

Offered: 4/27/89  
Referred: Finance

6-1197D

Original sponsors: Senate Special  
Committee on Oil and Gas

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 CS FOR SENATE BILL NO. 271 (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 for the unpermit-  
7 ted discharge of oil and for the failure to implement  
8 an oil discharge contingency plan in response to an  
9 unpermitted discharge of crude oil; and removing a  
10 maximum limit on civil penalties for discharges of  
11 oil."

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

13 \* Section 1. AS 46.03.758(e) is amended to read:

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

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

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

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

28 (B) the owner of the oil carried as cargo on the  
29 vessel at the time the vessel was loaded, if the loading occurred

1 within the territorial jurisdiction of the state, or at a deep-  
2 water port or other offshore storage facility adjacent to the  
3 state; however, if the owner of the oil temporarily transfers  
4 ownership of the oil to another person, and the transfer has the  
5 purpose or effect of evading the vicarious liability imposed by  
6 this section, the transferor will be considered the owner of the  
7 oil for the purposes of this subsection; and

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

11 \* Sec. 2. AS 46.03.758(1)(6) is amended to read:

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

14 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

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

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

21 (1) \$5.83 per gallon of crude oil discharged for the first  
22 420,000 gallons discharged; and

23 (2) \$10 per gallon of crude oil discharged for amounts  
24 discharged in excess of 420,000 gallons.

25 (b) In determining how many gallons of crude oil have been dis-  
26 charged for purposes of assessing a penalty under (a) of this section,  
27 the court shall deduct the number of discharged gallons of crude oil  
28 that the defendant proves were removed by the defendant from the  
29 environment within the first 36 hours after the discharge as a result

1 of a cleanup operation undertaken in conformity with applicable state  
2 and federal law. The dispersal of oil through the use of chemical  
3 agents or other means is not considered removal for the purposes of  
4 this subsection.

5 (c) In determining how many gallons of crude oil have been  
6 discharged for purposes of assessing a penalty under (a) of this  
7 section, the court may deduct 50 percent of the number of discharged  
8 gallons of crude oil that the defendant proves were removed by the  
9 defendant within the first 36 hours after the discharge through the  
10 use of dispersing agents or other chemical agents approved by the  
11 department for use under the defendant's oil discharge contingency  
12 plan. The court may estimate the number of gallons removed under this  
13 subsection.

14 (d) The court shall assess five times the penalty set out in (a)  
15 of this section if the court finds

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

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

20 (e) Notwithstanding AS 46.03.875, a person liable for civil  
21 penalties under this section is not also liable for the discharge of  
22 the crude oil under AS 46.03.760(a). A person causing or permitting a  
23 discharge of uncontaminated crude oil of 18,000 gallons or less not  
24 permitted under applicable state or federal law is liable for that  
25 discharge under the penalty provisions of AS 46.03.760(a); however,  
26 the court may impose a penalty of less than \$500 for the discharge.

27 (f) The court may reduce the penalty imposed under this section  
28 if the defendant demonstrates, by a preponderance of the evidence,  
29 that the discharge was caused solely by a negligent act of a third

1 person unless the third person is a person with whom the defendant was  
2 found jointly and severally liable for the discharge under other state  
3 law.

4 (g) In this section, "discharge" means entry of uncontaminated  
5 crude oil into or upon the water or public land of the state, regard-  
6 less of causation, except discharges into an enclosed and impervious  
7 oil spill containment area.

8 \* Sec. 4. AS 46.03.770 is amended to read:

9 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY  
10 FOR DAMAGES. A vessel that is used in or in aid of a violation of  
11 AS 46.03.740 - 46.03.750 may be detained after a valid search by the  
12 department, an agent of the department, a peace officer of the state,  
13 or an authorized protection officer of the Department of Fish and  
14 Game. Upon judgment of the court having jurisdiction that the vessel  
15 was used in, or was the cause of, a violation of AS 46.03.740 - 46.-  
16 03.750 with knowledge of its owner or under circumstances indicating  
17 that the owner should reasonably have had this knowledge, the vessel  
18 may be held as security for payment to the state of the amount of  
19 damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.-  
20 760, [AND] 46.03.822, and AS 46.04.030(g). If the damages assessed  
21 are not paid within 30 days after judgment or final determination of  
22 an appeal, the vessel shall be sold at public auction, or as otherwise  
23 directed by the court, and the damages paid from the proceeds. The  
24 balance, if any, shall be paid by the court to the owner of the ves-  
25 sel. The court shall permit the release of the vessel upon posting of  
26 a bond set by the court in an amount not to exceed the maximum amount  
27 of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND]  
28 46.03.822, and AS 46.04.030(g). The damages received under this  
29 section shall be transmitted to the proper state officer for deposit

1 in the general fund. A vessel seized under this section shall be  
2 returned or the bond exonerated if no damages are assessed under  
3 AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-  
4 030(g).

5 \* Sec. 5. AS 46.04.030(g) is amended to read:

6 (g) Failure of a holder of an approved oil discharge contingency  
7 plan to have access to the quality or quantity of resources identified  
8 in the plan and, in the event of a spill, to respond with those re-  
9 sources within the shortest feasible time is a violation of this  
10 chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any  
11 other applicable law. If the holder of an approved oil discharge  
12 contingency plan fails to respond to an unpermitted discharge of  
13 uncontaminated crude oil with the quality and quantity of resources  
14 identified in the plan and in a manner required under the plan, the  
15 holder is strictly liable, jointly and severally, for the civil pen-  
16 alty assessed under AS 46.03.759 against any other person for that  
17 discharge.

18 \* Sec. 6. AS 46.04.040(e) is amended to read:

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

1 disapproved for use in the state.

2 \* Sec. 7. AS 46.04.040(i) is amended to read:

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