication devices to which the carrier or the vessel has access,
7 whether through direct ownership or by contract or membership in an
8 approved discharge cleanup organization; and

9 (4) the terms of agreement and operation plan of any dis-
10 charge cleanup organization to which the carrier or the owner or
11 operator of the vessel belongs.

12 (g) Upon showing of satisfactory containment and removal or cleanup
13 capability under this section, and upon payment of the annual insurance
14 premium, the commission shall issue the applicant a certificate of
15 insurance covering the terminal facility and related appurtenances or
16 for each vessel. In addition to the annual insurance premium, the
17 commission may assess a penalty for late applications and a fee for the
18 processing of an application for the issuance or renewal of a certifi-
19 cate of insurance under this section. This fee shall be reasonably
20 related to the administrative costs of verifying the data submitted
21 under (d), (e) and (f) of this section.

22 Sec. 30.20.050. EXEMPTIONS. Because the likelihood of signi-
23 ficant damage to marine, estuarine and terrestrial environment due to
24 spills or discharges of oil, petroleum products or their by-products is
25 remote due to the restricted nature of marina operations and small
26 quantities stored there or at limited capacity facility, a marina or a
27 facility used or capable of being used to store less than 500 barrels
28 are exempt from the certificate of insurance requirements of sec. 40 of
29 this chapter. For the purpose of this section "marina" means a person

1 engaged in the business of servicing the fuel requirements of pleasure
2 craft, fishing boats and other commercial vessels, where the purchaser
3 and the consumer are the same entity and the serviced vessel is 65
4 feet or less in overall length.

5 Sec. 30.20.060. SCOPE OF REGULATIONS. The commission shall
6 promulgate regulations to carry out the purposes of this chapter that
7 do not conflict with federal law or regulations issued by the United
8 States Coast Guard, including but not limited to the following:

9 (1) operating and inspection requirements for oil terminal
10 facilities, carriers, personnel, equipment, supplies and other matters
11 relating to the insured's operations under sec. 40 of this chapter;

12 (2) procedures and methods of reporting discharges and
13 other occurrences prohibited by this chapter;

14 (3) procedures, methods, means and equipment to be used by
15 persons subject to this chapter and the implementing regulations;

16 (4) procedures, methods, means and equipment to be used in
17 the removal of oil and petroleum pollutants;

18 (5) development and implementation of criteria and plans to
19 meet oil and petroleum pollution discharges, spills or other occurrences
20 of various degrees and kinds;

21 (6) the establishment from time to time of control districts
22 comprising sections of the state's coast and the establishment of regu-
23 lations to meet the particular requirements of each district;

24 (7) requirements for the safety and operation of vessels,
25 barges, tugs, motor vehicles, motorized equipment and other equipment
26 relating to the use and operation of terminals, facilities and refin-
27 eries and the approach and departure from terminals, facilities and
28 refineries; and

29 (8) those other regulations that may be required by or for

1 emergency conditions or that reasonably may be necessary to carry out
2 the purposes of this chapter.

3 ARTICLE 3. EMERGENCIES.

4 Sec. 30.20.070. GOVERNOR'S POWERS; EMERGENCY PROCLAMATION. (a)

5 In addition to exercising his civil defense powers under AS 26.20, or
6 directing the Department of Environmental Conservation to exercise its
7 emergency powers under AS 46.03.820, whenever any disaster or catas-
8 trophe occurs or appears imminent arising from the discharge of oil,
9 petroleum products or their by-products, the governor, or in his
10 absence or inability, the lieutenant governor, shall by proclamation
11 declare the fact and that an emergency exists in one, several or all
12 sections of the state. A copy of the proclamation shall be filed with
13 the lieutenant governor in the manner prescribed by law.

14 (b) The governor has general direction and control of the com-
15 mission and is responsible for carrying out the provisions of this
16 chapter when a disaster or catastrophe occurs or appears imminent
17 arising from the discharge of oil, petroleum products or their by-
18 products.

19 (c) In performing his duties under this chapter, the governor
20 may:

21 (1) issue, amend and rescind the necessary orders and regu-
22 lations to carry out the provisions of this chapter within the limits
23 of the authority conferred upon him and not inconsistent with the regu-
24 lations and directives of the President of the United States or of any
25 federal department or agency that has specifically authorized emergency
26 functions;

27 (2) delegate any authority vested in him under this chapter
28 and provide for the subdelegation of that authority.

29 (d) Whenever the governor is satisfied that an emergency no longer

1 exists he shall terminate the proclamation issued under (a) of this
2 section by another proclamation affecting the sections of the state
3 covered by the original proclamation. The proclamation shall be
4 published in the newspapers of general circulation in the state and
5 posted at other places that the governor, or the person acting in that
6 capacity, considers appropriate.

7 (e) The provisions of AS 26.20 as they apply to eminent domain
8 and compensation, mutual aid, immunity, aid in emergency, right-of-
9 way, enforcement and compensation apply to disasters or catastrophes
10 proclaimed by the governor under this chapter.

11 Sec. 30.20.080. INTERAGENCY COOPERATION. In performing his duties
12 under sec. 70 of this chapter, the governor shall secure cooperation
13 from all departments and agencies of the federal government, and the
14 governments of other states and foreign countries, and the political
15 subdivisions of them, as well as from private agencies, in all matters
16 relating to disaster or catastrophe.

17 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

18 Sec. 30.20.090. IMMEDIATE REMOVAL REQUIRED. Any person dischar-
19 ging oil, petroleum products or their by-products in a manner prohibited
20 by sec. 20 of this chapter shall immediately undertake to remove the
21 discharge to the commission's satisfaction. Notwithstanding this
22 requirement, in the absence of an effort to remove the discharge, the
23 commission shall undertake the removal of the discharge and may retain
24 agents and enter into contracts for that purpose. These agents or
25 contractors shall operate under the direction of the commission.

26 Sec. 30.20.100. UNEXPLAINED DISCHARGES. Any unexplained dis-
27 charge of oil, petroleum products or their by-products within the
28 state's jurisdiction or discharge of oil, petroleum products or their
29 by-products occurring in waters beyond state jurisdiction that for any

1 reason penetrates within state jurisdiction shall be removed by or
2 under the direction of the commission. Any expenses involved in the
3 removal of discharges, whether by the person causing the discharge,
4 the person reporting it, or the commission by itself, or through its
5 agents or contracts shall be paid in the first instance from the
6 coastal protection insurance fund established under this chapter. Any
7 reimbursements due the fund for the cost of removing the discharge
8 shall be collected in the manner prescribed in sec. 300 of this chapter.

9 Sec. 30.20.110. OIL DISCHARGE CLEAN-UP PERSONNEL, EQUIPMENT. (a)
10 The commission shall establish and maintain at ports, harbors or other
11 locations within the state, the employees and equipment that, in its
12 judgment, may be necessary to carry out the provisions of this chapter.

13 (b) The commission may employ, subject to the State Personnel
14 Act (AS 39.25), persons necessary to carry out the provisions of this
15 chapter, prescribe their duties and compensation.

16 (c) The salaries of commission employees and the cost of equipment
17 required to carry out the provisions of this chapter shall be paid from
18 the coastal protection insurance fund.

19 (d) The commission and the Departments of Natural Resources and
20 Environmental Protection shall consult with one another periodically
21 relative to procedures for the prevention of oil discharges into the
22 coastal and inside coastal waters of the state from offshore drilling
23 production facilities.

24 (e) Inspection and enforcement employees of the commission in
25 their line of duty under this chapter are peace officers under
26 AS 01.10.060(6).

27 ARTICLE 6. ENFORCEMENT; PENALTIES.

28 Sec. 30.20.120. ADMINISTRATIVE ADJUDICATION. Whenever it appears
29 after investigation that there is a violation of any regulation, order

1 or certificate issued by the commission, the commission shall proceed
2 in accordance with its regulations.

3 Sec. 30.20.130. CRIMINAL SANCTIONS. A person who violates sec.
4 20 of this chapter is punishable under AS 46.03.760(a) or AS 46.03.790.
5 A person who falsifies information required under sec. 40 of this
6 chapter is punishable under AS 46.03.760(d) or AS 46.03.790.

7 Sec. 30.20.140. CIVIL PENALTIES. (a) A person who violates a
8 provision of this chapter or any regulation or order of the commission
9 is subject to the penalties prescribed in AS 46.03.760(b) - (c) and
10 AS 46.03.770 - 46.03.780.

11 Sec. 30.20.150. INJUNCTIVE RELIEF. A person may be enjoined by
12 the superior court from committing a violation of a provision of this
13 chapter, or the implementing regulations.

14 Sec. 30.20.160. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a)
15 Actions to recover penalties or damages under this chapter shall be
16 brought by the attorney general in a court of competent jurisdiction.

17 (b) All penalties or damages recovered under the provisions of
18 this chapter shall be paid to the commission and deposited by it in
19 the coastal protection insurance fund.

20 Sec. 30.20.170. EACH VIOLATION IS A SEPARATE OFFENSE. Each vio-
21 lation of a provision of this chapter, an implementing regulation, or
22 an order or certificate issued by the commission under them, is a
23 separate and distinct offense and, in case of a continuing violation,
24 each day the violation continues constitutes a separate offense.

25 Sec. 30.20.180. PENALTIES CUMULATIVE. (a) All penalties imposed
26 under this chapter are cumulative.

27 (b) An action to recover a civil penalty is not a bar to an
28 enforcement proceeding to require compliance, or to any other remedy
29 or sanction provided by this chapter.

1 Sec. 30.20.190. JOINDER OF ACTIONS. Under the applicable court
2 rules, appeals from orders of the commission, and actions for recovery
3 of damages or penalties may be joined. The court may in the interests
4 of justice separate the actions.

5 Sec. 30.20.200. PRIVATE CAUSE OF ACTION. (a) A person subjected
6 to a prohibited discharge in violation of this chapter may sue in a
7 state court of appropriate jurisdiction for damages resulting from the
8 prohibited discharge.

9 (b) A person recovering damages under this section is entitled to
10 a reasonable attorney fee, fixed by the court, to be taxed and collected
11 as costs of the suit.

12 Sec. 30.20.210. PROMPT REPORTS. The provisions of secs. 90 - 200
13 of this chapter do not apply to any discharge promptly reported and
14 removed by an insured in accordance with the regulations and orders of
15 the commission to the satisfaction of the commission or other affected
16 persons.

17 ARTICLE 7. COASTAL PROTECTION INSURANCE FUND.

18 Sec. 30.20.220. FUND CREATED USES; LIMITATIONS; CHARGES. (a)
19 The coastal protection insurance fund is created as a revolving fund.
20 The fund shall be used by the commission to carry out the purposes of
21 this chapter.

22 (b) The fund shall be limited to a sum established by the
23 commission by regulation.

24 (c) To this fund shall be credited all insurance premiums, penal-
25 ties, damages and other fees or charges related to this chapter. To
26 this fund shall be charged all expenses of the commission related to
27 this chapter, including administrative expenses, costs of removal of
28 discharges of pollutants, and third party damages covered by this
29 chapter.

1 Sec. 30.20.230. SURPLUS FUNDS. Money in the fund, not currently
2 needed to meet the obligations of the commission in the exercise of
3 its responsibilities under this chapter shall be deposited with the
4 commissioner of administration to the credit of the fund, and it may
5 be invested in the manner provided in AS 37.10. Interest received on
6 that investment shall be credited to the fund.

7 Sec. 30.20.240. RESEARCH AND DEVELOPMENT. The commission may
8 allocate annually not more than five per cent of the amount then
9 currently in the fund for research and development in the causes, effects
10 and removal of pollution caused by oil, petroleum products and their
11 by-products on the marine environment. These allocations shall be made
12 in accordance with the Executive Budget Act (AS 37.07).

13 Sec. 30.20.260. THIRD PARTY DAMAGES. (a) Any person claiming to
14 have suffered damages to real estate or personal property or loss of
15 income directly or indirectly as a result of a discharge of oil, petro-
16 leum products or their by-products prohibited by sec. 20 of this chapter
17 may apply within one year after the occurrence of the discharge to the
18 commission stating the amount of damage he claims to have suffered as a
19 result of the discharge. The commission shall prescribe appropriate
20 forms and procedures for these applications. The commission may, upon
21 petition, and for good cause shown, waive the one year limitation for
22 filing damage claims.

23 (b) An award of damages to a person on a claim under (a) of this
24 section bars recovery in an action by that person under sec. 200 of this
25 chapter, AS 46.03.760(e), AS 46.03.822 - 46.03.828, or any other
26 provision of law on the same claim for the same injury.

27 (c) If the claimant, the commission and the person causing the
28 discharge can agree to the damage claim, the commission shall certify
29 the amount of the claim and the name of the claimant to the commissioner

1 of administration, and the commissioner shall pay the same from the
2 coastal protection insurance fund.

3 (d) If the claimant, the commission and the person causing the
4 discharge cannot agree as to the amount of the damage claim, the claim
5 shall be transmitted immediately for action to the Board of Arbitration
6 provided in sec. 270 of this chapter.

7 (e) Third party damage claims shall be stated in their entirety
8 in one application. Damages omitted from any claim at the time the
9 award is made shall be considered waived.

10 Sec. 30.20.270. BOARD OF ARBITRATION. (a) The board of arbitra-
11 tion consists of three persons, one chosen by the person determined in
12 the first instance by the commission to have caused the discharge, one
13 to be chosen by the commission to represent the public interest and one
14 person chosen by the first two appointed members to serve as a neutral
15 arbitrator. The neutral arbitrator shall serve as chairman. If the
16 two arbitrators fail to agree upon, select and name the neutral arbi-
17 trator within 10 days after their appointment, then the commission
18 shall request the American Arbitration Association to use its procedures
19 for the selection of a neutral arbitrator. No member of the commission
20 may serve as an arbitrator.

21 (b) Arbitrators shall be named by their principals within 10 days
22 after the commission receives notice of claims arising from a discharge
23 prohibited by sec. 20 of this chapter. If either party fails to
24 select its arbitrator within the 10 day period, the other party shall
25 request the American Arbitration Association to use its procedures for
26 the selection of an arbitrator, and the two arbitrators shall proceed
27 to select the neutral arbitrator as provided in (a) of this section.

28 (c) One board of arbitrators shall be established for and hear
29 and determine all claims arising from or related to a common single

1 discharge.

2 (d) Hearings before boards of arbitrators shall be informal, and
3 the rules of evidence prevailing in judicial proceedings are not
4 binding. The adjudicatory provisions of the Administrative Procedures
5 Act (AS 44.62) are not applicable to proceedings under this subsection.
6 The board has the power to administer oaths and to require by subpoena
7 the attendance and testimony of witnesses, the production of books,
8 records and other evidence relative or pertinent to the issues represen-
9 ted to them for determination.

10 (e) Determinations made by a majority of the board shall be final,
11 but they are subject to appeal under the Administrative Procedure Act
12 (AS 44.62).

13 (f) Representation on a board of arbitration shall not be con-
14 sidered an admission of liability for the discharge.

15 Sec. 30.20.280. FUNDING. (a) Annual insurance premiums for each
16 classification of certificates issued by the commission under sec. 40 of
17 this chapter shall be based on the data submitted by applicants under
18 that section, the risk experience of oil terminal facilities and carriers
19 during the previous premium period and any other data, information or
20 standards the commission considers relevant or essential to an appro-
21 priate determination of the annual premium rates for the issuance of
22 certificates of insurance. Premium rates may be adjusted from time to
23 time during a premium year to allow for risk experience during that
24 period. Insurance premiums shall be paid to the commission and upon
25 receipt by it deposited in the coastal protection insurance fund.

26 (b) Whenever the balance in the fund has reached the limit pre-
27 scribed by the commission, insurance premiums may be waived or shall be
28 proportionately reduced to cover expenses essential to maintain oil dis-
29 charge removal personnel, equipment and supplies in a state of readiness,

1 administrative expenses and sums allocated to research and development.

2 (c) Whenever the balance in the fund is below the minimum the
3 commission believes is essential to maintain oil discharge removal
4 personnel, equipment and supplies in a state of readiness, to cover
5 administrative expenses and sums allocated to research and development,
6 the commission may submit a request to the legislature for an appropri-
7 ation or a supplemental appropriation under the Executive Budget Act
8 (AS 37.07).

9 (d) The commission shall submit annually to the legislature,
10 through the Department of Administration and the governor, in accordance
11 with the Executive Budget Act (AS 37.07), its recommendations for dis-
12 bursements from the fund under sec. 290 of this chapter.

13 Sec. 30.20.290. DISBURSEMENTS FROM FUND. Money in the coastal
14 protection insurance fund may be disbursed for the following purposes
15 and no other, subject to the provisions of AS 37.07 and 37.10:

16 (1) administrative expenses, personnel expenses and equipment
17 costs of the commission related to the enforcement of this chapter;

18 (2) all costs involved in the abatement of pollution related
19 to the discharge of oil, petroleum products and their by-products covered
20 by this Act;

21 (3) sums allocated to research and development in accordance
22 with sec. 240 of this chapter;

23 (4) payment of third party damage claims awarded in accordance
24 with sec. 260 of this chapter;

25 (5) payment of costs of arbitration and arbitrators; and

26 (6) payment of costs of insurance by the state to extend or
27 implement the benefits of the fund.

28 Sec. 30.20.300. REIMBURSEMENTS TO FUND. (a) The commission shall
29 recover to the use of the fund all sums expended from it, including over-

1 drafts, for the following purposes:

2 (1) costs incurred by the fund in the abatement of a prohibited
3 discharge including third party claims when the person permitting the
4 same has failed to promptly report the discharge as required by the
5 regulations of the commission, and those costs where the person permit-
6 ting the prohibited discharge is not an insured;

7 (2) in the case of an insured promptly reporting a discharge
8 as required by this chapter, the cost involved in the abatement of any
9 single prohibited discharge including third party claims in excess of an
10 amount set by the commission that is above payments received under any
11 federal program.

12 (b) However, recoveries resulting from damage due to an oil pollu-
13 tion disaster declared by the governor under sec. 70 of this chapter shall
14 be apportioned between the coastal protection insurance fund and the
15 general fund to repay the full costs to the general fund of any bonds
16 issued, or other general fund expenditures, as a result of the disaster.

17 (c) Requests for reimbursement to the fund for the costs listed in
18 (a)(1) and (2) and (b) of this section if not paid within 30 days of
19 demand shall be turned over to the Department of Administration or the
20 Department of Law, or both, for collection.

21 Sec. 30.20.310. WAIVER OF REIMBURSEMENT. (a) Upon petition of
22 the person determined to be liable for reimbursement to the fund for
23 abatement costs under sec. 300 of this chapter, the commission may, after
24 hearing, waive the right to reimbursement to the fund if the commission
25 finds that the occurrence was the result of any of the following:

- 26 (1) an act of war;
27 (2) an act of government, either state, federal or municipal;

28 or

- 29 (3) an act of God, which means an unforeseeable act exclusively

1 occasioned by the violence of nature without the interference of any
2 human agency.

3 (b) Upon a finding by the commission under (a) of this section,
4 immediate credit for it shall be entered for the party involved. The
5 findings of the commission shall be conclusive because it is the
6 legislative intent that waiver provided in this section is a privilege
7 conferred and not a right granted.

8 ARTICLE 8. STRICT LIABILITY.

9 Sec. 30.20.320. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE.
10 An operator of an oil terminal facility and a carrier are strictly
11 liable, without regard to fault, under AS 46.03.822 - 46.03.828 for
12 all acts and omissions of their employees and agents. The liability
13 of a carrier extends from the time the vessel enters state waters
14 until the time the vessel leaves state waters.

15 Sec. 30.20.330. STATE NEED NOT PROVE NEGLIGENCE. Because it is
16 the intent of this chapter to provide the means for rapid and effective
17 cleanup and to minimize direct damages as well as indirect damages and
18 the proliferation of third party claims, any oil terminal facility or
19 carrier operator, employee or agent, operating in the state or state
20 waters who permits or suffers a prohibited discharge or other polluting
21 condition to take place shall be liable to the state for all costs of
22 cleanup or other damage incurred by the state. In any suit to enforce
23 claims of the state under this section, it shall not be necessary for
24 the state to plead or prove negligence in any form or manner on the
25 party of the operator. The state need only plead and prove the fact
26 of the prohibited discharge or other polluting condition and that it
27 occurred at facilities under the control of the operator or was attri-
28 butable to carriers or others for whom the operator is responsible as
29 provided in this chapter.

1 ARTICLE 9. GENERAL, MISCELLANEOUS PROVISIONS.

2 Sec. 30.20.340. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
3 governor may execute supplementary agreements or compacts with any
4 other state or with foreign governments, subject to the approval of
5 the United States that may be required by law, for the purpose of
6 implementing and carrying out the purposes of this chapter.

7 Sec. 30.20.350. ANNUAL REPORT. The commission shall prepare and
8 publish an annual report to the governor and to the legislature reviewing
9 its work under this chapter and shall include its recommendations for
10 the enactment of appropriate legislation.

11 Sec. 30.20.360. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
12 If a conflict occurs between a provision of this chapter, or a regulat-
13 ion, certificate, order, decision or other determination of the commission
14 and a charter, ordinance, permit, regulation, franchise, decision or
15 other determination of a municipality, the provisions of this chapter
16 or a regulation, certificate, order, decision or other determination
17 of the commission prevails. However, nothing in this chapter may be
18 construed to preclude any municipality, by ordinance or regulation,
19 from exercising its police powers in the area regulated by this chapter.

20 Sec. 30.20.370. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

21 (a) The administrative adjudication procedures of the Administrative
22 Procedure Act (AS 44.62) do not apply to the adjudicatory, certificate
23 issuing, or other proceedings of the commission under this chapter.

24 However,

25 (1) final administrative determinations or orders by the
26 commission are subject to judicial review under that Act;

27 (2) commission hearings shall be held only after at least
28 10 days public notice, unless it is an emergency hearing, and they
29 shall be held at a place most convenient for those interested in the

1 subject of the hearing;

2 (3) a commissioner who has not heard the testimony or
3 argument may not participate in making a decision or order of the
4 commission.

5 (b) Notwithstanding the provisions of (a)(1) of this section, no
6 regulation or order of the commission may be stayed pending appeal under
7 the provisions of the Administrative Procedure Act.

8 (c) The Administrative Procedure Act applies to regulations promul-
9 gated by the commission.

10 Sec. 30.20.410. CONSTRUCTION. This chapter shall be liberally
11 construed to effect the purposes set out in sec. 10 of this chapter.

12 Sec. 30.20.420. DEFINITIONS. In this chapter, unless the context
13 requires otherwise,

14 (1) "barrel" means 42 U.S. gallons of oil at 60 degrees
15 Fahrenheit;

16 (2) "board" means a board of arbitration established under
17 this chapter;

18 (3) "carrier" means a person who owns or who, for compensa-
19 tion operates, or otherwise provides a vessel engaged in, used or capable
20 of being used for, the marine transportation of oil, petroleum products
21 or their by-products on the waters of this state;

22 (4) "commission" means the Alaska State Port Commission;

23 (5) "commissioner" means a member of the Alaska State Port
24 Commission;

25 (6) "discharge" means any spilling, leaking, pumping, pouring,
26 emitting, emptying, or dumping;

27 (7) "fund" means the state coastal protection insurance fund;

28 (8) "municipality" means a general law municipal corporation
29 and political subdivision, which is a first or second class borough or

1 city, or a third class borough, incorporated under the laws of the state
2 including a home rule first class borough or city, or a unification of
3 these;

4 (9) "oil, petroleum products and their by-products" means oil
5 of any kind and in any form including, but not limited to, petroleum,
6 fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils
7 and all other liquid hydrocarbons regardless of specific gravity;

8 (10) "oil terminal facility" means an onshore or offshore
9 facility of any kind and related appurtenances located in, on, or under
10 the surface of any land or water of the state, including tide and sub-
11 merged lands, which is used or capable of being used for the purpose of
12 transferring, processing or refining oil, petroleum products and their
13 by-products or for the purpose of storing the same; a vessel shall be
14 considered an oil terminal facility only in the event of a ship-to-ship
15 transfer of oil, petroleum products or their by-products, and only that
16 vessel going to or coming from the place of transfer and the oil ter-
17 minal facility;

18 (11) "operate" or "operator" means any person owning or opera-
19 ting an oil terminal facility or a carrier whether by lease, contract or
20 any other form of agreement, or a person who navigates or has charge
21 of the navigation or use of a vessel;

22 (12) "transferred" includes both onloading and offloading,
23 between terminal and vessel and vessel to vessel;

24 (13) "vessel" means every description of watercraft other than
25 a seaplane on the water, used or capable of being used as a means of
26 transportation on the water, whether self-propelled or otherwise, and
27 shall, for the purposes of this chapter, include tugs and barges.

28 Sec. 30.20.430. SHORT TITLE. This chapter may be cited as the
29 "Alaska Oil Discharge Prevention and Pollution Control Act".

1 * Sec. 2. AS 46.03.750(d) is amended to read:

2 (d) A person in charge of a sea-going vessel or of an onshore or
3 offshore facility, as soon as he has knowledge of any discharge from the
4 vessel or facility in violation of a provision of this chapter or
5 AS 30.20.020 shall immediately notify the department or the commission
6 of the discharge.

7 * Sec. 3. AS 46.03.760 is amended to read:

8 Sec. 46.03.760. POLLUTION PENALTIES. (a) A person who violates
9 secs. 710, 730, 740, or 750 of this chapter or AS 30.20.020 is guilty
10 of a misdemeanor and upon conviction is punishable by a fine of not more
11 than \$25,000, or by imprisonment for not more than one year, or by both.
12 Each unlawful act constitutes a separate offense.

13 (b) In addition to the penalties provided in (a) of this section a
14 person who violates secs. 740 - 750 of this chapter or AS 30.20.020 is
15 liable, in a civil action, to the state for liquidated damages to be
16 assessed by the court for an amount not less than \$5,000 nor more than
17 \$100,000, depending on the severity of the violation.

18 (c) In addition to the penalties provided in (a) of this section,
19 a person who violates a provision of sec. 750 of this chapter or AS 30.-
20 20.020 is liable to the state, in a civil action, in the case of a
21 vessel, for damages in an amount not to exceed \$100 per gross ton of the
22 violating vessel or \$14 million, whichever is less, and, in the case of
23 an onshore or offshore facility, \$100 for every \$500 evaluation of the
24 violating facility or \$14 million, whichever is less. However, if the
25 state shows that a violation of sec. 750 of this chapter or AS 30.20.020
26 was the result of wilful negligence or wilful misconduct on the part of
27 the person charged with the violation, the person is liable to the
28 state for the full amount of damages caused. In the case of wilful neg-
29 ligence or wilful misconduct, "damages," in this subsection, means costs

1 associated with the abatement, containment or removal of a pollutant and
2 reasonable restoration of the environment to its former state.

3 (d) A person who falsely certifies information required under sec.
4 750 of this chapter or AS 30.20.040, upon conviction, is punishable by
5 a fine of not more than \$25,000, or by imprisonment for not more than
6 one year, or by both. Each unlawful act constitutes a separate offense.

7 (e) Nothing in this section affects an individual's right to re-
8 cover damages under other applicable statutes or the common law.

9 * Sec. 4. AS 46.03.770 is amended to read:

10 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
11 FOR DAMAGES. A vessel which is used in or in aid of a violation of
12 secs. 740 - 750 of this chapter, or AS 30.20.020, may be detained after
13 a valid search by the department, an agent of the department, a peace
14 officer of the state, [OR] an authorized protection officer of the
15 Department of Fish and Game, or an authorized enforcement officer of
16 the Alaska State Port Commission. Upon judgment of the court having
17 jurisdiction that the vessel was used in or the cause of a violation
18 of secs. 740 - 750 of this chapter with knowledge of its owner or
19 under circumstances indicating that the owner should reasonably have
20 had this knowledge, the vessel may be held as security for payment to
21 the state of the amount of damages assessed by the court under sec.
22 760(b) of this chapter or upon determination by the commission under
23 AS 30.20, and if the damages so assessed are not paid within 30 days
24 after judgment, final determination by the commission or final deter-
25 mination of an appeal, the vessel shall be sold at public auction, or
26 as otherwise directed by the court or by the commission, and the
27 damages paid from the proceeds. The balance, if any, shall be paid by
28 the court or the commission to the owner of the vessel. The court
29 shall permit the release of the vessel upon posting of a bond set by

1 the court or the commission in an amount not to exceed \$100,000. The
2 damages received under this section shall be transmitted to the commission
3 [PROPER STATE OFFICER] for deposit in the coastal protection insurance
4 [GENERAL] fund. A vessel seized under this section shall be returned
5 or the bond exonerated if no damages are assessed under sec. 760(b) of
6 this chapter or AS 30.20.

7 * Sec. 5. AS 46.03.780(a) is amended to read:

8 (a) A person who violates a provision of this chapter or AS 30.20,
9 or who fails to perform a duty imposed by this chapter or AS 30.20, or
10 violates or disregards an order, permit, or other determination of the
11 department or the commission made under the provisions of this chapter
12 or AS 30.20, respectively, and thereby causes the death of fish, animals,
13 or vegetation or otherwise injures or degrades the environment of the
14 state is liable to the state for damages.

15 * Sec. 6. AS 46.03.790(a) is amended to read:

16 (a) A person found guilty of wilfully violating a provision of this
17 chapter, or AS 30.20, or a regulation, written order or directive of the
18 department or the commission or of a court made under this chapter, or
19 AS 30.20, is guilty of a misdemeanor, and upon conviction for the first
20 offense shall be punished by a fine of not more than \$1,000 and costs of
21 prosecution, or by imprisonment for not more than one year, or by both
22 the [SUCH] fine, cost, and imprisonment at the discretion of the court.
23 Upon conviction for a second or subsequent offense, a person is guilty
24 of a felony and is punishable by a fine of at least \$500 but not more
25 than \$5,000 and costs of prosecution, or by imprisonment for not more
26 than three years, or by both the fine, cost, and imprisonment at the
27 discretion of the court.

28 * Sec. 7. AS 46.03.900 is amended by adding a new paragraph to read:

29 (23) "commission" means the Alaska State Port Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

* Sec. 8. This Act takes effect January 1, 1975.