

Original sponsors: Brown, M.Davis,  
Ellis, et al.

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 CS FOR HOUSE BILL NO. 293 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL  
6 For an Act entitled: "An Act relating to civil penalties that can be  
7 assessed for certain oil discharges; allowing the  
8 state to recover full reasonable attorney fees and  
9 costs in certain actions; and amending Rule 82,  
10 Alaska Rules of Civil Procedure."

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

12 \* Section 1. AS 46.03.758(b) is amended to read:

13 (b) No later than the 10th day after the convening of the Second  
14 Session of the Sixteenth [TENTH] Alaska State Legislature, the depart-  
15 ment shall submit to the legislature regulations establishing the  
16 following schedule of fixed penalties for discharges of oil:

17 (1) Subject to (2) of this subsection, the penalties for  
18 the following categories of receiving environments may not exceed

19 (A) \$50 [\$10] per gallon of oil which enters an anad-  
20 romous stream or other freshwater environment with significant  
21 aquatic resources;

22 (B) \$25 [\$2.50] per gallon of oil which enters an  
23 estuarine, intertidal, or confined saltwater environment; and

24 (C) \$10 [\$1] per gallon of oil which enters an uncon-  
25 fined saltwater environment, public land, or freshwater environ-  
26 ment without significant aquatic resources.

27 (2) For discharges of oil which are caused by the gross  
28 negligence or intentional act of the discharger, or when the court  
29 finds that the discharger did not take reasonable measures to contain

1 and clean up the discharged oil, or where the discharger did not re-  
2 spond according to an approved contingency plan, the penalty shall be  
3 determined by multiplying the penalty established under (1) of this  
4 subsection by a factor of five.

5 \* Sec. 2. AS 46.03.758(e) is amended to read:

6 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess  
7 of 18,000 gallons not permitted under applicable state and federal law  
8 occurs within the territorial jurisdiction of the state, or into or  
9 upon the adjacent outer continental shelf of the state, the following  
10 persons, in addition to the person causing or permitting the dis-  
11 charge, are jointly and severally liable to the state, in a civil  
12 action, for the full amount of penalties established in the regu-  
13 lations adopted under this section: [, OR \$100,000,000, WHICHEVER IS  
14 LESS,]

15 (1) if the discharge occurs from any commercial or indus-  
16 trial facility other than a vessel or offshore platform, the owner,  
17 lessee or permittee, and operator of the facility;

18 (2) if the discharge occurs from a vessel,

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

20 (B) the owner of the oil carried as cargo on the  
21 vessel at the time the vessel was loaded, if the loading occurred  
22 within the territorial jurisdiction of the state, or at a deep-  
23 water port or other offshore storage facility adjacent to the  
24 state; however, if the owner of the oil temporarily transfers  
25 ownership of the oil to another person, and the transfer has the  
26 purpose or effect of evading the vicarious liability imposed by  
27 this section, the transferor will be considered the owner of the  
28 oil for the purposes of this subsection; and

29 (3) if the discharge occurs from an offshore platform, the

1 lessee or permittee of the tract or acreage upon which the platform is  
2 situated, and the operator of the platform.

3 \* Sec. 3. AS 46.03.758(f) is amended to read:

4 (f) The court shall deduct from the penalties for which the  
5 person charged is liable under (e) of this section that amount of oil  
6 which was removed from the environment as a result of a cleanup opera-  
7 tion undertaken in conformity with applicable state and federal law,  
8 unless the oil was removed by an agency of state, local or federal  
9 government. The dispersal of oil through the use of chemical agents,  
10 biological additives, burning or sinking agents, or other means is not  
11 considered removal for the purposes of this subsection. The court may  
12 estimate the amount of oil removed.

13 \* Sec. 4. AS 46.03.758(g) is amended to read:

14 (g) Except as provided in (f) and (j) of this section, the  
15 entire penalty specified in the regulations shall be imposed [, EXCEPT  
16 THAT A PERSON WHO DISCHARGES OIL INTO A RECEIVING ENVIRONMENT MAY  
17 DEMONSTRATE, BY A PREPONDERANCE OF EVIDENCE, THAT MITIGATING CIRCUM-  
18 STANCES RELATING TO THE EFFECTS OF THE DISCHARGE WOULD MAKE IMPOSITION  
19 OF THE FULL PENALTY INAPPROPRIATE. IN DETERMINING WHETHER MITIGATING  
20 CIRCUMSTANCES EXIST, THE COURT SHALL RECOGNIZE THAT SCIENTIFIC KNOWL-  
21 EDGE PERTAINING TO OIL SPILLS IS VERY LIMITED AND IF THERE IS INSUFFI-  
22 CIENT KNOWLEDGE EITHER TO PREDICT A BASE CASE OR TO SHOW MITIGATING  
23 CIRCUMSTANCES VARYING FROM THAT BASE CASE, THE ADMINISTRATIVELY ESTAB-  
24 LISHED SCHEDULE OF PENALTIES SHALL APPLY. IF MITIGATING CIRCUMSTANCES  
25 ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY REDUCE OR  
26 TOTALLY ELIMINATE THE PENALTY, IN ACCORDANCE WITH THE PURPOSES OF THIS  
27 SECTION].

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

29 (a) A person who violates a provision of this chapter, AS 46.04,

1 or AS 46.09, or who fails to perform a duty imposed by this chapter,  
2 AS 46.04, or AS 46.09, or violates or disregards an order, permit, or  
3 other determination of the department made under the provisions of  
4 this chapter, AS 46.04, or AS 46.09, respectively, and thereby causes  
5 the death of fish, animals, or vegetation or otherwise injures or  
6 degrades the environment of the state is liable to the state for  
7 damages, all reasonable attorney fees and costs incurred by the state  
8 in collecting the damages, and all reasonable attorney fees and costs  
9 incurred by the state in collecting penalties for violations described  
10 in this subsection.

11 \* Sec. 6. AS 46.03.780(a), as amended by sec. 5 of this Act, has the  
12 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing  
13 the state to recover all reasonable attorney fees and costs in certain  
14 actions.

15 \* Sec. 7. APPLICABILITY. (a) AS 46.03.758(b), as amended by sec. 1 of  
16 this Act, applies to a discharge of oil that occurs on or after the effec-  
17 tive date of the regulations required to be submitted to the legislature  
18 under AS 46.03.758(b), as amended by sec. 1 of this Act. Regulations  
19 adopted under AS 46.03.758 remain in effect until superseded by regulations  
20 adopted under AS 46.03.758, as amended by sec. 1 of this Act.

21 (b) AS 46.03.758(e) - (g), as amended by secs. 2 - 4 of this Act,  
22 apply to a discharge of oil that occurs on or after the effective date of  
23 this Act.