

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

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SENATE BILL NO. 502

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

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* Section 1. AS 46.03.758(a) is amended to read:

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(a) The legislature finds that

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(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even [. EVEN] minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

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(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of

1 oil and to insure that the public does not bear substantial losses
2 from oil pollution for which, because of its subtle, long-term or
3 unquantifiable nature, compensation would not otherwise be received;
4 and

5 (3) the handling of oil in large quantities is a hazardous
6 undertaking which poses a significant threat to the economy and
7 environment of the state, which can be substantially reduced only by
8 the taking of rigorous safety precautions involving considerable
9 expense; conversely, persons handling oil in smaller amounts might
10 pose a correspondingly lower risk to the economy and environment of
11 the state, and might be [ARE] capable of safe oil handling practices
12 at correspondingly lower costs [; IN ORDER TO PROVIDE AN INCENTIVE
13 WHICH IS EFFECTIVE, BUT NOT PUNITIVE, IT IS NECESSARY AND APPROPRIATE
14 THAT THE ASSESSMENT OF CIVIL PENALTIES FOR DISCHARGES OF SMALL
15 QUANTITIES OF OIL BE LEFT FOR CASE-BY-CASE JUDICIAL DETERMINATION,
16 WHILE INSURING, THROUGH THE PENALTY PROVISIONS OF THIS SECTION, THAT
17 THE HANDLING OF OIL IN LARGE QUANTITIES OCCURS IN A MANNER WHICH WILL
18 NOT IMPAIR THE RENEWABLE RESOURCES OF THE STATE].

19 * Sec. 2. AS 46.03.758(b) is repealed and reenacted to read:

20 (b) In order to promote the safe handling of oil, the department
21 shall adopt regulations that establish a schedule of penalties for
22 discharges of oil into the following categories of receiving
23 environments:

24 (1) Subject to (2) of this subsection, the penalties for
25 the following categories of receiving environments may not exceed

26 (A) \$50 per gallon of oil that enters any surface or
27 subsurface freshwater environment;

28 (B) \$50 per gallon of oil that enters an estuarine,
29 intertidal, or confined saltwater environment;

1 (C) \$25 per gallon of oil that enters an unconfined
2 saltwater environment or onto the land or subsurface land of the
3 state.

4 (2) The penalty shall be determined by multiplying the
5 penalty established under (1) of this subsection by a factor of five
6 if a court determines that

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

9 (B) the discharger did not take reasonable measures to
10 contain and cleanup the discharged oil; or

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

13 * Sec. 3. AS 46.03.758(d) is amended to read:

14 (d) The schedule shall vary according to the toxicity,
15 degradability and dispersal characteristics of the oil. The schedule
16 shall also vary according to the sensitivity and productivity of the
17 receiving environment. Variations under this subsection may be by
18 subcategories of receiving environments, specific receiving
19 environments, or both. The maximum penalties established in (b) of
20 this section shall apply to discharges in the most sensitive and
21 productive of receiving environments within each category of receiving
22 environment, and the penalty shall decrease for less productive or
23 sensitive receiving environments. If oil is discharged into multiple
24 receiving environments, the penalty shall be based upon the schedule
25 penalty value applicable to the most sensitive and productive
26 receiving environments unless the defendant proves the amount of oil
27 that entered each receiving environment by clear and convincing
28 evidence.

29 * Sec. 4. AS 46.03.758(e) is amended to read:

1 (e) If a discharge of oil [IN EXCESS OF 18,000 GALLONS] not
2 permitted under applicable state and federal law occurs within the
3 territorial jurisdiction of the state, or into or upon the adjacent
4 outer continental shelf of the state, the following persons, in
5 addition to the person causing or permitting the discharge, are
6 jointly and severally liable to the state, in a civil action, for the
7 full amount of penalties established under this section and in the
8 regulations adopted under this section:

9 (1) if the discharge occurs from any commercial or
10 industrial facility other than a vessel or offshore platform, the
11 owner, lessee or permittee, and the operator of the facility;

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

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

14 (B) the owner of the oil carried as cargo on the
15 vessel at the time the vessel was loaded, if the loading occurred
16 within the territorial jurisdiction of the estate, or at a
17 deep-water port or other offshore storage facility adjacent to
18 the state; however, if the owner of the oil temporarily transfers
19 ownership of the oil to another person, and the transfer has the
20 purpose or effect of evading the vicarious liability imposed by
21 this section, the transferor will be considered the owner of the
22 oil for the purposes of this subsection; and

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

26 * Sec. 5. AS 46.03.758(f) is repealed and reenacted to read:

27 (f) In determining how many gallons of oil have been discharged
28 for purposes of assessing a penalty under (b) of this section, the
29 court shall deduct the number of discharged gallons of oil that the

1 defendant proves were removed by the defendant from the environment
2 within the first 36 hours after the discharge as a result of a cleanup
3 operation undertaken in conformity with applicable state and federal
4 law. The dispersal of oil through burning, the use of chemical
5 agents, biological additives, sinking agents, or other means is not
6 considered removal for purposes of this subsection.

7 * Sec. 6. AS 46.03.758(i) is repealed and reenacted to read:

8 (i) The imposition of a civil penalty under this section does
9 not limit or otherwise affect the authority of the department to
10 enforce a provision of this chapter, AS 46.04, or AS 46.09, or to
11 recover damages, restoration expenses, investigation costs, court
12 costs, and attorney fees. A person who pays a civil penalty imposed
13 under this section may set off the penalty amount paid against a civil
14 penalty awarded by a court against the person for the same discharge
15 under AS 46.03.760(a).

16 * Sec. 7. AS 46.03.759 is amended to read:

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

18 (a) A person who is found to be liable under any other state law for
19 an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GALLONS]
20 is, in addition to liability for any other penalties or for damages or
21 the cost of containment and cleanup, liable to the state in a civil
22 action for a civil penalty, up to a maximum of \$500,000,000, in the
23 amount of

24 (1) \$8 per gallon of crude oil discharged for the first
25 420,000 gallons discharged; and

26 (2) \$12.50 per gallon of crude oil discharged for amounts
27 discharged in excess of 420,000 gallons.

28 (b) In determining how many gallons of crude oil have been
29 discharged for purposes of assessing a penalty under (a) of this

1 section, the court shall deduct the number of discharged gallons of
2 crude oil that the defendant proves were removed by the defendant from
3 the environment within the first 36 hours after the discharge as a
4 result of a cleanup operation undertaken in conformity with applicable
5 state and federal law. The dispersal of oil through burning, the use
6 of chemical agents, biological additives, or sinking agents, or other
7 means is not considered removal for the purposes of this subsection.

8 (c) Subject to the \$500,000,000 maximum set under (a) of this
9 section the court shall assess five [FOUR] times the penalty set out
10 in (a) of this section if the court finds

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

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

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

17 (d) The imposition of a civil penalty under this section does
18 not limit or otherwise affect the authority of the department to
19 enforce a provision of this chapter, AS 46.04, or AS 46.09, or to
20 recover damages, restoration expenses, investigation costs, court
21 costs, and attorney fees. A person who pays a civil penalty imposed
22 under this section may set off the penalty amount paid against a civil
23 penalty awarded by a court against the person for the same discharge
24 under AS 46.03.760(a). [NOTWITHSTANDING AS 46.03.875, A PERSON LIABLE
25 FOR CIVIL PENALTIES UNDER THIS SECTION IS NOT ALSO LIABLE FOR THE
26 DISCHARGE OF THE CRUDE OIL UNDER AS 46.03.760(a). A PERSON CAUSING OR
27 PERMITTING A DISCHARGE OF CRUDE OIL OF 18,000 GALLONS OR LESS NOT
28 PERMITTED UNDER APPLICABLE STATE OR FEDERAL LAW IS LIABLE FOR THAT
29 DISCHARGE UNDER THE PENALTY PROVISIONS OF AS 46.03.760(a); HOWEVER,

1 THE COURT MAY IMPOSE A PENALTY OF LESS THAN \$500 FOR THE DISCHARGE.]

2 (e) The court may reduce the penalty imposed under this section
3 if the defendant demonstrates, by a preponderance of the evidence,
4 that the discharge was caused solely by a negligent act of a third
5 person unless the third person is a person with whom the defendant was
6 found jointly and severally liable for the discharge under other state
7 law.

8 (f) A person otherwise liable for penalties under this section
9 is not liable if the person demonstrates, by a preponderance of the
10 evidence that the discharge occurred solely as a result of

11 (1) an act of God;

12 (2) a negligent or intentional act of the State of Alaska
13 or the United States; or

14 (3) an act of war.

15 (g) In this section, "discharge" means entry of crude oil into
16 or upon the water or public land of the state, regardless of
17 causation, except discharges into an enclosed and impervious oil spill
18 containment area.

19 * Sec. 8. AS 46.03.760(a) is repealed and reenacted to read:

20 (a) A person who violates or causes or permits to be violated a
21 provision of this chapter, AS 46.04, AS 46.09, or a regulation, order
22 of the department, permit, approval, or certificate issued under this
23 chapter, AS 46.04, or AS 46.09, is liable to the state in a civil
24 action for a sum to be assessed by the court of not less than \$2,500
25 nor more than \$100,000 a day for each violation. Each violation is a
26 separate and distinct offense, and where a violation continues from
27 day to day each day constitutes a separate violation. The amount
28 assessed by the court under this subsection shall reflect, as
29 applicable,

1 (1) reasonable compensation for any adverse environmental
2 effects caused by the violation;

3 (2) reasonable costs incurred by the state in the
4 detection, investigation, and attempted correction of the violation;

5 (3) the economic savings realized by the person in not
6 complying with the requirement for which the violation is charged;

7 (4) the prior history of violations committed by the
8 person;

9 (5) the need for an enhanced civil penalty to deter future
10 violations;

11 (6) the extent and seriousness of the violation;

12 (7) the person's attainment of compliance, within the
13 shortest feasible time, with the requirement for which the violation
14 is shown;

15 (8) the ability to pay; and

16 (9) any other factors that the court determines justice
17 requires.

18 * Sec. 9. AS 46.03.760(e) is amended to read:

19 (e) In addition to liability under (a) [- (d)] of this section,
20 a person who violates or causes or permits to be violated a provision
21 of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
22 brought under AS 46.03.822, for the full amount of actual damages
23 caused to the state by the violation, including direct and indirect
24 costs associated with the abatement, containment and [OR] removal of
25 the pollutant, restoration of the environment to its former state, and
26 all incidental administrative costs.

27 * Sec. 10. AS 46.03.763 is amended to read:

28 Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action [TO
29 IMPOSE CIVIL PENALTIES] under AS 46.03.758, 46.03.759, [OR] 46.03.760,

1 46.03.765, 46.03.780, or 46.03.822 [FOR A DISCHARGE OF OIL], the state
2 may recover full reasonable attorney fees and costs incurred by the
3 state in maintaining the action.

4 * Sec. 11. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c),
5 and 46.03.760(f) are repealed.

6 * Sec. 12. Section 10's amendment of AS 46.03.763 has the effect of
7 amending Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery
8 of full reasonable attorney fees and costs in certain additional actions.

9 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).