

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 565 (Judiciary)
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."

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

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

11 (a) The legislature finds that

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

19 (2) the exact nature and extent of oil pollution can be
20 neither documented with certainty nor precisely quantified on a spill-
21 by-spill basis; however, in light of the magnitude of harm that
22 [WHICH] may be caused by oil discharges, and the vital importance of
23 commercial, sport and subsistence fishing, tourism, and Alaska's
24 natural abundance and beauty to the economic future of the state and
25 its quality of life, it is the judgment of the legislature that sub-
26 stantial civil penalties should be imposed for the discharge of oil in
27 order to provide a meaningful incentive for the safe handling of oil
28 and to ensure [INSURE] that the public does not bear substantial
29 losses from oil pollution for which, because of its subtle, long-term

1 or unquantifiable nature, compensation would not otherwise be re-
2 ceived; and

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

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

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

23 (1) \$50 per gallon of oil that enters an anadromous stream
24 or other freshwater environment with significant aquatic resources;

25 (2) \$25 per gallon of oil that enters an estuarine, inter-
26 tidal, or confined saltwater environment;

27 (3) \$10 per gallon of oil that enters an unconfined salt-
28 water environment, public land, or a freshwater environment without
29 significant aquatic resources.

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

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

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

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

25 (1) if the discharge occurs from a [ANY] commercial or
26 industrial facility other than a vessel or offshore platform, the
27 owner, lessee or permittee, and operator of the facility;

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

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

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

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

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

14 (f) For purposes of assessing a penalty under (b) of this sec-
15 tion, in determining how many gallons of oil have been discharged, the
16 court shall deduct the number of discharged gallons of oil that the
17 defendant proves by clear and convincing evidence were removed by the
18 defendant from the environment within 365 days after the discharge as
19 a result of a cleanup operation undertaken in conformity with appli-
20 cable state and federal law, except that if the oil was discharged
21 onto a surface freshwater or saltwater environment or onto the surface
22 of public land, the court shall deduct the number of discharged
23 gallons of oil that the defendant proves by clear and convincing
24 evidence were removed by the defendant from the environment within the
25 first 36 hours after the discharge as a result of a cleanup operation
26 undertaken in conformity with applicable state and federal law. The
27 dispersal of oil through burning, the use of chemical agents, biologi-
28 cal additives, sinking agents, or other means is not considered re-
29 moval for purposes of this subsection.

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

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

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

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

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

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

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

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

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

27 (1) \$50 [\$8] per gallon of crude oil that enters an
28 anadromous stream or other freshwater environment with significant
29 aquatic resources, subject to adjustment under AS 46.03.761

1 [DISCHARGED FOR THE FIRST 420,000 GALLONS DISCHARGED]; [AND]

2 (2) \$25 [\$12.50] per gallon of crude oil that enters an
3 estuarine, intertidal, or confined saltwater environment, subject to
4 adjustment under AS 46.03.761; and

5 (3) \$10 per gallon of crude oil that enters an unconfined
6 saltwater environment, public land, or a freshwater environment with-
7 out significant aquatic resources, subject to adjustment under AS 46.-
8 03.761 [DISCHARGED FOR AMOUNTS DISCHARGED IN EXCESS OF 420,000
9 GALLONS].

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

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

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

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

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

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

21 (d) The imposition of a civil penalty under this section does
22 not affect the authority of the department to enforce a provision of
23 this chapter, AS 46.04, or AS 46.09, or to recover damages, restora-
24 tion expenses, investigation costs, court costs, and attorney fees. A
25 person who pays a civil penalty imposed under this section is entitled
26 to set off the penalty amount paid against a civil penalty awarded by
27 a court against the person for the same discharge under AS 46.03.-
28 760(a).

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

1 (a) A person who violates or causes or permits to be violated a
2 provision of this chapter, AS 46.04, AS 46.09, or a regulation, order
3 of the department, permit, approval, or certificate issued under this
4 chapter, AS 46.04, or AS 46.09, is liable to the state in a civil
5 action for a sum to be assessed by the court of not less than \$2,500
6 nor more than \$100,000 a day for each violation, subject to adjustment
7 under AS 46.03.761. Each violation is a separate and distinct of-
8 fense, and where a violation continues from day to day each day con-
9 stitutes a separate violation. The amount assessed by the court under
10 this subsection must reflect, as applicable,

11 (1) reasonable compensation for adverse environmental
12 effects of the violation;

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

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

17 (4) the prior history of violations committed by the per-
18 son;

19 (5) the need for an enhanced civil penalty to deter future
20 violations;

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

22 (7) the person's attainment of compliance, within the
23 shortest feasible time, with the requirement for which the violation
24 is shown;

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

26 (9) other factors that the court determines are in the
27 interest of justice.

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

29 (e) In addition to liability under (a) [- (d)] of this section,

1 a person who violates or causes or permits to be violated a provision
2 of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
3 brought under AS 46.03.822, for the full amount of actual damages
4 caused to the state by the violation, including direct and indirect
5 costs associated with the abatement, containment and [OR] removal of
6 the pollutant, restoration of the environment to its former state, and
7 all incidental administrative costs.

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

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

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

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

1 dollar for Alaskan consumers.

2 (d) The department shall adopt a regulation

3 (1) announcing, on or before June 30 of each third year,
4 the changes in dollar amounts required by (b) of this section;

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

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

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

16 * Sec. 14. AS 46.04.040(e) is amended to read:

17 (e) Financial responsibility may be demonstrated by self-
18 insurance, insurance, surety, or guarantee, under terms the department
19 may prescribe. An action brought under AS 46.03.758, 46.03.760(e)
20 [46.03.760(a) OR (e)], 46.03.822, or AS 46.04.030(g) or to collect
21 penalties imposed under AS 46.03.759 may be brought in a state court
22 directly against the insurer or another person providing evidence of
23 financial responsibility. The applicant, and an insurer, surety, or
24 guarantor shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an unau-
27 thorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 * Sec. 15. AS 46.04.040(i) is amended to read:

1 (i) Financial responsibility under this section extends to a
2 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
3 under AS 46.03.758, 46.03.759, [46.03.760(a)], or AS 46.04.030(g).

4 * Sec. 16. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c),
5 and 46.03.760(f) are repealed.