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1 IN THE SENATE

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ACSCS SS SENATE BILL NO. 406 (Jud.)

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

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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 police power 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; PERIODIC
3 INSPECTIONS. (a) No person may operate, or cause to be operated in the
4 state, an oil terminal facility used or capable of being used in the
5 transfer of oil, petroleum products or their by-products without a
6 certificate of 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 transportation
9 of oil, petroleum products or their by-products

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

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

14 (3) through the waters of the state without a certificate of
15 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 established under sec. 280 of this chapter and
23 submission of satisfactory evidence that the applicant has, or is in the
24 process of, implementing state and federal plans and regulations for
25 control of pollution related to oil, petroleum products and their by-
26 products and the abatement of the 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 to

1 prevent, contain, and remove discharges of oil and other pollutants, and
2 shall submit information to the commission, in a form satisfactory to
3 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 organ-
10 ization; 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 terminal
13 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 they
16 can provide all necessary equipment, personnel and supplies to prevent,
17 contain, and remove discharges of oil and other pollutants, and shall
18 submit information to the commission, in a form satisfactory to it,
19 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 the
22 carrier for the marine transportation of oil, petroleum products or
23 their by-products to and from onshore and offshore oil terminal facili-
24 ties in this state; the vessel description shall include, but is not
25 limited to, the overall length, beam, draft, gross tonnage, net tonnage,
26 and design capacity for transporting oil, petroleum products or their
27 by-products, and a detailed statement as to the vessel's seaworthiness;
28 however, the commission may require that the carrier furnish a marine
29 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 operator
11 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 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 certificate
19 of insurance under this section. This fee shall be reasonably related
20 to the administrative costs of verifying the data submitted under (d),
21 (e) and (f) of this section.

22 (h) Oil terminal facilities engaged in the transfer of, and carriers
23 engaged in the marine transportation of, oil, petroleum products or
24 their by-products, that are applicants for, or are holders of, a cer-
25 tificate of insurance under this section are subject to inspection by
26 the commission at least once every six months to ensure compliance with
27 the provisions of this chapter.

28 Sec. 30.25.050. EXEMPTIONS. Because the likelihood of significant
29 damage to marine, estuarine and terrestrial environment due to spills or

1 discharges of oil, petroleum products or their by-products is remote due
2 to the restricted nature of marina operations and small quantities
3 stored there or at limited capacity facility, a marina or a facility
4 used or capable of being used to store less than 500 barrels are exempt
5 from the certificate of insurance requirements of sec. 40 of this chapter.
6 For the purpose of this section "marina" means a person engaged in the
7 business of servicing the fuel requirements of pleasure craft, fishing
8 boats and other commercial vessels, where the purchaser and the consumer
9 are the same entity and the serviced vessel is 65 feet or less in overall
10 length.

11 Sec. 30.25.060. SCOPE OF REGULATIONS. The commission shall promul-
12 gate regulations to carry out the purposes of this chapter that do not
13 conflict with federal law or regulations issued by any federal department
14 or agency, including but not limited to the following:

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

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

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

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

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

27 (6) the establishment from time to time of control districts
28 comprising sections of the state's coast and the establishment of
29 regulations to meet the particular requirements of each district;

1 (7) requirements for the safety and operation of vessels,
2 barges, tugs, motor vehicles, motorized equipment and other equipment
3 relating to the use and operation of terminals, facilities and refin-
4 eries and the approach and departure from terminals, facilities and
5 refineries; and

6 (8) those other regulations that may be required by or for
7 emergency conditions or that reasonably may be necessary to carry out
8 the purposes of this chapter.

9 ARTICLE 3. EMERGENCIES.

10 Sec. 30.25.070. GOVERNOR'S POWERS; EMERGENCY PROCLAMATION. (a) In
11 addition to exercising his civil defense powers under AS 26.20, or
12 directing the Department of Environmental Conservation to exercise its
13 emergency powers under AS 46.03.820, whenever a disaster or catastrophe
14 occurs or appears imminent arising from the discharge of oil, petroleum
15 products or their by-products, the governor, or in his absence or in-
16 ability, the lieutenant governor, shall by proclamation declare the fact
17 and that an emergency exists in one, several or all sections of the
18 state. A copy of the proclamation shall be filed with the lieutenant
19 governor in the manner prescribed by law.

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

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

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

1 functions;

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

4 (d) When the governor is satisfied that an emergency no longer
5 exists he shall terminate the proclamation issued under (a) of this
6 section by another proclamation affecting the sections of the state
7 covered by the original proclamation. The proclamation shall be pub-
8 lished in the newspapers of general circulation in the state and posted
9 at other places that the governor, or the person acting in that capacity,
10 considers appropriate.

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

15 Sec. 30.25.080. INTERAGENCY COOPERATION. In performing his
16 duties under sec. 70 of this chapter, the governor shall secure coopera-
17 tion from all departments and agencies of the federal government, and
18 the governments of other states and foreign countries, and the political
19 subdivisions of them, as well as from private agencies, in all matters
20 relating to disaster or catastrophe.

21 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

22 Sec. 30.25.090. IMMEDIATE REMOVAL REQUIRED. A person discharging
23 oil, petroleum products or their by-products in a manner prohibited by
24 sec. 20 of this chapter shall immediately undertake to remove the dis-
25 charge to the commission's satisfaction. Notwithstanding this require-
26 ment, in the absence of an effort to remove the discharge, the commission
27 shall undertake the removal of the discharge and may retain agents and
28 enter into contracts for that purpose. These agents or contractors
29 shall operate under the direction of the commission.

1 Sec. 30.25.100. UNEXPLAINED DISCHARGES. An unexplained discharge
2 of oil, petroleum products or their by-products within the state's
3 jurisdiction or discharge of oil, petroleum products or their by-products
4 occurring in waters beyond state jurisdiction that for any reason pene-
5 trates within state jurisdiction shall be removed by or under the direc-
6 tion of the commission. Expenses involved in the removal of discharges,
7 whether by the person causing the discharge, the person reporting it, or
8 the commission by itself, or through its agents or contracts shall be
9 paid in the first instance from the coastal protection insurance fund
10 established under this chapter. Reimbursements due the fund for the cost
11 of removing the discharge shall be collected in the manner prescribed in
12 sec. 300 of this chapter.

13 Sec. 30.25.110. OIL DISCHARGE CLEAN-UP PERSONNEL, EQUIPMENT. (a)
14 The commission shall establish and maintain at ports, harbors or other
15 locations within the state, the employees and equipment that, in its
16 judgment, may be necessary to carry out the provisions of this chapter.

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

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

23 (d) The commission and the Departments of Natural Resources and
24 Environmental Protection shall consult with one another periodically
25 relative to procedures for the prevention of oil discharges into the
26 coastal and inside coastal waters of the state from offshore drilling
27 production facilities. The commission and these departments shall
28 jointly establish pre-designated disposal sites for the deposit of oil
29 discharge refuse and waste.

1 (e) Inspection and enforcement employees of the commission in
2 their line of duty under this chapter are peace officers under AS 01.10.-
3 060(6).

4 ARTICLE 6. ENFORCEMENT; PENALTIES.

5 Sec. 30.25.120. ADMINISTRATIVE ADJUDICATION. When it appears
6 after investigation that there is a violation of a regulation, order or
7 certificate issued by the commission, the commission shall proceed in
8 accordance with its regulations.

9 Sec. 30.25.130. CRIMINAL SANCTIONS. A person who violates sec. 20
10 of this chapter is punishable under AS 46.03.760(a) or AS 46.03.790. A
11 person who falsifies information required under sec. 40 of this chapter
12 is punishable under AS 46.03.760(d) or AS 46.03.790.

13 Sec. 30.25.140. CIVIL PENALTIES. (a) A person who violates a
14 provision of this chapter or a regulation or order of the commission is
15 subject to the penalties prescribed in AS 46.03.760(b) - (c) and AS 46.-
16 03.770 - 46.03.780.

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

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

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

26 Sec. 30.25.170. EACH VIOLATION IS A SEPARATE OFFENSE. Each vio-
27 lation of a provision of this chapter, an implementing regulation, or an
28 order or certificate issued by the commission under them, is a separate
29 and distinct offense and, in case of a continuing violation, each day

1 the violation continues constitutes a separate offense.

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

4 (b) An action to recover a civil penalty is not a bar to an en-
5 forcement proceeding to require compliance, or to any other remedy or
6 sanction provided by this chapter.

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

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

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

18 Sec. 30.25.210. PROMPT REPORTS. The provisions of secs. 90 - 200
19 of this chapter do not apply to a discharge promptly reported and removed
20 by an insured in accordance with the regulations and orders of the
21 commission to the satisfaction of the commission or other affected
22 persons.

23 ARTICLE 7. COASTAL PROTECTION INSURANCE FUND.

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

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

1 (c) To this fund shall be credited all insurance premiums, penal-
2 ties, damages and other fees or charges related to this chapter. To
3 this fund shall be charged all expenses of the commission related to
4 this chapter, including administrative expenses, costs of removal of
5 discharges of pollutants, and third party damages covered by this chapter.

6 Sec. 30.25.230. SURPLUS FUNDS. Money in the fund, not currently
7 needed to meet the obligations of the commission in the exercise of its
8 responsibilities under this chapter shall be deposited with the commis-
9 sioner of administration to the credit of the fund, and it may be in-
10 vested in the manner provided in AS 37.10. Interest received on that
11 investment shall be credited to the fund.

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

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

28 (b) An award of damages to a person on a claim under (a) of this
29 section bars recovery in an action by that person under sec. 200 of this

1 chapter, AS 46.03.760(e), AS 46.03.822 - 46.03.828, or any other pro-
2 vision of law on the same claim for the same injury.

3 (c) If the claimant, the commission and the person causing the
4 discharge can agree to the damage claim, the commission shall certify
5 the amount of the claim and the name of the claimant to the commissioner
6 of administration, and the commissioner shall pay the same from the
7 coastal protection insurance fund.

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

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

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

26 (b) Arbitrators shall be named by their principals within 10 days
27 after the commission receives notice of claims arising from a discharge
28 prohibited by sec. 20 of this chapter. If either party fails to select
29 its arbitrator within the 10-day period, the other party shall request

1 the American Arbitration Association to use its procedures for the
2 selection of an arbitrator, and the two arbitrators shall proceed to
3 select the neutral arbitrator as provided in (a) of this section.

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

6 (d) Hearings before boards of arbitrators shall be informal, and
7 the rules of evidence prevailing in judicial proceedings are not binding.
8 The adjudicatory provisions of the Administrative Procedures Act (AS 44.-
9 62) are not applicable to proceedings under this subsection. The board
10 has the power to administer oaths and to require by subpoena the atten-
11 dance and testimony of witnesses, the production of books, records and
12 other evidence relative or pertinent to the issues represented to them
13 for determination.

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

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

19 Sec. 30.25.280. FUNDING; INSURANCE PREMIUMS. (a) Annual insurance
20 premiums for each classification of certificates issued by the commis-
21 sion under sec. 40 of this chapter shall be based on the following
22 factors:

- 23 (1) data submitted by applicants under that section;
- 24 (2) with respect to the issuance of certificates to carriers
25 engaged in the marine transportation of oil, petroleum products or their
26 by-products, the design characteristics of the vessel for which the
27 certificate is issued, including but not limited to the presence or
28 absence of the standard safety features set out in AS 30.20.240(d); the
29 premium for a vessel that lacks some or all of those standard safety

1 features shall be increased accordingly in the manner prescribed by the
2 commission, however, the annual premium shall be set at no less than one
3 fifth of the original cost of installation had these standard safety
4 equipment features been installed at the time of construction of the
5 vessel;

6 (3) the risk experience of oil terminal facilities and
7 carriers during the previous premium period; and

8 (4) any other data, information or standards the commission
9 considers relevant or essential to an appropriate determination of the
10 annual premium rates for the issuance of certificates of insurance under
11 sec. 40 of this chapter.

12 (b) Premium rates may be adjusted from time to time during a
13 premium year to allow for risk experience during that period.

14 (c) Insurance premiums shall be paid to the commission and upon
15 receipt by it deposited in the coastal protection insurance fund.

16 (d) When the balance in the fund has reached the limit prescribed
17 by the commission, insurance premiums may be waived or shall be propor-
18 tionately reduced to cover expenses essential to maintain oil discharge
19 removal personnel, equipment and supplies in a state of readiness,
20 administrative expenses and sums allocated to research and development.

21 (e) When the balance in the fund is below the minimum the commis-
22 sion believes is essential to maintain oil discharge removal personnel,
23 equipment and supplies in a state of readiness, to cover administrative
24 expenses and sums allocated to research and development, the commission
25 may submit a request to the legislature for an appropriation or a
26 supplemental appropriation under the Executive Budget Act (AS 37.07).

27 (f) The commission shall submit annually to the legislature,
28 through the Department of Administration and the governor, in accordance
29 with the Executive Budget Act (AS 37.07), its recommendations for dis-

1 bursements from the fund under sec. 290 of this chapter.

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

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

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

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

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

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

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

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

20 (1) costs incurred by the fund in the abatement of a pro-
21 hibited discharge including third party claims when the person permitting
22 the same has failed to promptly report the discharge as required by the
23 regulations of the commission, and those costs when the person permit-
24 ting the prohibited discharge is not an insured;

25 (2) if an insured promptly reported a discharge as required
26 by this chapter, the cost involved in the abatement of a single pro-
27 hibited discharge including third party claims in excess of an amount
28 set by the commission that is above payments received under any federal
29 program.

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

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

11 Sec. 30.25.310. WAIVER OF REIMBURSEMENT. (a) Upon petition of
12 the person determined to be liable for reimbursement to the fund for
13 abatement costs under sec. 300 of this chapter, the commission may,
14 after hearing, waive the right to reimbursement to the fund if the
15 commission finds that the occurrence was the result of any of the
16 following:

17 (1) an act of war;

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

19 or

20 (3) an act of God, which means an unforeseeable act exclu-
21 sively occasioned by the violence of nature without the interference of
22 a human agency.

23 (b) Upon a finding by the commission under (a) of this section,
24 immediate credit for it shall be entered for the party involved. The
25 findings of the commission shall be conclusive because it is the legis-
26 lative intent that waiver provided in this section is a privilege
27 conferred and not a right granted.

28 ARTICLE 8. STRICT LIABILITY.

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

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

6 Sec. 30.25.330. STATE NEED NOT PROVE NEGLIGENCE. Because it is
7 the intent of this chapter to provide the means for rapid and effective
8 cleanup and to minimize direct damages as well as indirect damages and
9 the proliferation of third party claims, an oil terminal facility or
10 carrier operator, employee or agent, operating in the state or state
11 waters who permits or suffers a prohibited discharge or other polluting
12 condition to take place shall be liable to the state for all costs of
13 cleanup or other damage incurred by the state. In any suit to enforce
14 claims of the state under this section, it shall not be necessary for
15 the state to plead or prove negligence in any form or manner on the part
16 of the operator. The state need only plead and prove the fact of the
17 prohibited discharge or other polluting condition and that it occurred
18 at facilities under the control of the operator or was attributable to
19 carriers or others for whom the operator is responsible as provided in
20 this chapter.

21 ARTICLE 9. GENERAL, MISCELLANEOUS PROVISIONS.

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

27 Sec. 30.25.350. ANNUAL REPORT. The commission shall prepare and
28 publish an annual report to the governor and to the legislature reviewing
29 its work under this chapter and shall include in the report its recommen-

1 dations for the enactment of appropriate legislation.

2 Sec. 30.25.360. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.

3 If a conflict occurs between a provision of this chapter, or a regula-
4 tion, certificate, order, decision or other determination of the commis-
5 sion and a charter, ordinance, permit, regulation, franchise, decision
6 or other determination of a municipality, the provisions of this chapter
7 or a regulation, certificate, order, decision or other determination of
8 the commission prevails. However, nothing in this chapter may be con-
9 strued to preclude a municipality, by ordinance or regulation, from
10 exercising its police powers in the area regulated by this chapter.

11 Sec. 30.25.370. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)

12 The administrative adjudication procedures of the Administrative Pro-
13 cedure Act (AS 44.62) do not apply to the adjudicatory, certificate
14 issuing, or other proceedings of the commission under this chapter.
15 However,

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

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

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

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

27 (c) The Administrative Procedure Act applies to regulations
28 promulgated by the commission.

29 Sec. 30.25.410. CONSTRUCTION. This chapter shall be liberally

1 construed to effect the purposes set out in sec. 10 of this chapter.

2 Sec. 30.25.420. DEFINITIONS. In this chapter, unless the context
3 requires otherwise,

4 (1) "board" means a board of arbitration established under
5 this chapter;

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

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

11 (4) "commissioner" means a member of the Alaska State Port
12 Commission;

13 (5) "deepwater port" means a fixed or floating man-made
14 structure other than a vessel, or a group of these structures, located
15 off the coast of the United States beyond the territorial waters of the
16 state and which are used or intended for use as a port or terminal for
17 the transfer, loading or unloading and further handling of oil, petro-
18 leum products or their by-products for transportation to any state, and
19 commonly known as "superports" or "monobuoys;" the term includes all
20 associated components and equipment, including pipelines, pumping
21 stations, service platforms, mooring buoys and similar appurtenances to
22 the extent they are located seaward of the high water mark;

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

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

26 (8) "municipality" means a home rule or general law borough
27 or city including but not limited to a unified municipality organized
28 under AS 29.68;

29 (9) "oil, petroleum products and their by-products" means oil

1 of any kind and in any form including, but not limited to, petroleum,
2 fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils
3 and all other liquid hydrocarbons regardless of specific gravity;

4 (10) "oil terminal facility" means an onshore or offshore
5 facility of any kind and related appurtenances, including but not
6 limited to a deepwater port, located in, on, or under the surface of any
7 land or water of the state, including tide and submerged lands, which is
8 used or capable of being used for the purpose of transferring, processing
9 or refining oil, petroleum products and their by-products or for the
10 purpose of storing the same; a vessel shall be considered an oil terminal
11 facility only in the event of a ship-to-ship transfer of oil, petroleum
12 products or their by-products, and only that vessel going to or coming
13 from the place of transfer and the oil terminal facility;

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

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

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

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

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

28 (d) A person in charge of a sea-going vessel or of an onshore or
29 offshore facility, as soon as he has knowledge of any discharge from the

1 vessel or facility in violation of a provision of this chapter or
2 AS 30.25.020 shall immediately notify the department or the commission
3 of the discharge.

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

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

10 (b) In addition to the penalties provided in (a) of this section
11 a person who violates secs. 740 - 750 of this chapter or AS 30.25.020 is
12 liable, in a civil action, to the state for liquidated damages to be
13 assessed by the court for an amount not less than \$5,000 nor more than
14 \$100,000, depending on the severity of the violation.

15 (c) In addition to the penalties provided in (a) of this section,
16 a person who violates a provision of sec. 750 of this chapter or AS 30.-
17 25.020 is liable to the state, in a civil action, in the case of a
18 vessel, for damages in an amount not to exceed \$100 per gross ton of the
19 violating vessel or \$14 million, whichever is less, and, in the case of
20 an onshore or offshore facility, \$100 for every \$500 evaluation of the
21 violating facility or \$14 million, whichever is less. However, if the
22 state shows that a violation of sec. 750 of this chapter or AS 30.25.020
23 was the result of wilful negligence or wilful misconduct on the part of
24 the person charged with the violation, the person is liable to the state
25 for the full amount of damages caused. In the case of wilful negligence
26 or wilful misconduct, "damages," in this subsection, means costs associ-
27 ated with the abatement, containment or removal of a pollutant and
28 reasonable restoration of the environment to its former state.

29 (d) A person who falsely certifies information required under sec.

1 750 of this chapter or AS 30.25.040, upon conviction, is punishable by
2 a fine of not more than \$25,000, or by imprisonment for not more than
3 one year, or by both. Each unlawful act constitutes a separate offense.

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

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

7 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
8 FOR DAMAGES. A vessel which is used in or in aid of a violation of
9 secs. 740 - 750 of this chapter, or AS 30.25.020, may be detained after
10 a valid search by the department, an agent of the department, a peace
11 officer of the state, [OR] an authorized protection officer of the
12 Department of Fish and Game, or an authorized enforcement officer of
13 the Alaska State Port Commission. Upon judgment of the court having
14 jurisdiction that the vessel was used in or the cause of a violation of
15 secs. 740 - 750 of this chapter with knowledge of its owner or under
16 circumstances indicating that the owner should reasonably have had this
17 knowledge, the vessel may be held as security for payment to the state
18 of the amount of damages assessed by the court under sec. 760(b) of this
19 chapter or upon determination by the commission under AS 30.25, and if
20 the damages so assessed are not paid within 30 days after judgment,
21 final determination by the commission or final determination of an
22 appeal, the vessel shall be sold at public auction, or as otherwise
23 directed by the court or by the commission, and the damages paid from
24 the proceeds. The balance, if any, shall be paid by the court or the
25 commission to the owner of the vessel. The court shall permit the
26 release of the vessel upon posting of a bond set by the court or the
27 commission in an amount not to exceed \$100,000. The damages received
28 under this section shall be transmitted to the commission [PROPER STATE
29 OFFICER] for deposit in the coastal protection insurance [GENERAL] fund.

1 A vessel seized under this section shall be returned or the bond ex-
2 onerated if no damages are assessed under sec. 760(b) of this chapter or
3 AS 30.25.

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

5 (a) A person who violates a provision of this chapter or AS 30.25,
6 or who fails to perform a duty imposed by this chapter or AS 30.25, or
7 violates or disregards an order, permit, or other determination of the
8 department or the commission made under the provisions of this chapter
9 or AS 30.25, respectively, and thereby causes the death of fish,
10 animals, or vegetation or otherwise injures or degrades the environment
11 of the state is liable to the state for damages.

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

13 (a) A person found guilty of wilfully violating a provision of
14 this chapter, or AS 30.25, or a regulation, written order or directive
15 of the department or the commission or of a court made under this
16 chapter, or AS 30.25, is guilty of a misdemeanor, and upon conviction
17 for the first offense shall be punished by a fine of not more than
18 \$1,000 and costs of prosecution, or by imprisonment for not more than
19 one year, or by both the [SUCH] fine, cost, and imprisonment at the
20 discretion of the court. Upon conviction for a second or subsequent
21 offense, a person is guilty of a felony and is punishable by a fine of
22 at least \$500 but not more than \$5,000, or by imprisonment for not more
23 than three years, or by both.

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

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

26 * Sec. 8. This Act takes effect July 1, 1976.
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