

1 IN THE SENATE

BY THE SENATE SPECIAL  
COMMITTEE ON OIL AND GAS

2 SENATE BILL NO. 271

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 for the unpermit-  
7 ted discharge of uncontaminated crude oil and for the  
8 failure to implement an oil discharge contingency  
9 plan in response to an unpermitted discharge of  
10 uncontaminated crude oil."

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

12 \* Section 1. AS 46.03.758(1)(6) is amended to read:

13 (6) "oil" means petroleum [, CRUDE OIL,] and any substance  
14 refined from petroleum, except uncontaminated [OR] crude oil;

15 \* Sec. 2. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

17 (a) A person who is found to be liable under any other state law for  
18 an unpermitted discharge of uncontaminated crude oil in excess of  
19 18,000 gallons is, in addition to liability for any other penalties or  
20 for damages or the cost of containment and cleanup, liable to the  
21 state in a civil action for a civil penalty in the amount of

22 (1) \$1,000 per barrel of crude oil discharged for the first  
23 100,000 barrels discharged; and

24 (2) \$2,000 per barrel of crude oil discharged for amounts  
25 discharged in excess of 100,000 barrels.

26 (b) In determining how many barrels of crude oil have been dis-  
27 charged for purposes of assessing a penalty under (a) of this section,  
28 the court shall disregard the number of discharged barrels of crude  
29 oil that the defendant proves were removed by the defendant from the

1 environment within the first 36 hours after the discharge as a result  
2 of a cleanup operation undertaken in conformity with applicable state  
3 and federal law. The dispersal of oil through the use of chemical  
4 agents or other means is not considered removal for the purposes of  
5 this subsection.

6 (c) The court shall assess five times the penalty set out in (a)  
7 of this section if the court finds

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

10 (2) the defendant did not take reasonable measures to  
11 contain and clean up the discharged oil.

12 (d) Notwithstanding AS 46.03.875, a person liable for civil  
13 penalties under this section is not also liable for the discharge of  
14 the crude oil under AS 46.03.760(a). A person causing or permitting a  
15 discharge of uncontaminated crude oil of 18,000 gallons or less not  
16 permitted under applicable state or federal law is liable for that  
17 discharge under the penalty provisions of AS 46.03.760(a); however,  
18 the court may impose a penalty of less than \$500 for the discharge.

19 (e) The court may reduce the penalty imposed under this section  
20 if the defendant demonstrates, by a preponderance of the evidence,  
21 that the discharge was caused solely by a negligent act of a third  
22 person unless the third person is a person with whom the defendant was  
23 found jointly and severally liable for the discharge under other state  
24 law.

25 (f) In this section, "discharge" means entry of uncontaminated  
26 crude oil into or upon the water or public land of the state, regard-  
27 less of causation, except discharges into an enclosed and impervious  
28 oil spill containment area.

29 \* Sec. 3. AS 46.03.770 is amended to read:

1           Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY  
2           FOR DAMAGES. A vessel that is used in or in aid of a violation of  
3           AS 46.03.740 - 46.03.750 may be detained after a valid search by the  
4           department, an agent of the department, a peace officer of the state,  
5           or an authorized protection officer of the Department of Fish and  
6           Game. Upon judgment of the court having jurisdiction that the vessel  
7           was used in, or was the cause of, a violation of AS 46.03.740 -  
8           46.03.750 with knowledge of its owner or under circumstances indicat-  
9           ing that the owner should reasonably have had this knowledge, the  
10          vessel may be held as security for payment to the state of the amount  
11          of damages assessed by the court under AS 46.03.758, 46.03.759,  
12          46.03.760, [AND] 46.03.822, and AS 46.04.035. If the damages assessed  
13          are not paid within 30 days after judgment or final determination of  
14          an appeal, the vessel shall be sold at public auction, or as otherwise  
15          directed by the court, and the damages paid from the proceeds. The  
16          balance, if any, shall be paid by the court to the owner of the ves-  
17          sel. The court shall permit the release of the vessel upon posting of  
18          a bond set by the court in an amount not to exceed the maximum amount  
19          of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND]  
20          46.03.822, and AS 46.04.035. The damages received under this section  
21          shall be transmitted to the proper state officer for deposit in the  
22          general fund. A vessel seized under this section shall be returned or  
23          the bond exonerated if no damages are assessed under AS 46.03.758,  
24          46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.035.

25          \* Sec. 4. AS 46.04 is amended by adding a new section to read:

26                 Sec. 46.04.035. LIABILITY FOR FAILURE TO IMPLEMENT PLAN. A  
27                 person who has an oil discharge contingency plan approved by the  
28                 department under AS 46.04.030 who fails to respond to an unpermitted  
29                 discharge of uncontaminated crude oil in a manner required under the

1 plan is strictly liable, jointly and severally, for the civil penalty  
2 assessed under AS 46.03.759 against any other person for that dis-  
3 charge.

4 \* Sec. 5. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self- insur-  
6 ance, insurance, surety, or guarantee, under terms the department may  
7 prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e),  
8 [OR] 46.03.822, or AS 46.04.035 or to collect penalties imposed under  
9 AS 46.03.759 may be brought in a state court directly against the  
10 insurer or another person providing evidence of financial responsibil-  
11 ity. The applicant, and an insurer, surety, or guarantor shall  
12 appoint an agent for service of process in the state. An insurer must  
13 either be authorized by the Department of Commerce and Economic Devel-  
14 opment to sell insurance in the state or be an unauthorized insurer  
15 listed by the Department of Commerce and Economic Development as not  
16 disapproved for use in the state.

17 \* Sec. 6. AS 46.04.040(i) is amended to read:

18 (i) Financial responsibility under this section extends to a loss  
19 compensable under AS 46.03.760(e) or 46.03.822 and an assessment under  
20 AS 46.03.758, 46.03.759, [OR] 46.03.760(a), or AS 46.04.035.