

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 565 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalty, damages, costs,  
7 and attorney fee provisions concerning the discharge  
8 of oil and other environmental violations; amending  
9 Rule 82, Alaska Rules of Civil Procedure; and provid-  
10 ing for an effective date."

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

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

13 (a) The legislature finds that

14 (1) recent information discloses that the discharge of oil  
15 may cause significant short and long-term damage to the state's en-  
16 vironment; even [. EVEN] minute quantities of oil released to the  
17 environment may cause high mortalities among larval and juvenile forms  
18 of important commercial species, may affect salmon migration patterns,  
19 and may otherwise degrade and diminish the renewable resources of the  
20 state;

21 (2) the exact nature and extent of oil pollution can be  
22 neither documented with certainty nor precisely quantified on a spill-  
23 by-spill basis; however, in light of the magnitude of harm that  
24 [WHICH] may be caused by oil discharges, and the vital importance of  
25 commercial, sport and subsistence fishing, tourism, and Alaska's  
26 natural abundance and beauty to the economic future of the state and  
27 its quality of life, it is the judgment of the legislature that sub-  
28 stantial civil penalties should be imposed for the discharge of oil in  
29 order to provide a meaningful incentive for the safe handling of oil

1 and to ensure [INSURE] that the public does not bear substantial  
2 losses from oil pollution for which, because of its subtle, long-term  
3 or unquantifiable nature, compensation would not otherwise be re-  
4 ceived; and

5 (3) the handling of oil in large quantities is a hazardous  
6 undertaking that [WHICH] poses a significant threat to the economy and  
7 environment of the state, that [WHICH] can be substantially reduced  
8 only by the taking of rigorous safety precautions involving consider-  
9 able expense; conversely, persons handling oil in smaller amounts  
10 might pose a correspondingly lower risk to the economy and environment  
11 of the state, and might be [ARE] capable of safe oil handling prac-  
12 tices at correspondingly lower costs [; IN ORDER TO PROVIDE AN INCEN-  
13 TIVE WHICH IS EFFECTIVE, BUT NOT PUNITIVE, IT IS NECESSARY AND APPRO-  
14 PRIATE THAT THE ASSESSMENT OF CIVIL PENALTIES FOR DISCHARGES OF SMALL  
15 QUANTITIES OF OIL BE LEFT FOR CASE-BY-CASE JUDICIAL DETERMINATION,  
16 WHILE INSURING, THROUGH THE PENALTY PROVISIONS OF THIS SECTION, THAT  
17 THE HANDLING OF OIL IN LARGE QUANTITIES OCCURS IN A MANNER WHICH WILL  
18 NOT IMPAIR THE RENEWABLE RESOURCES OF THE STATE].

19 \* Sec. 2. AS 46.03.758(b) is repealed and reenacted to read:

20 (b) In order to promote the safe handling of oil, the department  
21 shall adopt regulations that establish a schedule of penalties for  
22 discharges of oil into the receiving environments described in (1) -  
23 (3) of this subsection. Subject to AS 46.08.761 and (m) of this  
24 section, the penalties may not exceed

25 (1) \$12.50 per gallon of oil that enters an anadromous  
26 stream or other freshwater environment with significant aquatic re-  
27 sources;

28 (2) \$8.00 per gallon of oil that enters an estuarine,  
29 intertidal, or confined saltwater environment;

1                   (3) \$6.00 per gallon of oil that enters an unconfined salt-  
2 water environment, public land, or a freshwater environment without  
3 significant aquatic resources.

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

5                   (d) The schedule must [SHALL] vary according to the toxicity,  
6 degradability, and dispersal characteristics of the oil. The schedule  
7 must [SHALL] also vary according to the sensitivity and productivity  
8 of the receiving environment. Variations under this subsection may be  
9 by subcategories of receiving environments, specific receiving en-  
10 vironments, or both. The maximum penalties established in (b) of this  
11 section must [SHALL] apply to discharges in the most sensitive and  
12 productive of receiving environments within each category of receiving  
13 environment, and the penalty must [SHALL] decrease for less productive  
14 or sensitive receiving environments. If oil is discharged into mul-  
15 multiple receiving environments, the penalty must be based upon the  
16 schedule penalty value applicable to the most sensitive and productive  
17 receiving environment unless the defendant proves how much oil entered  
18 each receiving environment by clear and convincing evidence.

19 \* Sec. 4. AS 46.03.758(e) is amended to read:

20                   (e) If a discharge of oil in excess of 500 [18,000] gallons not  
21 permitted under applicable state and federal law occurs within the  
22 territorial jurisdiction of the state, or into or upon the adjacent  
23 outer continental shelf of the state, the following persons, in addi-  
24 tion to the person causing or permitting the discharge, are jointly  
25 and severally liable to the state, in a civil action, for the full  
26 amount of penalties established under this section and in the regu-  
27 lations adopted under this section:

28                   (1) if the discharge occurs from a [ANY] commercial or  
29 industrial facility other than a vessel or offshore platform, the

1 owner, lessee or permittee, and operator of the facility;

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

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

4 (B) the owner of the oil carried as cargo on the  
5 vessel at the time the vessel was loaded, if the loading occurred  
6 within the territorial jurisdiction of the state, or at a deep-  
7 water port or other offshore storage facility adjacent to the  
8 state; however, if the owner of the oil temporarily transfers  
9 ownership of the oil to another person, and the transfer has the  
10 purpose or effect of evading the vicarious liability imposed by  
11 this section, the transferor will be considered the owner of the  
12 oil for the purposes of this subsection; 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 is  
15 situated, and the operator of the platform.

16 \* Sec. 5. AS 46.03.758(f) is repealed and reenacted to read:

17 (f) For purposes of assessing a penalty under (b) of this sec-  
18 tion, in determining how many gallons of oil have been discharged, the  
19 court shall deduct the number of discharged gallons of oil that the  
20 defendant proves by clear and convincing evidence were removed by the  
21 defendant from the environment within 365 days after the discharge as  
22 a result of a cleanup operation undertaken in conformity with appli-  
23 cable state and federal law, except that if the oil was discharged  
24 onto a surface freshwater or saltwater environment or onto the surface  
25 of public land, the court shall deduct the number of discharged  
26 gallons of oil that the defendant proves by clear and convincing  
27 evidence were removed by the defendant from the environment within the  
28 first 36 hours after the discharge as a result of a cleanup operation  
29 undertaken in conformity with applicable state and federal law. The

1 dispersal of oil through burning, the use of chemical agents, biologi-  
2 cal additives, sinking agents, or other means is not considered re-  
3 moval for purposes of this subsection.

4 \* Sec. 6. AS 46.03.758(i) is repealed and reenacted to read:

5 (i) The imposition of a civil penalty under this section does  
6 not limit or otherwise affect the authority of the department to  
7 enforce a provision of this chapter, AS 46.04, or AS 46.09, or to  
8 recover damages, restoration expenses, investigation costs, court  
9 costs, and attorney fees. A person who pays a civil penalty imposed  
10 under this section is entitled to set off the penalty amount paid  
11 against a civil penalty awarded by a court against the person for the  
12 same discharge under AS 46.03.760(a).

13 \* Sec. 7. AS 46.03.758 is amended by adding a new subsection to read:

14 (m) The penalty that would otherwise be assessed under (b) of  
15 this section shall be multiplied by a factor of five if a court deter-  
16 mines that

17 (1) the discharge was caused by the gross negligence or  
18 intentional act of the discharger;

19 (2) the discharger did not take reasonable measures to  
20 contain and cleanup the discharged oil; or

21 (3) the defendant did not respond in accordance with an  
22 approved oil discharge contingency plan.

23 \* Sec. 8. AS 46.03.759(a) is amended to read:

24 (a) A person who is found to be liable under any other state law  
25 for an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GAL-  
26 LONS] is, in addition to liability for any other penalties or for  
27 damages or the cost of containment and cleanup, liable to the state in  
28 a civil action for a civil penalty, up to a maximum of \$500,000,000,  
29 subject to adjustment under AS 46.03.761, in the amount of

1 (1) \$8 per gallon of crude oil discharged for the first  
2 420,000 gallons discharged, subject to adjustment under AS 46.03.761;  
3 and

4 (2) \$12.50 per gallon of crude oil discharged for amounts  
5 discharged in excess of 420,000 gallons, subject to adjustment under  
6 AS 46.03.761.

7 \* Sec. 9. AS 46.03.759(c) is amended to read:

8 (c) Subject to the [\$500,000,000] maximum set under (a) of this  
9 section the court shall assess five [FOUR] times the penalty amounts  
10 set out in (a) of this section if the court finds

11 (1) the discharge was caused by the gross negligence or  
12 intentional act of the defendant;

13 (2) the defendant did not take reasonable measures to  
14 contain and clean up the discharged oil; or

15 (3) the defendant did not respond in accordance with an  
16 approved oil discharge contingency plan.

17 \* Sec. 10. AS 46.03.759(d) is repealed and reenacted to read:

18 (d) The imposition of a civil penalty under this section does  
19 not affect the authority of the department to enforce a provision of  
20 this chapter, AS 46.04, or AS 46.09, or to recover damages, restora-  
21 tion expenses, investigation costs, court costs, and attorney fees. A  
22 person who pays a civil penalty imposed under this section is entitled  
23 to set off the penalty amount paid against a civil penalty awarded by  
24 a court against the person for the same discharge under AS 46.03.-  
25 760(a).

26 \* Sec. 11. AS 46.03.760(a) is repealed and reenacted to read:

27 (a) A person who violates or causes or permits to be violated a  
28 provision of this chapter, AS 46.04, AS 46.09, or a regulation, order  
29 of the department, permit, approval, or certificate issued under this

1 chapter, AS 46.04, or AS 46.09, is liable to the state in a civil  
2 action for a sum to be assessed by the court of not less than \$2,500  
3 nor more than \$100,000 a day for each violation, subject to adjustment  
4 under AS 46.03.761. Each violation is a separate and distinct of-  
5 fense, and where a violation continues from day to day each day con-  
6 stitutes a separate violation. The amount assessed by the court under  
7 this subsection must reflect, as applicable,

8 (1) reasonable compensation for adverse environmental  
9 effects of the violation;

10 (2) reasonable costs incurred by the state in the detec-  
11 tion, investigation, and attempted correction of the violation;

12 (3) the economic savings realized by the person in not  
13 complying with the requirement for which the violation is charged;

14 (4) the prior history of violations committed by the per-  
15 son;

16 (5) the need for an enhanced civil penalty to deter future  
17 violations;

18 (6) the extent and seriousness of the violation;

19 (7) the person's attainment of compliance, within the  
20 shortest feasible time, with the requirement for which the violation  
21 is shown;

22 (8) the person's ability to pay; and

23 (9) other factors that the court determines are in the  
24 interest of justice.

25 \* Sec. 12. AS 46.03.760(e) is amended to read:

26 (e) In addition to liability under (a) [- (d)] of this section,  
27 a person who violates or causes or permits to be violated a provision  
28 of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action  
29 brought under AS 46.03.822, for the full amount of actual damages

1 caused to the state by the violation, including direct and indirect  
2 costs associated with the abatement, containment and [OR] removal of  
3 the pollutant, restoration of the environment to its former state, and  
4 all incidental administrative costs.

5 \* Sec. 13. AS 46.03 is amended by adding a new section to read:

6 Sec. 46.03.761. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
7 amounts in AS 46.03.758, 46.03.759, and 46.03.760 and in the regula-  
8 tions adopted under AS 46.03.758 change, as provided in this section,  
9 according to and to the extent of changes in the Consumer Price Index  
10 for all urban consumers for the Anchorage metropolitan area compiled  
11 by the Bureau of Labor Statistics, United States Department of Labor  
12 (the index). The index for January of the year in which this section  
13 becomes effective is the reference base index.

14 (b) The dollar amounts change on October 1 of each third year  
15 according to the percentage change between the index for January of  
16 that year and the most recent index used to determine whether to  
17 change the dollar amounts. After calculation of the new amounts, the  
18 resulting amounts shall be rounded to the nearest cent.

19 (c) If the index is revised, the percentage of change is cal-  
20 culated on the basis of the revised index. If a revision of the index  
21 changes the reference base index, a revised reference base index is  
22 determined by multiplying the reference base index applicable by the  
23 rebasing factor furnished by the United States Bureau of Labor Statis-  
24 tics. If the index is superseded, the index referred to in this sec-  
25 tion is the one represented by the Bureau of Labor Statistics as  
26 reflecting most accurately changes in the purchasing power of the  
27 dollar for Alaskan consumers.

28 (d) The department shall adopt a regulation

29 (1) announcing, on or before June 30 of each third year,

1 the changes in dollar amounts required by (b) of this section;

2 (2) amending, on or before June 30 of each third year, the  
3 regulations adopted under AS 46.03.758(b) to reflect the changes in  
4 dollar amounts required by (b) of this section; and

5 (3) announcing, promptly after the changes occur, changes  
6 in the index required by (c) of this section, including, if applica-  
7 ble, the numerical equivalent of the reference base index under a  
8 revised reference base index and the designation or title of any index  
9 superseding the index.

10 (e) The department shall also provide notification of a change  
11 in dollar amounts required under (b) of this section to the clerks of  
12 court in each judicial district of the state.

13 \* Sec. 14. AS 46.03.763 is amended to read:

14 Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action [TO  
15 IMPOSE CIVIL PENALTIES] under AS 46.03.758, 46.03.759, [OR] 46.03.760,  
16 46.03.765, 46.03.780, or 46.03.822 [FOR A DISCHARGE OF OIL], the state  
17 may recover full reasonable attorney fees and costs incurred by the  
18 state in maintaining the action.

19 \* Sec. 15. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c),  
20 and 46.03.760(f) are repealed.

21 \* Sec. 16. AS 46.03.763, as amended by sec. 14 of this Act, has the  
22 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing  
23 the recovery of full reasonable attorney fees and costs in certain addi-  
24 tional actions.

25 \* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).