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Original sponsors: Senate Special
Committee on Oil and Gas

1 IN THE SENATE BY THE SENATE SPECIAL
COMMITTEE ON OIL AND GAS

2 CS SENATE BILL NO. 271 (Oil & Gas)

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 deduct the number of discharged barrels of crude oil
29 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 46.04.030(g). If the damages
13 assessed are not paid within 30 days after judgment or final deter-
14 mination of an appeal, the vessel shall be sold at public auction, or
15 as otherwise directed by the court, and the damages paid from the
16 proceeds. The balance, if any, shall be paid by the court to the
17 owner of the vessel. The court shall permit the release of the vessel
18 upon posting of a bond set by the court in an amount not to exceed the
19 maximum amount of damages available under AS 46.03.758, 46.03.759,
20 46.03.760, [AND] 46.03.822, and AS 46.04.030(g). The damages received
21 under this section shall be transmitted to the proper state officer
22 for deposit in the general fund. A vessel seized under this section
23 shall be returned or the bond exonerated if no damages are assessed
24 under AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.-
25 04.030(g).

26 * Sec. 4. AS 46.04.030(g) is amended to read:

27 (g) Failure of a holder of an approved oil discharge contingency
28 plan to have access to the quality or quantity of resources identified
29 in the plan and, in the event of a spill, to respond with those

1 resources within the shortest feasible time is a violation of this
2 chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any
3 other applicable law. If the holder of an approved oil discharge
4 contingency plan fails to respond to an unpermitted discharge of
5 uncontaminated crude oil with the quality and quantity of resources
6 identified in the plan and in a manner required under the plan, the
7 holder is strictly liable, jointly and severally, for the civil pen-
8 alty assessed under AS 46.03.759 against any other person for that
9 discharge.

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

11 (e) Financial responsibility may be demonstrated by self-insur-
12 ance, insurance, surety, or guarantee, under terms the department may
13 prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e),
14 [OR] 46.03.822, or AS 46.04.030(g) or to collect penalties imposed
15 under AS 46.03.759 may be brought in a state court directly against
16 the insurer or another person providing evidence of financial respon-
17 sibility. The applicant, and an insurer, surety, or guarantor shall
18 appoint an agent for service of process in the state. An insurer must
19 either be authorized by the Department of Commerce and Economic Devel-
20 opment to sell insurance in the state or be an unauthorized insurer
21 listed by the Department of Commerce and Economic Development as not
22 disapproved for use in the state.

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

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