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Original sponsor: Senate Special  
Committee on Oil and Gas

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR 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; removing a maxi-  
10 mum limit on civil penalties for discharges of oil;  
11 and amending Rule 82, Alaska Rules of Civil Proce-  
12 dure."

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

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

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

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

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

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

29 (B) the owner of the oil carried as cargo on the

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

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

12 \* Sec. 2. 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 [OR] crude oil;

15 \* Sec. 3. 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 crude oil in excess of 18,000 gallons is,  
19 in addition to liability for any other penalties or for damages or the  
20 cost of containment and cleanup, liable to the state in a civil action  
21 for a civil penalty in the amount of

22 (1) \$8 per gallon of crude oil discharged for the first  
23 420,000 gallons discharged; and

24 (2) \$12.50 per gallon of crude oil discharged for amounts  
25 discharged in excess of 420,000 gallons.

26 (b) In determining how many gallons 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 gallons 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 burning, the use of  
4 chemical agents, biological additives, or sinking agents, or other  
5 means is not considered removal for the purposes of 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;

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

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

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

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

27 (f) In this section, "discharge" means entry of crude oil into  
28 or upon the water or public land of the state, regardless of causa-  
29 tion, except discharges into an enclosed and impervious oil spill

1       containment area.

2       \* Sec. 4. AS 46.03 is amended by adding a new section to read:

3               Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action to impose  
4       civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a  
5       discharge of oil, the state may recover full reasonable attorney fees  
6       and costs incurred by the state in maintaining the action.

7       \* Sec. 5. AS 46.03.770 is amended to read:

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

1 returned or the bond exonerated if no damages are assessed under  
2 AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-  
3 030(g).

4 \* Sec. 6. AS 46.04.030(g) is amended to read:

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

16 \* Sec. 7. AS 46.04.040(e) is amended to read:

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

29 \* Sec. 8. 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, [OR] 46.03.760(a), or AS 46.04.030(g).

4           \* Sec. 9. AS 46.03.763, as enacted by sec. 4 of this Act, has the  
5           effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing  
6           the recovery of full reasonable attorney fees and costs in certain actions.