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HOUSE COMMITTEE REPORT

(7)

Date Referred: May 4, 1989

FURTHER REFERRALS:

Date of Committee Action: 2-26-90

The JUDICIARY Committee considered:

HB 315

HOUSE BILL NO. 315 NEGLIGENT OPERATION OF TANKER, ETC.]

"An Act providing criminal penalties for negligent operation of a tank vessel, negligent oil discharges, failure to comply with an oil discharge contingency plan, and failure to adequately clean up an oil discharge."

RECOMMENDATIONS:

- be replaced with CS HB 315 (Jud) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): _____
(Dept)

APPROVES PREVIOUS: _____

(Date/Dept)

- fiscal impact _____
- fiscal note(s) _____
- 2 zero fiscal note DEC / Courts
- zero fiscal note(s) _____
- zero with analysis LAW
- zero fn/analysis _____

SIGNING DO PASS:

Peter Jones

Mike De...

H. Elger

...

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Terry...</u>		<input checked="" type="checkbox"/>	

...
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act providing criminal penalties for negligent operation of a tank vessel..."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services

Phone: 465-3672
 Date: January 17, 1990

Approved by Commissioner: Richard I. Pegues / FULL
 Agency: Department of Law

Date: January 17, 1990

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 315

This bill amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

This bill also amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: HB 315
Negligent Operation of a Tanker, etc.
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environmental Conservation
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The FY 90 effect would also be a zero impact.

Prepared by: Gail Garton
Division: Administrative Services

Phone: 465-2600
Date: 1/22/90

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: January 22, 1990

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date:		Agency Affected:	Alaska Court System
Title:	An Act providing for criminal penalties for negligent operation of vessel...	BRU:	Trial Courts
Sponsor:	Rules Committee	Components:	
Requestor:	House Judiciary		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 284-6228
Date: 02/16/90

Approved by: Annur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 02/16/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act providing criminal penalties
 for negligent operation of a tank vessel..."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Douglas B. Baily, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: January 17, 1990
 Date: January 17, 1990

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 315

This bill amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

This bill also amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act providing for criminal penalties for negligent operation of vessel...</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Rules Committee</u>	Components:	
Requestor: <u>House Judiciary</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 284-8228
 Date: 02/16/90
 Date: 02/16/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
JHB 3/15

April 26, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to criminal penalties for negligent operation of a tank vessel, for negligent oil discharges, for failure to comply with an oil discharge contingency plan, and for failure to adequately clean up an oil spill.

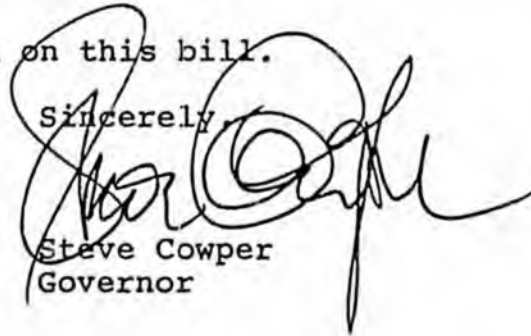
This bill increases the penalty for a negligent oil spill to a class A misdemeanor if the spill is less than 10,000 barrels, and to a class C felony if the spill is 10,000 barrels or more. In addition, the bill makes clear that criminal penalties will be imposed for failure to comply with an oil discharge contingency plan and for failure to adequately clean up an oil spill. Finally, the bill makes it a class C felony to actually endanger a person or property through negligently operating, navigating, or piloting a tank vessel. The need for this legislation arises from our review of criminal statutes in light of the Prince William Sound oil spill.

The class B misdemeanor penalty imposed under current law for negligent oil discharges, or for failure to comply with administrative regulations requiring adequate clean up of a discharge, does not accurately reflect the seriousness of the societal interests that are violated when a criminally negligent act causes extensive damage. Under the bill, felony penalties are imposed for negligent spills of 10,000 barrels or more (420,000 gallons), or for failure to respond appropriately to any spill of this magnitude.

The new crime of negligent operation of a tank vessel is similar in definition to the crime of negligent operation of a motor vehicle. However, given the extent of the possible damage from negligent operation of a tank vessel, the crime is designated a class C felony. The purpose of imposing felony penalties in this context is to provide a strong incentive for operators, navigators, and pilots of tank vessels to exercise an appropriate level of care to protect the lives and property of Alaskans.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 315
PUBLISH DATE: HOUSE 4/26/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act providing criminal penalties for negligent oil discharges..."
Sponsor: Rules/By Req. of the Governor
Requestor: Governor's Office/OMB

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: April 24, 1989

Approved by Commissioner: Douglas B. Bailly, Attorney General

Date: April 24, 1989

Agency: Department of Law

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

No. 1
HB 315
HOUSE 4/26/89

For Bill/Resolution No. _____

This bill amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for inadequate cleanup of oil discharges. The new subsection provides that a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04.030, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

This bill also amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 26, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5-3-89

The RESOURCES Committee considered:

HB 315

HOUSE BILL NO. 315

[NEGLIGENT OPERATION OF TANKER, ETC.]

"An Act providing criminal penalties for negligent operation of a tank vessel, negligent oil discharges, failure to comply with an oil discharge contingency plan, and failure to adequately clean up an oil discharge."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis LAW 4-26-89

SIGNING DO PASS:

Carl Wickham

Carl Davidson

~~_____~~

~~_____~~

Mike Dem

Richard Joseph

White

SIGNING:

(Check approp. column)

Do Not
PASS

No Rec

Amend

<i>Carl Wickham</i>			<input checked="" type="checkbox"/>
<i>Carl Davidson</i>			
<i>Mike Dem</i>			<input checked="" type="checkbox"/>

Carl Wickham

Chairman's Signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1989

SUBJECT: House Bill 315

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

As you consider the bill, please also consider the following:

(1) On page 1, line 22, the term "hazardous material" appears. "Hazardous material" is not a term that is used in Title 46. Elsewhere in the chapter, the reference throughout is to a "hazardous substance." The latter term is defined (see AS 46.03.826(4)), albeit not for purposes of this new section. If the committee intends to keep "hazardous material," it should provide a definition. (A suggested definition of "hazardous material" appears in AS 29.35.590, the municipal code.) If the committee wants to shift to "hazardous substance," it should likewise direct that a definition be provided.

(2) On page 2, at line 2, note that the bill section adds "subsections" (g) and (h), not just "a subsection" as the lead sentence states.

JC:lmb
L7/084

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
7 vidual for the conduct of an organization and to
8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
12 quired act relating to the handling of a hazardous
13 waste, and for failure to provide information or
14 providing false information about oil or a hazardous
15 substance when required by law."

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

17 * Section 1. AS 11.16 is amended by adding a new section to read:

18 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
19 IZATION CONDUCT. (a) A person is criminally liable for conduct that
20 the person performs or causes to be performed in the name of, or in
21 behalf of, an organization to the same extent as if that conduct were
22 performed in the person's own name or behalf.

23 (b) Whenever a duty to act is imposed by law upon an organiza-
24 tion, any agent of the organization who has primary responsibility for
25 the discharge of the duty is legally accountable for an omission to
26 perform the required act to the same extent as if the duty were im-
27 posed by law directly upon the agent.

28 (c) When a person is liable for an offense under this section,
29 the person is subject to any sentence authorized by law, including

1 imprisonment.

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

3 Sec. 46.03.742. NEGLIGENT OPERATION OF TANK VESSEL. (a) A
4 person commits the crime of negligent operation of a tank vessel when,
5 by operating, navigating, or piloting a tank vessel with criminal
6 negligence, the person creates a risk of a release of a hazardous
7 substance and the release could cause serious physical injury to
8 another person or damage to the property of another.

9 (b) Negligent operation of a tank vessel is a class C felony.

10 (c) In this section,

11 (1) "criminal negligence" has the meaning given in AS 11.-
12 81.900;

13 (2) "hazardous substance" has the meaning given in AS 46.-
14 03.026;

15 (3) "tank vessel" means

16 (A) a vessel that is constructed or adapted to
17 carry, or that carries, as a means of transportation by water, a
18 hazardous substance in bulk as cargo or cargo residue;

19 (B) the vessel that propels the tank vessel if the
20 tank vessel is a barge or other vessel that is not self-propel-
21 led.

22 * Sec. 3. AS 46.03.790(a) is amended to read:

23 (a) Except as provided in (d) [(d) - (f)] of this section, a
24 person is guilty of a class A misdemeanor if the person with criminal
25 negligence

26 (1) [WHO NEGLIGENTLY] violates a provision of this chapter,
27 AS 46.04, or AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the
28 department, or a permit, approval, or acceptance, or a term or condi-
29 tion of a permit, approval, or acceptance issued under this chapter,

1 AS 46.04, or AS 46.09;

2 (2) fails to provide information or provides false informa-
3 tion required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regula-
4 tion adopted by the department under AS 46.03.755, AS 46.04, or
5 AS 46.09; or

6 (3) makes a false statement or representation in an appli-
7 cation, label, manifest, record, report, permit, or other document
8 filed, maintained, or used for purposes of compliance with AS 46.03.-
9 250 - 46.03.314 applicable to hazardous wastes or a regulation adopted
10 by the department under AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS
11 B MISDEMEANOR].

12 * Sec. 4. AS 46.03.790(b) is amended to read:

13 (b) A [EXCEPT AS PROVIDED IN (d) - (f) OF THIS SECTION, A]
14 person is guilty of a class C felony if the person [WHO] knowingly

15 (1) violates' a provision of this chapter, AS 46.04, or
16 AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the department,
17 or a permit, approval, or acceptance, or a term or condition of a
18 permit, approval, or acceptance issued under this chapter, AS 46.04,
19 or AS 46.09;

20 (2) transports hazardous waste to a facility without a
21 permit required by AS 46.03.250 - 46.03.314; or

22 (3) treats, stores, or disposes of hazardous waste without
23 a permit required by AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS A
24 MISDEMEANOR].

25 * Sec. 5. AS 46.03.790(d) is amended to read:

26 (d) Notwithstanding (a) [AND (b)] of this section, a person who
27 with criminal negligence discharges oil in violation of AS 46.03.740
28 or who, when required by an oil discharge to comply with the pro-
29 visions of an oil discharge contingency plan approved under

1 AS 46.04.030, with criminal negligence fails to comply with the plan
2 is guilty of

3 (1) a class C felony if the oil discharge is 10,000 barrels
4 or more;

5 (2) a class A misdemeanor if the oil discharge is less than
6 10,000 barrels [FAILS TO PROVIDE OR FALSELY STATES INFORMATION RE-
7 QUIRED UNDER AS 46.03.755, AS 46.04, OR AS 46.09 IS GUILTY OF A MISDE-
8 MEANOR AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN
9 \$25,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.
10 EACH UNLAWFUL ACT CONSTITUTES A SEPARATE OFFENSE].

11 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

12 (g) In this section,

13 (1) "barrel" has the meaning given in AS 46.04.900;

14 (2) "criminal negligence" has the meaning given in AS 11.-
15 81.900;

16 (3) "knowingly" has the meaning given in AS 11.81.900.

17 * Sec. 7. AS 46.03.790(e) and 46.03.790(f) are repealed.
18
19
20
21
22
23

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
7 vidual for the conduct of an organization and to
8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
12 quired act relating to the handling of a hazardous
13 waste, and for failure to provide information or
14 providing false information about oil or a hazardous
15 substance when required by law."

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

17 * Section 1. AS 11.16 is amended by adding a new section to read:

18 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
19 IZATION CONDUCT. (a) A person is criminally liable for conduct that
20 the person performs or causes to be performed in the name of, or in
21 behalf of, an organization to the same extent as if that conduct were
22 performed in the person's own name or behalf.

23 (b) Whenever a duty to act is imposed by law upon an organiza-
24 tion, any agent of the organization who has primary responsibility for
25 the discharge of the duty is legally accountable for an omission to
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9 (b) Negligent operation of a tank vessel is a class C felony.

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16 (A) a vessel that is constructed or adapted to
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go1239hE
Chenoweth
2/23/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
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8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
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A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 1, line 6 - 7:

Delete "to liability and penalties under state criminal
law,"

Page 1, line 8:

Delete ", "

Page 1, line 11:

Delete "and"

Page 1, line 13:

Delete "of oil or"

Page 1, line 14, after "hazardous waste":

Insert

"and for failure to provide information or
providing false information about oil or a
hazardous substance when required by law"

A M E N D M E N T # ___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, lines 4 - 5:

delete all material and insert

"by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates a substantial risk of a release of a hazardous substance and the release could cause serious physical injury to another person or damage in an amount exceeding \$100,000 to property of another."

A M E N D M E N T # _____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 10, after "(b)":

Delete all material, and insert "A"

Page 3, line 23:

Delete "and (b)"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Delete "," and insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09,"

go1239hE
Chenoweth
2/23/90

Original sponsor(s): Rules/Governor

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 2 CS FOR HOUSE BILL NO. 315 (Judiciary)
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3810


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1990

SUBJECT: Draft CSHB 315 (Judiciary)

TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
Attn: Hayden Kaden

FROM: Jack Chenoweth
Legislative Counsel 

The draft requested is enclosed.

The change of the penalty in AS 46.03.790(b) from a misdemeanor to a class C felony for a criminal activity that has "knowingly" as a culpability factor, an intentional violation, suggests that the committee should also give some attention to AS 46.03.800(b) and 46.03.810(b). There, a refusal to abate--another crime that requires proof of knowledge, an intentional violation--retains the misdemeanor penalty, albeit with a continuing cross-reference to this section that is being amended. Conforming amendments should be made to AS 46.03.800(b) and 46.03.810(b) to make those crimes that are intentional violations into felonies.

In AS 46.03.790(d), bill section 5, the second of the three criminal elements did not require the activity under an oil discharge contingency plan to be tied to an actual discharge of oil. Absent the connection, since the crime is defined by the magnitude of the spill, one could not be sure which penalty--the misdemeanor or the felony--applied. I drafted to incorporate a discharge provision.

On page 1, at line 16: the text from the Department of Law speaks of "any agent . . . who has primary responsibility." Is it conceivable that more than one agent could be said to have primary responsibility? I think not, and would prefer "the agent . . . who has primary responsibility" if there were only one person, or "an agent . . . who has responsibility" if the provision were intended to be applicable to more than one person.

JC:pl
WKP1/082

Enclosure

go1239hE
Chenoweth
2/5/90

Original sponsor(s): Rules/Governor

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7 MEANOR AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN
8 \$25,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.
9 EACH UNLAWFUL ACT CONSTITUTES A SEPARATE OFFENSE].

10 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

11 (g) In this section,

12 (1) "barrel" has the meaning given in AS 46.04.900;

13 (2) "criminal negligence" has the meaning given in AS 11.-
14 81.900;

15 (3) "knowingly" has the meaning given in AS 11.81.900.

16 * Sec. 7. AS 46.03.790(e) and 46.03.790(f) are repealed.
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go1239hE
Chenoweth
2/1/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 CS FOR HOUSE BILL NO. 315 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability and penalties under
 7 state criminal law."

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

9 * Section 1. AS 11.16 is amended by adding a new section to read:

10 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
 11 IZATION CONDUCT. (a) A person is criminally liable for conduct that
 12 the person performs or causes to be performed in the name of, or in
 13 behalf of, an organization to the same extent as if that conduct were
 14 performed in the person's own name or behalf.

15 (b) Whenever a duty to act is imposed by law upon an organiza-
 16 tion, any agent of the organization who has primary responsibility for
 17 the discharge of the duty is legally accountable for an omission to
 18 perform the required act to the same extent as if the duty were im-
 19 posed by law directly upon the agent.

20 (c) When a person is liable for an offense under this section,
 21 the person is subject to any sentence authorized by law, including
 22 imprisonment.

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

24 Sec. 46.03.742. NEGLIGENT OPERATION OF TANK VESSEL. (a) A
 25 person commits the crime of negligent operation of a tank vessel when,
 26 with criminal negligence, the person endangers a person or property by
 27 operating, navigating, or piloting a tank vessel.

28 (b) Negligent operation of a tank vessel is a class C felony.

29 (c) In this section,

1 (1) "criminal negligence" has the meaning given in AS 11.-
2 81.900;

3 (2) "hazardous substance" has the meaning given in AS 46.-
4 03.826;

5 (3) "tank vessel" means

6 (A) a vessel that is constructed or adapted to
7 carry, or that carries, a hazardous substance in bulk as cargo or
8 cargo residue;

9 (B) the vessel that propels the tank vessel if the
10 tank vessel is a barge or other vessel that is not self-propel-
11 led.

12 * Sec. 3. AS 46.03.790(a) is amended to read:

13 (a) Except as provided in (d) [(d) - (f)] of this section, a
14 person is guilty of a class A misdemeanor if the person with criminal
15 negligence

16 (1) [WHO NEGLIGENTLY] violates a provision of this chapter,
17 AS 46.04, or AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the
18 department, or a permit, approval, or acceptance, or a term or condi-
19 tion of a permit, approval, or acceptance issued under this chapter,
20 AS 46.04, or AS 46.09;

21 (2) fails to provide information or provides false informa-
22 tion required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regula-
23 tion adopted by the department under AS 46.03.755, AS 46.04, or AS 46.-
24 09; or

25 (3) makes a false statement or representation in an appli-
26 cation, label, manifest, record, report, permit, or other document
27 filed, maintained, or used for purposes of compliance with AS 46.03.-
28 250 - 46.03.314 applicable to hazardous wastes or a regulation adopted
29 by the department under AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS

1 B MISDEMEANOR].

2 * Sec. 4. AS 46.03.790(b) is amended to read:

3 (b) Except as provided in (d) [(d) - (f)] of this section, a
4 person is guilty of a class C felony if the person [WHO] knowingly

5 (1) violates a provision of this chapter, AS 46.04, or
6 AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the department,
7 or a permit, approval, or acceptance, or a term or condition of a
8 permit, approval, or acceptance issued under this chapter, AS 46.04,
9 or AS 46.09;

10 (2) transports hazardous waste to a facility without a
11 permit required by AS 46.03.250 - 46.03.314; or

12 (3) treats, stores, or disposes of hazardous waste without
13 a permit required by AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS A
14 MISDEMEANOR].

15 * Sec. 5. AS 46.03.790(d) is amended to read:

16 (d) Notwithstanding (a) and (b) of this section, a person who
17 with criminal negligence discharges oil in violation of AS 46.03.740,
18 who, when required by an oil discharge to comply with the provisions
19 of an oil discharge contingency plan approved under AS 46.04.030,
20 fails to comply with the plan, or who fails to adequately clean up a
21 discharge of oil when required to do so by a regulation adopted by the
22 department under this chapter, AS 46.04, or AS 46.09, is guilty of

23 (1) a class C felony if the oil discharge is 100,000 bar-
24 rels or more;

25 (2) a class A misdemeanor if the oil discharge is less than
26 100,000 barrels [FAILS TO PROVIDE OR FALSELY STATES INFORMATION RE-
27 QUIRED UNDER AS 46.03.755, AS 46.04, OR AS 46.09 IS GUILTY OF A MISDE-
28 MEANOR AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN
29 \$25,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.

1 EACH UNLAWFUL ACT CONSTITUTES A SEPARATE OFFENSE].

2 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

3 (g) In this section,

4 (1) "barrel" has the meaning given in AS 46.04.900;

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6 81.900;

7 (3) "knowingly" has the meaning given in AS 11.81.900.

8 * Sec. 7. AS 46.03.790(e) and 46.03.790(f) are repealed.
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A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, lines 4 - 5:

Delete all material and insert

"by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates a substantial risk of a release of a hazardous substance and the release could cause serious physical injury to another person or damage in an amount exceeding \$100,000 to property of another."

A M E N D M E N T # ____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 10, after "(b)":

Delete all material, and insert "A"

Page 3, line 23:

Delete "and (b)"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Delete "," and insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09,"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On page 2, line 27,28, delete "a year" and insert in its place:

"per campaign"

On page 3, line 1, delete "a year" and insert in its place:

"per campaign"

On page 3, line 13, delete "a year" and insert in its place:

"per campaign"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On page 2, line 29, following "A group", insert
"or individual"

On page 3, line 1, following "more than" insert
"an aggregate total of"

On page 3, line 1, following "party", delete "and" and insert
", including all of"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On Page 3, line 3, following the word "campaign", insert:

"A candidate may not accept more than an aggregate total of \$5,000 per campaign from the members of a professional or trade association, group or organization."

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 1, line 6 - 7:

Delete "to liability and penalties under state criminal
law,"

A M E N D M E N T # _____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T # ___

IN THE HOUSE

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Page 3, line 10, after "(b)":

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Page 3, line 23:

Delete "and (b)"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 4:

Delete "endangers a person or property"

Page 2, line 5, after "tank vessel":

Insert:

"creates a substantial risk of of a
release of a hazardous substance and the
release could cause serious physical
injury to another person, or damage in an
amount exceeding \$100,000 to property of
another"