

Introduced: 2/6/76
Referred: Commerce and
Resources

1 IN THE SENATE

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2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 406

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the marine transportation of oil,
7 petroleum products and their by-products; and providing
8 for an effective date."

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

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

11 CHAPTER 20. REGULATION OF OIL TANKER TRAFFIC.

12 Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger
13 of spills, the legislature finds and declares that the marine transpor-
14 tation of oil, other petroleum products and their by-products by tankers
15 or other carriers so engaged in the coastal waters and inside coastal
16 waters of the state creates a great potential hazard to important
17 natural resources of the state and to jobs and incomes dependent on
18 these resources. The legislature also recognizes that the state's
19 coastal and inside coastal waters are a relatively confined saltwater
20 environment with irregular shorelines and therefore there is a greater
21 than usual likelihood of long-term damage from any large oil discharge.
22 Certain areas of the state's coastal and inside coastal waters have
23 limited space for maneuvering a large oil tanker or other carrier
24 engaged in the marine transportation of oil, other petroleum products or
25 their by-products. These waters also contain many natural obstacles and
26 phenomena as well as a high density of commercial and pleasure boat
27 traffic. Thus, it is important that large oil tankers or other carriers
28 have sufficient capability for rapid maneuvering responses.

29 (b) It is also the purpose of this chapter to decrease the likeli-

1 hood of oil discharges in the coastal and inside coastal waters of the
2 state and its shorelines by requiring oil tankers and other carriers
3 engaged in the marine transportation of oil, other petroleum products or
4 their by-products to be equipped with certain safety and maneuvering
5 capability features and, if these vessels are above a certain size but
6 lack these features, to be escorted by tugs while navigating in the
7 coastal and inside coastal waters of the state.

8 Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a)
9 An oil tanker or other carrier engaged in the marine transportation of
10 oil, other petroleum products or their by-products while navigating
11 those portions of the navigable coastal, inside coastal or other navi-
12 gable waters of the state prescribed by the department by regulation
13 shall be equipped or fitted with

14 (1) LORAN-C navigational system receivers and other position
15 location systems as may be prescribed from time to time by the depart-
16 ment by regulation;

17 (2) radar controlled collision avoidance systems prescribed
18 by the department by regulation; and

19 (3) two radars of types prescribed by the department by regu-
20 lation in working order and operating.

21 (b) An oil tanker or other carrier engaged in the marine transpor-
22 tation of oil, other petroleum products or their by-products of 20,000
23 deadweight tons or more, which lacks the following maneuverability and
24 stopping features, must be escorted by tugs with an aggregate shaft
25 horsepower equivalent to five per cent of the deadweight tons of that
26 tanker or other carrier while navigating those portions of the navigable
27 coastal, inside coastal or other navigable waters of the state prescribed
28 by the department by regulation:

29 (1) lateral thrusters;

1 (2) controllable pitch propellers or astern horsepower equal
2 to 80 per cent of ahead horsepower; and

3 (3) redundant boilers or an auxiliary propulsion source and
4 other backup equipment that the department may require by regulation to
5 provide for a vessel's safe operation if the primary equipment fails.

6 (c) An oil tanker or other carrier engaged in the marine trans-
7 portation of oil, other petroleum products or their by-products of
8 20,000 deadweight tons or more while navigating those portions of the
9 navigable coastal, inside coastal or other navigable waters of the state
10 prescribed by the department by regulation shall be equipped or fitted
11 with

12 (1) flue gas or other gas inerting systems to be prescribed
13 by the department by regulation; and

14 (2) segregated ballast tanks, the combined capacity of which
15 shall be of sufficient size, as prescribed by the department, so that
16 the oil tanker or other carrier can operate safely on ballast voyages
17 without recourse to the use of cargo tanks for water ballast, and which
18 shall be achieved in part by fitting, throughout the cargo length,
19 either a double bottom of a minimum height of one-fifteenth of the beam
20 or two meters, whichever is the greater, or a double hull. Throughout
21 the cargo-carrying length or compartments of the vessel of a minimum
22 depth of two meters, no cargo may be placed in segregated ballast tanks,
23 nor may ballast be placed in cargo tanks.

24 (d) Not later than January 1, 1985, an oil tanker or other car-
25 rier, of 500 deadweight tons or more, but less than 20,000 deadweight
26 tons, engaged in the marine transportation of oil, other petroleum pro-
27 ducts or their by-products in the navigable waters of the state shall be
28 equipped or fitted, where applicable, with the safety and maneuvera-
29 bility features described in (b) and (c) of this section, as prescribed

1 by the department by regulation. The regulations promulgated under this
2 subsection shall be published by January 1, 1977.

3 Sec. 30.20.030. OIL TANKER TRAFFIC REGULATIONS. (a) The depart-
4 ment shall establish, promulgate and maintain a comprehensive, uniform
5 system of marine traffic regulations for the operation of oil tankers
6 and other carriers engaged in the marine transportation of oil, other
7 petroleum products or their by-products in the navigable waters of the
8 state that may be required to implement the provisions of this chapter
9 and that are not in conflict with the marine traffic regulations con-
10 tained in federal navigation laws or regulations promulgated by the
11 United States Coast Guard.

12 (b) In promulgating these regulations, the department may pre-
13 scribe the maximum and minimum speed for vessels subject to this chapter
14 and the weather conditions under which the movement of these vessels may
15 be prohibited.

16 (c) The department shall consult and cooperate with the United
17 States Coast Guard in the establishment, promulgation, maintenance,
18 administration and enforcement of the marine traffic regulations promul-
19 gated under this chapter.

20 (d) The Administrative Procedure Act (AS 44.62) applies to regula-
21 tions promulgated by the department under this chapter.

22 Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the
23 regulations promulgated under it shall be enforced by a peace officer or
24 an employee of the department or other state agency authorized by the
25 commissioner.

26 (b) An owner or operator of a vessel who violates a provision of
27 this chapter, or a regulation promulgated under it, upon conviction, is
28 guilty of a misdemeanor and is punishable by a fine of not less than
29 \$1,000 nor more than \$25,000, or by imprisonment for not more than one

1 year, or by both. Each day on which a violation occurs may be con-
2 sidered a separate and additional offense.

3 Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS,
4 ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or
5 of the Congress of the United States, as may be required under appli-
6 cable provisions of law, the governor may execute supplementary agree-
7 ments, reciprocal arrangements or compacts with any other state or with
8 a foreign government to implement the purposes of this chapter.

9 Sec. 30.20.080. DEFINITIONS. In this chapter

10 (1) "carrier" means a person who owns or who, for compensa-
11 tion, operates or otherwise provides a vessel engaged in, used or
12 capable of being used for, the marine transportation of oil, petroleum
13 products or their by-products on the waters of this state;

14 (2) "commissioner" means the commissioner of environmental
15 conservation;

16 (3) "department" means the Department of Environmental
17 Conservation;

18 (4) "oil, petroleum products or their by-products" means oil
19 of any kind and in any form including, but not limited to, petroleum,
20 fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils
21 and all other liquid hydrocarbons, including but not limited to lique-
22 fied natural gas, regardless of specific gravity;

23 (5) "operate" means to navigate or otherwise use a vessel
24 subject to the provisions of this chapter;

25 (6) "operator" means the person who operates or has charge of
26 the navigation or use of a vessel subject to the provisions of this
27 chapter;

28 (7) "owner" means a person, other than a lienholder, having
29 the property in or title to a vessel; the term includes a person en-

1 titled to the use or possession of a vessel subject to an interest of
2 another person reserved or created by agreement and securing payment or
3 performance of an obligation, but the term excludes a lessee under a
4 lease not intended as security;

5 (8) "vessel" means every description of watercraft or other
6 artificial contrivance, other than a seaplane on the water, used or
7 capable of being used as a means of transportation on or through the
8 water, whether self-propelled or otherwise, and shall, for the purposes
9 of this chapter, include tugs and barges;

10 (9) "waters of the state" means the navigable coastal, inside
11 coastal and other navigable waters within the territorial limits of this
12 state, and the marginal sea adjacent to this state, as defined in
13 AS 44.03 and AS 46.03.900(22).

14 Sec. 30.20.090. SHORT TITLE. This chapter may be cited as the Oil
15 Tanker Traffic Regulation Act.

16 * Sec. 2. AS 30 is amended by adding a new chapter to read:

17 CHAPTER 25. OIL TERMINAL FACILITIES; TRANSFER OF OIL,
18 PETROLEUM PRODUCTS AND THEIR BY-PRODUCTS.

19 ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

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

26 (b) The legislature further finds and declares that the preser-
27 vation of these uses is a matter of the highest urgency and priority and
28 that these uses can only be served effectively by maintaining the
29 coastal and inside coastal waters, estuaries, wetlands, beaches and

1 public lands adjoining the seacoast in as close to pristine condition as
2 possible taking into account multiple use accommodations necessary to
3 provide the broadest possible protection of public and private interests
4 with the least possible conflicts in such diverse uses.

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

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

23 (1) to exercise the police power of the state through the
24 Department of Environmental Conservation by conferring upon the depart-
25 ment the power to deal with the hazards and threats of danger and damage
26 posed by these transfers and related activities and to encourage and
27 ensure cooperation with the United States Coast Guard and any other
28 state or federal department or agency;

29 (2) to require the prompt containment and removal of the

1 pollution occasioned by oil spills;

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

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

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

15 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE

16 CARRIERS; ISSUANCE OF CERTIFICATES OF INSURANCE.

17 Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
18 THE STATE PROHIBITED. Except as provided in AS 46.03.740, the discharge
19 of oil, petroleum products or their by-products into or upon any waters
20 and lands of the state (as defined in AS 46.03.826(7)) is prohibited.

21 Sec. 30.25.030. AUTHORITY OF COMMISSION. (a) The authority of
22 the department under this chapter extends to the areas described in sec.
23 20 of this chapter, and to a distance of 12 miles from the coastline of
24 the state as defined in AS 44.03.

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

29 Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLI-

1 CATIONS; PERIODIC INSPECTIONS. (a) No person may operate, or cause to
2 be operated in the state, an oil terminal facility used or capable of
3 being used in the transfer of oil, petroleum products or their by-
4 products without a certificate of insurance issued by the department
5 under this chapter.

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

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

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

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

15 (c) The department may prohibit the loading or unloading of a
16 vessel or other marine carrier, subject to the provisions of this chap-
17 ter, that does not possess a certificate of insurance issued under this
18 chapter.

19 (d) Certificates of insurance shall be issued on an annual basis
20 and shall expire on December 31, subject to those terms and conditions
21 the department considers necessary and prescribes by regulation to carry
22 out the purposes of this chapter.

23 (e) As a condition precedent to the issuance or renewal of a
24 certificate of insurance the department shall require payment of an
25 annual insurance premium established under sec. 260 of this chapter and
26 submission of satisfactory evidence that the applicant has, or is in the
27 process of, implementing state and federal plans and regulations for
28 control of pollution related to oil, petroleum products and their by-
29 products and the abatement of the pollution when a discharge occurs.

1 (f) In addition to the evidence supplied under (d) of this sec-
2 tion, applicants for an oil terminal facility certificate shall demon-
3 strate that they can provide all necessary equipment, personnel and
4 supplies to prevent, contain, and remove discharges of oil and other
5 pollutants, and shall submit information to the department in a form
6 satisfactory to it, describing the following:

7 (1) the barrel or other measurement capacity of the terminal
8 facility;

9 (2) all containment and removal equipment, including but not
10 limited to vehicles, vessels, pumps, skimmers, booms, chemicals and
11 communications devices to which the facility has access, whether through
12 direct ownership or by contract or membership in an oil cleanup organ-
13 ization; and

14 (3) the terms of agreement and operation plan of any dis-
15 charge cleanup organization to which the owner or operator of the
16 terminal facility belongs.

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

23 (1) the name and description of each vessel for which a
24 certificate is sought that is engaged in, used or capable of being used
25 by the carrier for the marine transportation of oil, petroleum products
26 or their by-products to and from onshore and offshore oil terminal
27 facilities in this state; the vessel description shall include, but is
28 not limited to, the overall length, beam, draft, gross tonnage, net
29 tonnage, and design capacity for transporting oil, petroleum products or

1 their by-products, and a detailed statement as to the vessel's seaworth-
2 iness; the department may, in addition, require that the carrier furnish
3 a marine survey of the vessel's condition;

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

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

12 (4) the terms of agreement and operation plan of any dis-
13 charge cleanup organization to which the carrier or the owner or opera-
14 tor of the vessel belongs.

15 (h) Upon showing of satisfactory containment and removal or
16 cleanup capability under this section, and upon payment of the annual
17 insurance premium, the department shall issue the applicant a certi-
18 ficate of insurance covering the terminal facility and related appur-
19 tenances or for each vessel. In addition to the annual insurance pre-
20 mium, the department may assess a penalty for late applications and a
21 fee for the processing of an application for the issuance or renewal of
22 a certificate of insurance under this section. This fee shall be
23 reasonably related to the administrative costs of verifying the data
24 submitted under (e), (f) and (g) of this section.

25 (i) Oil terminal facilities engaged in the transfer of, and
26 carriers engaged in the marine transportation of, oil, petroleum pro-
27 ducts or their by-products, that are applicants for, or are holders of,
28 a certificate of insurance under this section are subject to inspection
29 by the department to ensure compliance with the provisions of this

1 chapter.

2 Sec. 30.25.050. EXEMPTIONS. Because the likelihood of significant
3 damage to the marine, estuarine and terrestrial environment due to
4 spills or discharges of oil, petroleum products or their by-products
5 is remote due to the restricted nature of marina operations and small
6 quantities stored there or at a limited capacity facility, a marina or
7 a facility used or capable of being used to store less than 500 barrels
8 of oil, petroleum products or their by-products is exempt from the cer-
9 tificate of insurance requirements of sec. 40 of this chapter. For
10 the purpose of this section "marina" means a person engaged in the
11 business of servicing the fuel requirements of pleasure craft, fishing
12 boats and other commercial vessels, where the purchaser and the consumer
13 are the same entity, and the fuel capacity of the servicing or serviced
14 vessel is 500 barrels of oil, petroleum products or their by-products
15 or less.

16 Sec. 30.25.060. SCOPE OF REGULATIONS. The department shall pro-
17 mulgate regulations to carry out the purposes of this chapter that do
18 not conflict with federal law or regulations issued by any federal
19 department or agency, including but not limited to the following:

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

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

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

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

29 (5) development and implementation of criteria and plans to

1 meet oil and petroleum pollution discharges, spills or other occurrences
2 of various degrees and kinds;

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

6 (7) requirements for the safety and operation of vessels,
7 barges, tugs, motor vehicles, motorized equipment and other equipment
8 relating to the use and operation of terminals, facilities and refin-
9 eries and the approach and departure from terminals, facilities and
10 refineries; and

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

14 ARTICLE 3. EMERGENCIES.

15 Sec. 30.25.070. GOVERNOR'S POWERS; EMERGENCY PROCLAMATION. (a)
16 In addition to exercising his civil defense powers under AS 26.20, or
17 directing the department to exercise its emergency powers under AS 46.-
18 03.820, whenever a disaster or catastrophe occurs or appears imminent
19 arising from the discharge of oil, petroleum products or their by-
20 products, the governor, or in his absence or inability, the lieutenant
21 governor, shall by proclamation declare the fact and that an emergency
22 exists in one, several or all sections of the state. A copy of the
23 proclamation shall be filed with the lieutenant governor in the manner
24 prescribed by law.

25 (b) The governor has general direction and control of the depart-
26 ment and is responsible for carrying out the provisions of this chapter
27 when a disaster or catastrophe occurs or appears imminent arising from
28 the discharge of oil, petroleum products or their by-products.

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

1 (1) issue, amend and rescind the necessary orders and regu-
2 lations to carry out the provisions of this chapter within the limits of
3 the authority conferred upon him and not inconsistent with the regula-
4 tions and directives of the President of the United States or of any
5 federal department or agency that has specifically authorized emergency
6 functions;

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

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

16 (e) The provisions of AS 26.20 as they apply to eminent domain and
17 compensation, mutual aid, immunity, aid in emergency, right-of-way,
18 enforcement and compensation apply to disasters or catastrophes pro-
19 claimed by the governor under this chapter.

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

26 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

27 Sec. 30.25.090. IMMEDIATE REMOVAL REQUIRED. A person discharging
28 oil, petroleum products or their by-products in a manner prohibited by
29 sec. 20 of this chapter shall immediately undertake to remove the dis-

1 charge to the department's satisfaction. Notwithstanding this require-
2 ment, in the absence of an effort to remove the discharge, the depart-
3 ment shall undertake the removal of the discharge and may retain agents
4 and enter into contracts for that purpose notwithstanding the provisions
5 of AS 37.05.220 - 37.05.280. These agents or contractors shall operate
6 under the direction of the department.

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

19 Sec. 30.25.110. OIL DISCHARGE CLEAN-UP PERSONNEL, EQUIPMENT. (a)
20 The department shall establish and maintain at ports, harbors or other
21 locations within the state, the personnel, equipment and supplies that,
22 in its judgment, may be necessary to carry out the provisions of this
23 chapter. However, the department may enter into a contract with a
24 person or private organization to provide the oil discharge clean-up
25 personnel, equipment or other services or supplies that may be required
26 to carry out the provisions of this chapter.

27 (b) The department may employ, subject to the State Personnel Act
28 (AS 39.25), persons necessary to carry out the provisions of this chap-
29 ter, prescribe their duties and compensation.

1 (c) The salaries of department employees and the cost of equipment
2 or supplies, or the contract entered into under (a) of this section, re-
3 quired to carry out the provisions of this chapter shall be paid from
4 the coastal protection insurance fund.

5 (d) The department and the Departments of Natural Resources and
6 Fish and Game shall consult with one another periodically relative to
7 procedures for the prevention of oil discharges into the coastal and
8 inside coastal waters of the state from offshore drilling production
9 facilities. These departments shall jointly establish pre-designated
10 disposal sites for the deposit of oil discharge refuse and waste.

11 (e) Inspection and enforcement employees of the department in
12 their line of duty under this chapter and AS 46.03 are peace officers
13 under AS 01.10.060(6).

14 ARTICLE 5. ENFORCEMENT; PENALTIES.

15 Sec. 30.25.120. ADMINISTRATIVE ADJUDICATION. When it appears
16 after investigation that there is a violation of a regulation, order or
17 certificate issued by the department, the department shall proceed in
18 accordance with its regulations.

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

23 Sec. 30.25.140. CIVIL PENALTIES. A person who violates a pro-
24 vision of this chapter or a regulation or order of the department is
25 subject to the penalties prescribed in AS 46.03.760(b) - (c) and 46.-
26 03.770 - 46.03.780.

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

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

4 (b) All penalties or damages recovered under the provisions of
5 this chapter shall be paid to the department and deposited by it in the
6 coastal protection insurance fund.

7 Sec. 30.25.170. EACH VIOLATION IS A SEPARATE OFFENSE. Each vio-
8 lation of a provision of this chapter, an implementing regulation, or an
9 order or certificate issued by the department under them, is a separate
10 and distinct offense and, in case of a continuing violation, each day
11 the violation continues constitutes a separate offense.

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

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

17 Sec. 30.25.190. JOINDER OF ACTIONS. Under the applicable court
18 rules, appeals from orders of the department, and actions for recovery
19 of damages or penalties may be joined. The court may in the interests
20 of justice separate the actions.

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

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

28 ARTICLE 6. COASTAL PROTECTION INSURANCE FUND.

29 Sec. 30.25.210. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The

1 coastal protection insurance fund is created as a revolving fund. The
2 fund shall be used by the department to carry out the purposes of this
3 chapter.

4 (b) The fund shall be limited to a sum established by the depart-
5 ment by regulation.

6 (c) To this fund shall be credited all insurance premiums, penal-
7 ties, damages and other fees or charges related to this chapter. To
8 this fund shall be charged all expenses of the department related to
9 this chapter, including administrative expenses, costs of removal of
10 discharges of pollutants, and third party damages covered by this
11 chapter.

12 Sec. 30.25.220. SURPLUS FUNDS. Money in the fund, not currently
13 needed to meet the obligations of the department in the exercise of its
14 responsibilities under this chapter shall be deposited with the commis-
15 sioner of administration to the credit of the fund, and it may be in-
16 vested in the manner provided in AS 37.10. Interest received on that
17 investment shall be credited to the fund.

18 Sec. 30.25.230. RESEARCH AND DEVELOPMENT. The department may
19 allocate annually not more than five per cent of the amount then cur-
20 rently in the fund for research and development into the causes, ef-
21 fects, prevention and removal of pollution caused by oil, petroleum
22 products, or their by-products on the marine environment. These allo-
23 cations shall be made in accordance with the Executive Budget Act
24 (AS 37.07).

25 Sec. 30.25.240. THIRD PARTY DAMAGES. (a) A person claiming to
26 have suffered damages to real estate or personal property or loss of
27 income directly or indirectly as a result of a discharge of oil, petro-
28 leum products or their by-products prohibited by sec. 20 of this
29 chapter, or as the result of an unexplained discharge under sec. 100

1 of this chapter, may apply within one year after the occurrence of the
2 discharge to the department stating the amount of damage he claims to
3 have suffered as a result of the discharge. The department shall pre-
4 scribe appropriate forms and procedures for these applications. The
5 department may, upon petition, and for good cause shown, waive the one-
6 year limitation for filing damage claims.

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

11 (c) If the claimant, the department and the person causing the
12 discharge can agree to the damage claim, the department shall certify
13 the amount of the claim and the name of the claimant to the commissioner
14 of administration, and the commissioner shall pay the same from the
15 coastal protection insurance fund.

16 (d) If the claimant, the department and the person causing the
17 discharge cannot agree as to the amount of the damage claim, the claim
18 shall be transmitted immediately for action to the board of arbitration
19 provided in sec. 250 of this chapter.

20 (e) Third party damage claims by any single person shall be stated
21 in their entirety in one application. Damages omitted from any claim at
22 the time the award is made shall be considered waived.

23 Sec. 30.25.250. BOARD OF ARBITRATION. (a) The board of arbitra-
24 tion consists of three persons, one chosen by the person determined in
25 the first instance by the department to have caused the discharge, one
26 to be chosen by the department to represent the public interest, and one
27 person chosen by the first two appointed members to serve as a neutral
28 arbitrator. The neutral arbitrator shall serve as chairman. If the two
29 arbitrators fail to agree upon, select and name the neutral arbitrator

1 within 10 days after their appointment, then the department shall re-
2 quest the American Arbitration Association to use its procedures for the
3 selection of a neutral arbitrator. No employee of the department may
4 serve as an arbitrator.

5 (b) Arbitrators shall be named by their principals within 10 days
6 after the department receives notice that the claimant, the department
7 and the person causing the discharge cannot agree as to the amount of
8 the damage claim. If either party fails to select its arbitrator within
9 the 10-day period, the other party shall request the American Arbitra-
10 tion Association to use its procedures for the selection of an arbitra-
11 tor, and the two arbitrators shall proceed to select the neutral arbi-
12 trator as provided in (a) of this section.

13 (c) One board of arbitrators shall be established for and hear and
14 determine all claims arising from or related to a common single dis-
15 charge.

16 (d) Hearings before boards of arbitrators shall be informal, and
17 the rules of evidence prevailing in judicial proceedings are not bind-
18 ing. The adjudicatory provisions of the Administrative Procedure Act
19 (AS 44.62) are not applicable to proceedings under this subsection. The
20 board has the power to administer oaths and to require by subpoena the
21 attendance and testimony of witnesses, the production of books, records
22 and other evidence relative or pertinent to the issues represented to
23 them for determination.

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

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

29 Sec. 30.25.260. FUNDING; INSURANCE PREMIUMS. (a) Annual in-

1 surance premiums for each classification of certificates issued by the
2 department under sec. 40 of this chapter shall be based on the following
3 factors:

4 (1) data submitted by applicants under that section;

5 (2) with respect to the issuance of certificates to carriers
6 engaged in the marine transportation of oil, petroleum products or their
7 by-products, the design characteristics of the vessel for which the
8 certificate is issued, including but not limited to the presence or
9 absence of the standard safety features set out in AS 30.20.020(b) -
10 (c); the premium for a vessel that lacks some or all of those standard
11 safety features shall be increased accordingly in the manner prescribed
12 by the department; however, the annual premium shall be set at no less
13 than one-fifth of the original cost of installation had these standard
14 safety or maneuverability features been installed at the time of con-
15 struction of the vessel;

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

18 (4) any other data, information or standards the department
19 considers relevant or essential to an appropriate determination of the
20 annual premium rates for the issuance of certificates of insurance under
21 sec. 40 of this chapter.

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

24 (c) Insurance premiums shall be paid to the department and upon
25 receipt by it deposited in the coastal protection insurance fund.

26 (d) When the balance in the fund has reached the limit prescribed
27 by the department, insurance premiums may be waived or shall be propor-
28 tionately reduced to cover expenses essential to maintain oil discharge
29 removal personnel, equipment and supplies in a state of readiness,

1 administrative expenses and sums allocated to research and development.

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

8 (f) The department shall submit annually to the legislature,
9 through the Department of Administration and the governor, in accordance
10 with the Executive Budget Act (AS 37.07), its recommendations for dis-
11 bursements from the fund under secs. 230 and 270 of this chapter.

12 Sec. 30.25.270. DISBURSEMENTS FROM FUND. Money in the coastal
13 protection insurance fund may be disbursed for the following purposes
14 and no other, subject to the provisions of AS 37.07 and AS 37.10:

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

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

21 (3) sums allocated to research and development in accordance
22 with sec. 230 of this chapter;

23 (4) payment of third party damage claims awarded in accor-
24 dance with sec. 240 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. 30.25.280. REIMBURSEMENTS TO FUND. (a) The department shall
29 recover to the use of the fund all sums expended from it, including

1 overdrafts.

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

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

12 Sec. 30.25.290. WAIVER OF REIMBURSEMENT. (a) Upon petition of
13 the person determined to be liable for reimbursement to the fund for
14 abatement costs under sec. 280 of this chapter, the department may,
15 after hearing, waive the right to reimbursement to the fund if the
16 department finds that the occurrence was the result of any of the
17 following:

18 (1) an act of war;

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

20 or

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

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

29 ARTICLE 7. STRICT LIABILITY.

1 Sec. 30.25.300. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE.

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

7 Sec. 30.25.310. STATE NEED NOT PROVE NEGLIGENCE. Because it is
8 the intent of this chapter to provide the means for rapid and effective
9 cleanup and to minimize direct damages as well as indirect damages and
10 the proliferation of third party claims, an oil terminal facility or
11 carrier operator, employee or agent, operating in the state or state
12 waters who permits or suffers a prohibited discharge or other polluting
13 condition to take place shall be liable to the state for all costs of
14 cleanup or other damage incurred by the state. In any suit to enforce
15 claims of the state under this section, it shall not be necessary for
16 the state to plead or prove negligence in any form or manner on the part
17 of the operator. The state need only plead and prove the fact of the
18 prohibited discharge or other polluting condition and that it occurred
19 at facilities under the control of the operator or was attributable to
20 carriers or others for whom the operator is responsible as provided in
21 this chapter.

22 ARTICLE 8. GENERAL, MISCELLANEOUS PROVISIONS.

23 Sec. 30.25.320. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
24 governor may execute supplementary agreements, reciprocal arrangements
25 or compacts with any other state or with foreign governments, subject to
26 the approval of the legislature and of the Congress of the United
27 States that may be required by applicable provisions of law, for the
28 purpose of implementing this chapter.

29 Sec. 30.25.330. ANNUAL REPORT. The department shall prepare and

1 publish an annual report to the governor and to the legislature re-
2 viewing its work under this chapter and shall include in the report its
3 recommendations for the enactment of appropriate legislation.

4 Sec. 30.25.340. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
5 If a conflict occurs between a provision of this chapter, or a regula-
6 tion, certificate, order, decision or other determination of the de-
7 partment and a charter, ordinance, permit, regulation, franchise, de-
8 cision or other determination of a municipality, the provisions of this
9 chapter or a regulation, certificate, order, decision or other determ-
10 ination of the department prevails. However, nothing in this chapter
11 may be construed to preclude a municipality, by ordinance or regulation,
12 from exercising its police powers in the area regulated by this chapter.

13 Sec. 30.25.350. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
14 The administrative adjudication procedures of the Administrative Pro-
15 cedure Act (AS 44.62) do not apply to the adjudicatory, certificate
16 issuing, or other proceedings of the department under this chapter.
17 However,

18 (1) final administrative determinations or orders by the
19 department are subject to judicial review under that Act;

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

24 (b) Notwithstanding the provisions of (a)(1) of this section, no
25 regulation or order of the department 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 department.

29 Sec. 30.25.360. CONSTRUCTION. This chapter shall be liberally

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

2 Sec. 30.25.380. DEFINITIONS. In this chapter, unless the context
3 requires otherwise,

4 (1) "barrel" means 42 U.S. gallons at 60 degrees Fahrenheit;

5 (2) "board" means a board of arbitration established under
6 this chapter;

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

11 (4) "commissioner" means the commissioner of environmental
12 conservation;

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 within or beyond the territorial
16 waters of the state and which are used or intended for use as a port or
17 terminal for the transfer, loading or unloading and further handling of
18 oil, petroleum products or their by-products for transportation to any
19 state or foreign nation, and those commonly known as "superports" or
20 "monobuoys;" the term includes all associated components and equipment,
21 including pipelines, pumping stations, service platforms, mooring buoys
22 and similar appurtenances to the extent they are located seaward of the
23 high water mark;

24 (6) "department" means the Department of Environmental Con-
25 servation;

26 (7) "discharge" means any spilling, leaking, pumping, pour-
27 ing, emitting, emptying, or dumping;

28 (8) "fund" means the state coastal protection insurance fund;

29 (9) "municipality" means a home rule or general law borough

1 or city including but not limited to a unified municipality organized
2 under AS 29.68;

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

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

18 (12) "operate" or "operator" means a 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 of
21 the navigation or use of a vessel;

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

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

29 (15) "waters of the state" means the navigable waters within

1 the territorial limits of the state, and the marginal sea adjacent to
2 the state, and as defined in AS 44.03 and AS 46.03.900(22).

3 Sec. 30.25.390. SHORT TITLE. This chapter may be cited as the
4 Alaska Oil Discharge Prevention and Pollution Control Act.

5 * Sec. 3. 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 the
8 vessel or facility in violation of a provision of this chapter or
9 AS 30.25.020 shall immediately notify the department of the discharge.

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

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

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

21 (c) In addition to the penalties provided in (a) of this section,
22 a person who violates a provision of sec. 750 of this chapter or AS 30.-
23 25.020 is liable to the state, in a civil action, in the case of a
24 vessel, for damages in an amount not to exceed \$100 per gross ton of the
25 violating vessel or \$14 million, whichever is less, and, in the case of
26 an onshore or offshore facility, \$100 for every \$500 evaluation of the
27 violating facility or \$14 million, whichever is less. However, if the
28 state shows that a violation of sec. 750 of this chapter or AS 30.25.020
29 was the result of wilful negligence or wilful misconduct on the part of

1 the person charged with the violation, the person is liable to the state
2 for the full amount of damages caused. In the case of wilful negligence
3 or wilful misconduct, "damages," in this subsection, means costs associ-
4 ated with the abatement, containment or removal of a pollutant and
5 reasonable restoration of the environment to its former state.

6 (d) A person who falsely certifies information required under sec.
7 750 of this chapter or AS 30.25.040, upon conviction, is punishable by
8 a fine of not more than \$25,000, or by imprisonment for not more than
9 one year, or by both. Each unlawful act constitutes a separate offense.

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

12 * Sec. 5. AS 46.03.770 is amended to read:

13 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
14 FOR DAMAGES. A vessel which is used in or in aid of a violation of
15 secs. 740 - 750 of this chapter, or AS 30.25.020, may be detained after
16 a valid search by the department, an agent of the department, a peace
17 officer of the state, or an authorized protection officer of the De-
18 partment of Fish and Game. Upon judgment of the court having jurisdic-
19 tion that the vessel was used in or the cause of a violation of secs.
20 740 - 750 of this chapter, or AS 30.25.020, with knowledge of its owner
21 or under circumstances indicating that the owner should reasonably have
22 had this knowledge, the vessel may be held as security for payment to
23 the state of the amount of damages assessed by the court under sec.
24 760(b) of this chapter or upon determination by the department under
25 AS 30.25, and if the damages so assessed are not paid within 30 days
26 after judgment, final determination by the department or final deter-
27 mination of an appeal, the vessel shall be sold at public auction, or as
28 otherwise directed by the court or by the department, and the damages
29 paid from the proceeds. The balance, if any, shall be paid by the court

1 or the department to the owner of the vessel. The court shall permit
2 the release of the vessel upon posting of a bond set by the court or the
3 department in an amount not to exceed \$100,000. The damages received
4 under this section shall be transmitted to the department [PROPER STATE
5 OFFICER] for deposit in the coastal protection insurance [GENERAL] fund.
6 A vessel seized under this section shall be returned or the bond ex-
7 onerated if no damages are assessed under sec. 760(b) of this chapter or
8 AS 30.25.

9 * Sec. 6. AS 46.03.780(a) is amended to read:

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

17 * Sec. 7. AS 46.03.790(a) is amended to read:

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

29 * Sec. 8. This Act takes effect January 1, 1977.