

1 IN THE HOUSE

BY SPECKING

2 HOUSE BILL NO. 34

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST 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 CHAPTER 25. OIL TERMINAL FACILITIES; TRANSFER OF OIL,
15 PETROLEUM PRODUCTS AND THEIR BY-PRODUCTS.

16 ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

17 Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE. (a) The
18 legislature finds and declares that the highest and best uses of the
19 seacoast of the state are as a source of public and private recreation
20 and as a source of public use and private commerce in fishing and the
21 gathering of other marine life used and useful in food production and
22 other commercial activities.

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

1 interests with the least possible conflicts in such diverse uses.

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

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

21 (1) to exercise the policepower of the state through the
22 Alaska State Port Commission (AS 30.20) by conferring upon the commis-
23 sion the power to deal with the hazards and threats of danger and
24 damage posed by these transfers and related activities and to encourage
25 and ensure cooperation with the Department of Environmental Conserva-
26 tion, the United States Coast Guard and any other state or federal
27 department or agency;

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
10 safety, and that the state's interest in the preservation of these
11 interests outweighs any burdens of strict liability imposed by the
12 legislature upon those engaged in transferring oil, petroleum products
13 and their by-products and related activities.

14 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE

15 CARRIERS; ISSUANCE OF CERTIFICATES OF INSURANCE

16 Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
17 THE STATE PROHIBITED. The discharge of oil, petroleum products or
18 their by-products into or upon any coastal or inside coastal waters,
19 estuaries, tidal flats, beaches and lands adjoining the seacoast of
20 the state, or into any river, stream, sewer, surface water drain or
21 other waters that drain into the coastal or inside coastal waters of
22 the state is prohibited.

23 Sec. 30.25.030. 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. 30.25.040. 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
5 oil, 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
28 section, applicants for an oil terminal facility certificate shall
29 demonstrate that they can provide all necessary equipment, personnel

1 and supplies to prevent, contain, and remove discharges of oil and
2 other pollutants, and shall submit information to the commission, in a
3 form satisfactory 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
7 not limited to vehicles, vessels, pumps, skimmers, booms, chemicals
8 and communications devices to which the facility has access, whether
9 through direct ownership or by contract or membership in an oil clean-
10 up 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
15 section, applicants for a marine carrier certificate shall demonstrate
16 that they can provide all necessary equipment, personnel and supplies
17 to 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
29 furnish 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
5 not limited to vehicles, vessels, pumps, skimmers, booms, chemicals,
6 and communication devices to which the carrier or the vessel has
7 access, whether through direct ownership or by contract or membership
8 in an 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
13 cleanup capability under this section, and upon payment of the annual
14 insurance premium, the commission shall issue the applicant a certificate
15 of insurance covering the terminal facility and related appurtenances
16 or for each vessel. In addition to the annual insurance premium, the
17 commission may assess a penalty for late applications and a fee for
18 the processing of an application for the issuance or renewal of a
19 certificate 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. 30.25.050. 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
25 is 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
29 of this chapter. For the purpose of this section "marina" means a

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

5 Sec. 30.25.060. 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 any federal
8 department or agency, 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
23 regulations 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. 30.25.070. 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 a 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
24 regulations and directives of the President of the United States or of
25 any federal department or agency that has specifically authorized
26 emergency functions;

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

29 (d) When 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. 30.25.080. INTERAGENCY COOPERATION. In performing his
12 duties under sec. 70 of this chapter, the governor shall secure
13 cooperation from all departments and agencies of the federal government,
14 and the governments of other states and foreign countries, and the
15 political subdivisions of them, as well as from private agencies, in
16 all matters relating to disaster or catastrophe.

17 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

18 Sec. 30.25.090. IMMEDIATE REMOVAL REQUIRED. A 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. 30.25.100. UNEXPLAINED DISCHARGES. An 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. 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.
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. 30.25.110. OIL DISCHARGE CLEAN-UP PERSONNEL, EQUIPMENT.

10 (a) The commission shall establish and maintain at ports, harbors or
11 other locations within the state, the employees and equipment that, in
12 its judgment, may be necessary to carry out the provisions of this
13 chapter.

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

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

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

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

28 ARTICLE 6. ENFORCEMENT; PENALTIES.

29 Sec. 30.25.120. ADMINISTRATIVE ADJUDICATION. When it appears

1 after investigation that there is a violation of a regulation, order
2 or certificate issued by the commission, the commission shall proceed
3 in accordance with its regulations.

4 Sec. 30.25.130. CRIMINAL SANCTIONS. A person who violates sec.
5 20 of this chapter is punishable under AS 46.03.760(a) or AS 46.03.790.
6 A person who falsifies information required under sec. 40 of this
7 chapter is punishable under AS 46.03.760(d) or AS 46.03.790.

8 Sec. 30.25.140. CIVIL PENALTIES. (a) A person who violates a
9 provision of this chapter or a regulation or order of the commission
10 is subject to the penalties prescribed in AS 46.03.760(b) (c) and
11 AS 46.03.770 - 46.03.780.

12 Sec. 30.25.150. INJUNCTIVE RELIEF. A person may be enjoined by
13 the superior court from committing a violation of a provision of this
14 chapter, or the implementing regulations.

15 Sec. 30.25.160. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a)
16 Actions to recover penalties or damages under this chapter shall be
17 brought by the attorney general in a court of competent jurisdiction.

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

21 Sec. 30.25.170. EACH VIOLATION IS A SEPARATE OFFENSE. Each vio-
22 lation of a provision of this chapter, an implementing regulation, or
23 an order or certificate issued by the commission under them, is a
24 separate and distinct offense and, in case of a continuing violation,
25 each day the violation continues constitutes a separate offense.

26 Sec. 30.25.180. PENALTIES CUMULATIVE. (a) All penalties imposed
27 under this chapter are cumulative.

28 (b) An action to recover a civil penalty is not a bar to an
29 enforcement proceeding to require compliance, or to any other remedy

1 or sanction provided by this chapter.

2 Sec. 30.25.190. JOINDER OF ACTIONS. Under the applicable court
3 rules, appeals from orders of the commission, and actions for recovery
4 of damages or penalties may be joined. The court may in the interests
5 of justice separate the actions.

6 Sec. 30.25.200. PRIVATE CAUSE OF ACTION. (a) A person subjected
7 to a prohibited discharge in violation of this chapter may sue in a
8 state court of appropriate jurisdiction for damages resulting from the
9 prohibited discharge.

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

13 Sec. 30.25.210. PROMPT REPORTS. The provisions of secs. 90 -
14 200 of this chapter do not apply to a discharge promptly reported and
15 removed by an insured in accordance with the regulations and orders of
16 the commission to the satisfaction of the commission or other affected
17 persons.

18 ARTICLE 7. COASTAL PROTECTION INSURANCE FUND.

19 Sec. 30.25.220. FUND CREATED USES; LIMITATIONS; CHARGES. (a)
20 The coastal protection insurance fund is created as a revolving fund.
21 The fund shall be used by the commission to carry out the purposes of
22 this chapter.

23 (b) The fund shall be limited to a sum established by the commis-
24 sion by regulation.

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

1 chapter.

2 Sec. 30.25.230. SURPLUS FUNDS. Money in the fund, not currently
3 needed to meet the obligations of the commission in the exercise of
4 its responsibilities under this chapter shall be deposited with the
5 commissioner of administration to the credit of the fund, and it may
6 be invested in the manner provided in AS 37.10. Interest received on
7 that investment shall be credited to the fund.

8 Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The commission may
9 allocate annually not more than five per cent of the amount then
10 currently in the fund for research and development in the causes,
11 effects and removal of pollution caused by oil, petroleum products and
12 their by-products on the marine environment. These allocations shall
13 be made in accordance with the Executive Budget Act (AS 37.07).

14 Sec. 30.25.260. THIRD PARTY DAMAGES. (a) A person claiming to
15 have suffered damages to real estate or personal property or loss of
16 income directly or indirectly as a result of a discharge of oil,
17 petroleum products or their by-products prohibited by sec. 20 of this
18 chapter may apply within one year after the occurrence of the discharge
19 to the commission stating the amount of damage he claims to have
20 suffered as a result of the discharge. The commission shall prescribe
21 appropriate forms and procedures for these applications. The commission
22 may, upon petition, and for good cause shown, waive the one year
23 limitation for filing damage claims.

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

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

1 the amount of the claim and the name of the claimant to the commissioner
2 of administration, and the commissioner shall pay the same from the
3 coastal protection insurance fund.

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

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

11 Sec. 30.25.270. BOARD OF ARBITRATION. (a) The board of arbitra-
12 tion consists of three persons, one chosen by the person determined in
13 the first instance by the commission to have caused the discharge, one
14 to be chosen by the commission to represent the public interest and
15 one person chosen by the first two appointed members to serve as a
16 neutral arbitrator. The neutral arbitrator shall serve as chairman.
17 If the two arbitrators fail to agree upon, select and name the neutral
18 arbitrator within 10 days after their appointment, then the commission
19 shall request the American Arbitration Association to use its procedures
20 for the selection of a neutral arbitrator. No member of the commission
21 may serve as an arbitrator.

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

1 (c) One board of arbitrators shall be established for and hear
2 and determine all claims arising from or related to a common single
3 discharge.

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

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

15 (f) Representation on a board of arbitration shall not be considered
16 an admission of liability for the discharge.

17 Sec. 30.25.280. FUNDING. (a) Annual insurance premiums for
18 each classification of certificates issued by the commission under
19 sec. 40 of this chapter shall be based on the data submitted by applicants
20 under that section, the risk experience of oil terminal facilities and
21 carriers during the previous premium period and any other data, information
22 or standards the commission considers relevant or essential to an
23 appropriate determination of the annual premium rates for the issuance
24 of certificates of insurance. Premium rates may be adjusted from time
25 to time during a premium year to allow for risk experience during that
26 period. Insurance premiums shall be paid to the commission and upon
27 receipt by it deposited in the coastal protection insurance fund.

28 (b) When the balance in the fund has reached the limit prescribed
29 by the commission, insurance premiums may be waived or shall

1 be proportionately reduced to cover expenses essential to maintain oil
2 discharge removal personnel, equipment and supplies in a state of
3 readiness, administrative expenses and sums allocated to research and
4 development.

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

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

16 Sec. 30.25.290. DISBURSEMENTS FROM FUND. Money in the coastal
17 protection insurance fund may be disbursed for the following purposes
18 and no other, subject to the provisions of AS 37.07 and 37.10:

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

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

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

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

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

29 (6) payment of costs of insurance by the state to extend or

1 implement the benefits of the fund.

2 Sec. 30.25.300. REIMBURSEMENTS TO FUND. (a) The commission
3 shall recover to the use of the fund all sums expended from it, including
4 overdrafts, for the following purposes:

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

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

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

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

25 Sec. 30.25.310. WAIVER OF REIMBURSEMENT. (a) Upon petition of
26 the person determined to be liable for reimbursement to the fund for
27 abatement costs under sec. 300 of this chapter, the commission may,
28 after hearing, waive the right to reimbursement to the fund if the
29 commission finds that the occurrence was the result of any of the

1 following:

2 (1) an act of war;

3 (2) an act of government, either state, federal or municipal;

4 or

5 (3) an act of God, which means an unforeseeable act exclusively
6 occasioned by the violence of nature without the interference of a
7 human agency.

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

13 ARTICLE 8. STRICT LIABILITY.

14 Sec. 30.25.320. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE.

15 An operator of an oil terminal facility and a carrier are strictly
16 liable, without regard to fault, under AS 46.03.822 - 46.03.828 for
17 all acts and omissions of their employees and agents. The liability
18 of a carrier extends from the time the vessel enters state waters
19 until the time the vessel leaves state waters.

20 Sec. 30.25.330. STATE NEED NOT PROVE NEGLIGENCE. Because it is
21 the intent of this chapter to provide the means for rapid and effective
22 cleanup and to minimize direct damages as well as indirect damages and
23 the proliferation of third party claims, an oil terminal facility or
24 carrier operator, employee or agent, operating in the state or state
25 waters who permits or suffers a prohibited discharge or other polluting
26 condition to take place shall be liable to the state for all costs of
27 cleanup or other damage incurred by the state. In any suit to enforce
28 claims of the state under this section, it shall not be necessary for
29 the state to plead or prove negligence in any form or manner on the

1 part of the operator. The state need only plead and prove the fact of
2 the prohibited discharge or other polluting condition and that it
3 occurred at facilities under the control of the operator or was attri-
4 butable to carriers or others for whom the operator is responsible as
5 provided in this chapter.

6 ARTICLE 9. GENERAL, MISCELLANEOUS PROVISIONS.

7 Sec. 30.25.340. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
8 governor may execute supplementary agreements or compacts with any
9 other state or with foreign governments, subject to the approval of
10 the United States that may be required by law, for the purpose of
11 implementing and carrying out the purposes of this chapter.

12 Sec. 30.25.350. ANNUAL REPORT. The commission shall prepare and
13 publish an annual report to the governor and to the legislature reviewing
14 its work under this chapter and shall include in the report its recommen-
15 dations for the enactment of appropriate legislation.

16 Sec. 30.25.360. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
17 If a conflict occurs between a provision of this chapter, or a regula-
18 tion, certificate, order, decision or other determination of the
19 commission and a charter, ordinance, permit, regulation, franchise,
20 decision or other determination of a municipality, the provisions of
21 this chapter or a regulation, certificate, order, decision or other
22 determination of the commission prevails. However, nothing in this
23 chapter may be construed to preclude a municipality, by ordinance or
24 regulation, from exercising its police powers in the area regulated by
25 this chapter.

26 Sec. 30.25.370. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

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

1 However,

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

4 (2) commission hearings shall be held only after at least
5 10 days public notice, unless it is an emergency hearing, and they
6 shall be held at a place most convenient for those interested in the
7 subject of the hearing;

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

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

14 (c) The Administrative Procedure Act applies to regulations
15 promulgated by the commission.

16 Sec. 30.25.410. CONSTRUCTION. This chapter shall be liberally
17 construed to effect the purposes set out in sec. 10 of this chapter.

18 Sec. 30.25.420. DEFINITIONS. In this chapter, unless the context
19 requires otherwise,

20 (1) "board" means a board of arbitration established under
21 this chapter;

22 (2) "carrier" means a person who owns or who, for compensa-
23 tion, operates or otherwise provides a vessel engaged in, used or
24 capable of being used for, the marine transportation of oil, petroleum
25 products or their by-products on the waters of this state;

26 (3) "commission" means the Alaska State Port Commission;

27 (4) "commissioner" means a member of the Alaska State Port
28 Commission;

29 (5) "discharge" means any spilling, leaking, pumping,

1 pouring, emitting, emptying, or dumping;

2 (6) "fund" means the state coastal protection insurance
3 fund;

4 (7) "municipality" means a home rule or general law borough
5 or city including but not limited to a unified municipality organized
6 under AS 29.68;

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

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

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

25 (11) "transferred" includes both onloading and offloading,
26 between terminal and vessel and vessel to vessel;

27 (12) "vessel" means every description of watercraft or other
28 artificial contrivance, other than a seaplane on the water, used or
29 capable of being used as a means of transportation on or through the

1 water, whether self-propelled or Otherwise, and shall, for the purposes
2 of this chapter, include tugs and barges.

3 Sec. 30.25.430. SHORT TITLE. This chapter may be cited as the
4 Alaska Oil Discharge Prevention and Pollution Control Act.

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

6 (d) A person in charge of a sea-going vessel or of an onshore or
7 offshore facility, as soon as he has knowledge of any discharge from
8 the vessel or facility in violation of a provision of this chapter or
9 AS 30.25.020 shall immediately notify the department or the commission
10 of the discharge.

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

12 Sec. 46.03.760. POLLUTION PENALTIES. (a) A person who violates
13 secs. 710, 730, 740, or 750 of this chapter or AS 30.25.020 is guilty
14 of a misdemeanor and upon conviction is punishable by a fine of not
15 more than \$25,000, or by imprisonment for not more than one year, or
16 by both. Each unlawful act constitutes a separate offense.

17 (b) In addition to the penalties provided in (a) of this section
18 a person who violates secs. 740 - 750 of this chapter or AS 30.25.020
19 is liable, in a civil action, to the state for liquidated damages to
20 be assessed by the court for an amount not less than \$5,000 nor more
21 than \$100,000, depending on the severity of the violation.

22 (c) In addition to the penalties provided in (a) of this section,
23 a person who violates a provision of sec. 750 of this chapter or
24 AS 30.25.020 is liable to the state, in a civil action, in the case of
25 a vessel, for damages in an amount not to exceed \$100 per gross ton of
26 the violating vessel or \$14 million, whichever is less, and, in the
27 case of an onshore or offshore facility, \$100 for every \$500 evaluation
28 of the violating facility or \$14 million, whichever is less. However,
29 if the state shows that a violation of sec. 750 of this chapter or

1 AS 30.25.020 was the result of wilful negligence or wilful misconduct
2 on the part of the person charged with the violation, the person is
3 liable to the state for the full amount of damages caused. In the
4 case of wilful negligence or wilful misconduct, "damages," in this
5 subsection, means costs associated with the abatement, containment or
6 removal of a pollutant and reasonable restoration of the environment
7 to its former state.

8 (d) A person who falsely certifies information required under
9 sec. 750 of this chapter or AS 30.25.040, upon conviction, is punishable
10 by a fine of not more than \$25,000, or by imprisonment for not more
11 than one year, or by both. Each unlawful act constitutes a separate
12 offense.

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

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

16 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
17 FOR DAMAGES. A vessel which is used in or in aid of a violation of
18 secs. 740 - 750 of this chapter, or AS 30.25.020, may be detained
19 after a valid search by the department, an agent of the department, a
20 peace officer of the state, [OR] an authorized protection officer of
21 the Department of Fish and Game, or an authorized enforcement officer
22 of the Alaska State Port Commission. Upon judgment of the court
23 having jurisdiction that the vessel was used in or the cause of a
24 violation of secs. 740 - 750 of this chapter with knowledge of its
25 owner or under circumstances indicating that the owner should reasonably
26 have had this knowledge, the vessel may be held as security for payment
27 to the state of the amount of damages assessed by the court under sec.
28 760(b) of this chapter or upon determination by the commission under
29 AS 30.25, and if the damages so assessed are not paid within 30 days

1 after judgment, final determination by the commission or final deter-
2 mination of an appeal, the vessel shall be sold at public auction, or
3 as otherwise directed by the court or by the commission, and the
4 damages paid from the proceeds. The balance, if any, shall be paid by
5 the court or the commission to the owner of the vessel. The court
6 shall permit the release of the vessel upon posting of a bond set by
7 the court or the commission in an amount not to exceed \$100,000. The
8 damages received under this section shall be transmitted to the commission
9 [PROPER STATE OFFICER] for deposit in the coastal protection insurance
10 [GENERAL] fund. A vessel seized under this section shall be returned
11 or the bond exonerated if no damages are assessed under sec. 760(b) of
12 this chapter or AS 30.25.

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

14 (a) A person who violates a provision of this chapter or AS 30.25,
15 or who fails to perform a duty imposed by this chapter or AS 30.25, or
16 violates or disregards an order, permit, or other determination of the
17 department or the commission made under the provisions of this chapter
18 or AS 30.25, respectively, and thereby causes the death of fish,
19 animals, or vegetation or otherwise injures or degrades the environment
20 of the state is liable to the state for damages.

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

22 (a) A person found guilty of wilfully violating a provision of
23 this chapter, or AS 30.25, or a regulation, written order or directive
24 of the department or the commission or of a court made under this
25 chapter, or AS 30.25, is guilty of a misdemeanor, and upon conviction
26 for the first offense shall be punished by a fine of not more than
27 \$1,000 and costs of prosecution, or by imprisonment for not more than
28 one year, or by both the [SUCH] fine, cost, and imprisonment at the
29 discretion of the court. Upon conviction for a second or subsequent

1 offense, a person is guilty of a felony and is punishable by a fine of
2 at least \$500 but not more than \$5,000 and costs of prosecution, or by
3 imprisonment for not more than three years, or by both the fine, cost,
4 and imprisonment at the discretion of the court.

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

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

7 * Sec. 8. This Act takes effect January 1, 1976.

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