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Referred: Resources and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 *SCSCS* HOUSE BILL NO. 137 *Jud am (Rules)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties for discharges of
7 oil."

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

9 * Section 1. AS 46.03 is amended by adding a new section to read:

10 Sec. 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL. (a) The
11 legislature finds that the discharge of oil causes significant harm to
12 the economy and environment of the state which is often difficult to
13 detect and incapable of quantification, and that, in order to protect
14 the public welfare and insure adequate recourse for the discharge of
15 oil, and to provide an incentive for the safe production, handling and
16 transporting of oil, it is necessary to establish a regulatory mechanism
17 which recognizes and meets the realities of oil pollution.

18 (b) No later than January 1, 1978, the department shall adopt,
19 and may periodically revise, regulations establishing a schedule of
20 fixed penalties for discharges of oil of not less than \$5 nor more
21 than \$50 per gallon of oil discharged. The schedule shall vary
22 according to the toxicity, degradability and dispersal characteristics
23 of the oil. The schedule shall vary according to the sensitivity of
24 the receiving environment. Variations under this subsection may be by
25 category of receiving environments, specific receiving environments,
26 or both.

27 (c) Upon the effective date of regulations adopted under (b) of
28 this section, if a discharge of oil not permitted under applicable
29 state and federal law occurs within the territorial jurisdiction of

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1 the state, or into or upon the adjacent outer continental shelf of the
2 state, the following persons, in addition to the person causing or
3 permitting the discharge, are jointly and severally liable to the
4 state, in a civil action, for the full amount of penalties established
5 in the regulations:

6 (1) if the discharge occurs from any commercial or industrial
7 facility other than a vessel or offshore platform, the owner, lessee
8 (or permittee), and operator of the facility;

9 (2) if the discharge occurs from a vessel:

10 (A) the owner and the operator of the vessel; and

11 (B) the bailor of the oil discharged, if the bailment
12 occurred within the territorial jurisdiction of the state; and

13 (3) if the discharge occurs from an offshore platform, the
14 lessee (or permittee) of the tract or acreage upon which the platform
15 is situated, and the operator of the platform.

16 (d) The entire penalty specified in the regulations shall be
17 imposed, and no portion of the penalty for which a person is liable
18 under this section may be suspended or deferred.

19 (e) A person otherwise liable for penalties under (e) of this
20 section is not liable if he demonstrates, by a preponderance of the
21 evidence, that the discharge occurred solely as a result of:

22 (1) an act of God;

23 (2) an act of a third person with intent to cause a discharge
24 of oil, unless the third person is a person with whom the person
25 charged is made jointly and severally liable under (e)(1) - (3) of
26 this section;

27 (3) a negligent or intentional act of the State of Alaska
28 or the United States; or

29 (4) an act of war.

1 (f) Notwithstanding sec. 875 of this chapter, a person liable
2 under this section is not also liable for the discharge of oil under
3 sec. 760(a) of this chapter.

4 (g) If the application of this section to discharges of oil
5 solely into and upon the adjacent outer continental shelf of the state
6 is held invalid, the application of this section to discharges of oil
7 into and upon the water or land within the territorial jurisdiction of
8 the state is not affected by that holding. This severability provision
9 is intended to clarify, and not limit the severability provision of AS
10 01.10.030.

11 (h) As used in this section:

12 (1) "adjacent outer continental shelf" means that portion of
13 the outer continental shelf which would be within the territorial
14 jurisdiction of the state if its boundaries were extended seaward to
15 the outer margin of the outer continental shelf;

16 (2) "discharge of oil" means the entry of oil into or upon
17 the water or land of the state, regardless of causation;

18 (3) "offshore platform" means an offshore structure, whether
19 floating or temporarily or permanently secured to the floor of the
20 ocean or other water body, which is used primarily for the exploration
21 for or production of oil or natural gas;

22 (4) "oil" means petroleum, crude oil, and any substance
23 refined from petroleum or crude oil;

24 (5) "operator" means the person who, through contract,
25 lease, sublease or otherwise, exerts general supervision and control
26 of activities at the facility; the term includes, by way of example
27 and not limitation, prime or general contractors, the master of a
28 vessel (and his employer), or any other person who, through himself,
29 his agents, or contractors, undertakes the general functioning of the

1 facility; and

2 (6) "vessel" means any form or manner of watercraft, whether
3 or not capable of self-propulsion, except offshore platforms.

4 * Sec 2. AS 46.03.900 is amended by adding a new subsection to read:

5 (23) "facility" means any offshore or onshore structure,
6 improvement, vessel, vehicle, land, enterprise, or endeavor.