

Amended: 4/29/89
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) am
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

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

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

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

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

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

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

28 * Sec. 4. AS 46.03.770 is amended to read:

29 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY

1 FOR DAMAGES. A vessel that is used in or in aid of a violation of
2 AS 46.03.740 - 46.03.750 may be detained after a valid search by the
3 department, an agent of the department, a peace officer of the state,
4 or an authorized protection officer of the Department of Fish and
5 Game. Upon judgment of the court having jurisdiction that the vessel
6 was used in, or was the cause of, a violation of AS 46.03.740 - 46.-
7 03.750 with knowledge of its owner or under circumstances indicating
8 that the owner should reasonably have had this knowledge, the vessel
9 may be held as security for payment to the state of the amount of
10 damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.-
11 760, [AND] 46.03.822, and AS 46.04.030(g). If the damages assessed
12 are not paid within 30 days after judgment or final determination of
13 an appeal, the vessel shall be sold at public auction, or as otherwise
14 directed by the court, and the damages paid from the proceeds. The
15 balance, if any, shall be paid by the court to the owner of the ves-
16 sel. The court shall permit the release of the vessel upon posting of
17 a bond set by the court in an amount not to exceed the maximum amount
18 of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND]
19 46.03.822, and AS 46.04.030(g). The damages received under this
20 section shall be transmitted to the proper state officer for deposit
21 in the general fund. A vessel seized under this section shall be
22 returned or the bond exonerated if no damages are assessed under
23 AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-
24 030(g).

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

26 (g) Failure of a holder of an approved oil discharge contingency
27 plan to have access to the quality or quantity of resources identified
28 in the plan and, in the event of a spill, to respond with those re-
29 sources within the shortest feasible time is a violation of this

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

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

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

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

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