

CS FOR HOUSE BILL NO. 322(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/9/18
Referred: Rules

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to penalties for discharges of oil and other pollution violations; relating**
2 **to oil spill response plans for commercial motor vehicles transporting crude oil; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

6 (a) The legislature finds that

7 (1) [RECENT INFORMATION DISCLOSES THAT] the discharge of
8 oil may cause significant short and long-term damage to the state's environment; even
9 minute quantities of oil released to the environment may cause high mortalities among
10 larval and juvenile forms of important commercial species, may affect salmon
11 migration patterns, and may otherwise degrade and diminish the renewable resources
12 of the state;

13 (2) the exact nature and extent of oil pollution can be neither
14 documented with certainty nor precisely quantified on a spill-by-spill basis; however,

1 in light of the magnitude of harm **that** [WHICH] may be caused by oil discharges, and
 2 the vital importance of commercial, sport, and subsistence fishing, tourism, and the
 3 state's natural abundance and beauty to the economic future of the state and its quality
 4 of life, it is the judgment of the legislature that substantial civil penalties should be
 5 imposed for the discharge of oil in order to provide a meaningful incentive for the safe
 6 handling of oil and to **ensure** [INSURE] that the public does not bear substantial
 7 losses from oil pollution for which, because of its subtle, long-term, or unquantifiable
 8 nature, compensation would not otherwise be received; and

9 (3) the handling of oil in large quantities is a hazardous undertaking
 10 that poses a significant threat to the economy and environment of the state, which can
 11 be substantially reduced only by the taking of rigorous safety precautions involving
 12 considerable expense; conversely, persons handling oil in smaller amounts pose a
 13 correspondingly lower risk to the economy and environment of the state, and are
 14 capable of safe oil handling practices at correspondingly lower costs; in order to
 15 provide an incentive that is effective, [BUT NOT PUNITIVE,] it is necessary and
 16 appropriate that the assessment of [CIVIL] penalties for discharges of small quantities
 17 of oil be left for case-by-case [JUDICIAL] determination, while ensuring, through the
 18 penalty provisions of this section, that the handling of oil in large quantities occurs in
 19 a manner that will not impair the renewable resources of the state.

20 * **Sec. 2.** AS 46.03.758(b) is amended to read:

21 (b) **The** [NO LATER THAN THE 10TH DAY AFTER THE CONVENING
 22 OF THE SECOND SESSION OF THE TENTH ALASKA LEGISLATURE, THE]
 23 department shall **establish in** [SUBMIT TO THE LEGISLATURE] regulations
 24 [ESTABLISHING] the following schedule of fixed penalties for discharges of oil:

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

27 (A) **\$40** [\$10] per gallon of oil **that** [WHICH] enters an
 28 anadromous stream or other freshwater environment with significant aquatic
 29 resources;

30 (B) **\$10** [\$2.50] per gallon of oil **that** [WHICH] enters an
 31 estuarine, intertidal or confined saltwater environment; and

1 (C) \$4 [\$1] per gallon of oil that [WHICH] enters an
 2 unconfined saltwater environment, public land or freshwater environment
 3 without significant aquatic resources;

4 (2) for discharges of oil that are caused by the gross negligence or
 5 intentional act of the discharger, or when the court finds that the discharger did not
 6 take reasonable measures to contain and clean up the discharged oil, the penalty shall
 7 be determined by multiplying the penalty established under (1) of this subsection by a
 8 factor of five.

9 * **Sec. 3.** AS 46.03.758 is amended by adding a new subsection to read:

10 (m) The department shall, every three years, increase the amounts of the civil
 11 penalties authorized in (b) of this section by a percentage equal to the percentage of
 12 increase in all items of the Consumer Price Index for all urban consumers for
 13 Anchorage, Alaska. The index for January of 2018 is the reference base index.

14 * **Sec. 4.** AS 46.03.759(a) is amended to read:

15 (a) A person who is found to be liable under any other state law for an
 16 unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to
 17 liability for any other penalties or for damages or the cost of containment and cleanup,
 18 liable to the state in a civil action for a civil penalty, up to a maximum of
 19 \$500,000,000, in the amount of

20 (1) \$16 [\$8] per gallon of crude oil discharged for the first 420,000
 21 gallons discharged; and

22 (2) \$25 [\$12.50] per gallon of crude oil discharged for amounts
 23 discharged in excess of 420,000 gallons.

24 * **Sec. 5.** AS 46.03.759 is amended by adding new subsections to read:

25 (h) For the purpose of determining the volume of discharged crude oil under
 26 this section, the department shall include the produced water, if any, that was mixed
 27 with the discharged crude oil at the time of the discharge.

28 (i) The department shall, every three years, increase the amounts of the civil
 29 penalties authorized in (a) of this section by a percentage equal to the percentage of
 30 increase in all items of the Consumer Price Index for all urban consumers for
 31 Anchorage, Alaska. The index for January of 2018 is the reference base index.

1 * **Sec. 6.** AS 46.03.760(a) is amended to read:

2 (a) A person who violates or causes or permits to be violated a provision of
3 this chapter other than AS 46.03.250 - 46.03.313, or a provision of AS 46.04 or
4 AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or
5 acceptance, or term or condition of a permit, approval, or acceptance issued under this
6 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be
7 assessed by the court of not less than \$2,000 [\$500] nor more than \$400,000
8 [\$100,000] for the initial violation, nor more than \$25,000 [\$5,000] for each day after
9 that on which the violation continues, and that shall reflect, when applicable,

10 (1) reasonable compensation in the nature of liquidated damages for
11 any adverse environmental effects caused by the violation, which shall be determined
12 by the court according to the toxicity, degradability, and dispersal characteristics of
13 the substance discharged, the sensitivity of the receiving environment, and the degree
14 to which the discharge degrades existing environmental quality;

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

17 (3) the economic savings realized by the person in not complying with
18 the requirement for which a violation is charged; **and**

19 **(4) the need for an enhanced civil penalty to deter future**
20 **noncompliance.**

21 * **Sec. 7.** AS 46.03.760(d) is amended to read:

22 (d) In addition to liability under **(a) and (c)** [(a) - (c)] of this section, a person
23 who violates or causes or permits to be violated a provision of AS 46.03.740 -
24 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the
25 full amount of actual damages caused to the state by the violation, including

26 (1) direct and indirect costs associated with the abatement,
27 containment, or removal of the pollutant;

28 (2) restoration of the environment to its former state;

29 (3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as
30 emergency first response advances and reimbursements under AS 46.08.070(c); and

31 (4) all incidental administrative costs.

1 * **Sec. 8.** AS 46.03.760(e) is amended to read:

2 (e) A person who violates or causes or permits to be violated a provision of
 3 AS 46.03.250 - 46.03.313, 46.03.460 - 46.03.475, AS 46.14, or a regulation, a lawful
 4 order of the department, or a permit, approval, or acceptance, or term or condition of a
 5 permit, approval, or acceptance issued under AS 46.03.250 - 46.03.313, 46.03.460 -
 6 46.03.475, AS 46.14, or under the program authorized by AS 46.03.020(12), is liable,
 7 in a civil action, to the state for a sum to be assessed by the court of not less than
 8 **\$1,000** [\$500] nor more than **\$200,000** [\$100,000] for the initial violation, nor more
 9 than **\$25,000** [\$10,000] for each day after that on which the violation continues, and
 10 that shall reflect, when applicable,

11 (1) reasonable compensation in the nature of liquidated damages for
 12 any adverse environmental effects caused by the violation, that shall be determined by
 13 the court according to the toxicity, degradability and dispersal characteristics of the
 14 substance discharged, the sensitivity of the receiving environment, and the degree to
 15 which the discharge degrades existing environmental quality; for a violation relating to
 16 AS 46.14, the court, in making its determination under this paragraph, shall also
 17 consider the degree to which the discharge causes harm to persons or property; for a
 18 violation of AS 46.03.463, the court, in making its determination under this paragraph,
 19 shall also consider the volume of the graywater, sewage, or other wastewater
 20 discharged; this paragraph may not be construed to limit the right of parties other than
 21 the state to recover for personal injuries or damage to their property;

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

24 (3) the economic savings realized by the person in not complying with
 25 the requirement for which a violation is charged; and

26 (4) the need for an enhanced civil penalty to deter future
 27 noncompliance.

28 * **Sec. 9.** AS 46.03.760(f) is amended to read:

29 (f) An owner, agent, employee, or operator of a commercial passenger vessel,
 30 as defined in AS 43.52.295, who falsifies a registration or report required by
 31 AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a

1 provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a
 2 regulation, a lawful order of the department, or a permit, approval, or acceptance, or
 3 term or condition of a permit, approval, or acceptance issued under AS 46.03.250 -
 4 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state
 5 for a sum to be assessed by the court of not less than **\$10,000** [\$5,000] nor more than
 6 **\$200,000** [\$100,000] for the initial violation, nor more than **\$25,000** [\$10,000] for
 7 each day after that on which the violation continues, and that shall reflect, when
 8 applicable,

9 (1) reasonable compensation in the nature of liquidated damages for
 10 any adverse environmental effects caused by the violation, that shall be determined by
 11 the court according to the toxicity, degradability, and dispersal characteristics of the
 12 substance discharged, the sensitivity of the receiving environment, and the degree to
 13 which the discharge degrades existing environmental quality; for a violation relating to
 14 AS 46.14, the court, in making its determination under this paragraph, shall also
 15 consider the degree to which the discharge causes harm to persons or property; this
 16 paragraph may not be construed to limit the right of parties other than the state to
 17 recover for personal injuries or damage to their property;

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

20 (3) the economic savings realized by the person in not complying with
 21 the requirement for which a violation is charged; and

22 (4) the need for an enhanced civil penalty to deter future
 23 noncompliance.

24 * **Sec. 10.** AS 46.03.760(g) is amended to read:

25 (g) As used in this section, "economic savings" means **the economic benefit**
 26 **of noncompliance** [THAT SUM WHICH A PERSON WOULD BE REQUIRED TO
 27 EXPEND FOR THE PLANNING, ACQUISITION, SITING, CONSTRUCTION,
 28 INSTALLATION AND OPERATION OF FACILITIES NECESSARY TO EFFECT
 29 COMPLIANCE] with the standard violated. **When determining an "economic**
 30 **savings," the court may consider**

31 **(1) deferred and avoided costs of compliance with the standard**

1 **violated;**

2 **(2) a competitive advantage gained by noncompliance with the**
 3 **standard violated; and**

4 **(3) income derived as a result of noncompliance with the standard**
 5 **violated from operations that were not authorized or permitted.**

6 * **Sec. 11.** AS 46.03.760 is amended by adding new subsections to read:

7 (h) When assessing the need for an enhanced civil penalty to deter future
 8 noncompliance under this section, the court may take into consideration

9 (1) the seriousness of the violation;

10 (2) the degree of culpability of the person;

11 (3) the history of previous violations of the person;

12 (4) other penalties assessed for the same violation;

13 (5) good faith efforts made by the person to comply with applicable
 14 requirements and to minimize or mitigate the effects of the violations;

15 (6) the economic effect of the violation on the person; and

16 (7) other factors as justice may require.

17 (i) The department shall, every three years, increase the daily civil penalty
 18 caps in (a), (e), and (f) of this section by a percentage equal to the percentage of
 19 increase in all items of the Consumer Price Index for all urban consumers for
 20 Anchorage, Alaska. The index for January of 2018 is the reference base index.

21 * **Sec. 12.** AS 46.03 is amended by adding a new section to read:

22 **Sec. 46.03.762. Administrative penalties for discharges of oil and crude oil.**

23 (a) In addition to the actions available under AS 46.03.758 - 46.03.760, the department
 24 may assess an administrative penalty against a person who causes or permits a serious
 25 discharge or repeat discharges of oil not permitted under applicable state or federal
 26 law.

27 (b) An administrative penalty assessed under this section may not be less than
 28 \$500 nor more than \$10,000 for each violation. When assessing a penalty under this
 29 section, the department shall consider

30 (1) the effect of the discharge on the public health or the environment;

31 (2) reasonable costs incurred by the state in the detection,

1 investigation, and attempted correction of the discharge;

2 (3) any previous history of compliance or noncompliance by the
3 person with this chapter, AS 46.04, AS 46.09, and AS 46.14;

4 (4) the need to deter future discharges; and

5 (5) the volume, extent, and seriousness of the discharge, including the
6 potential for the discharge to threaten public health or the environment.

7 (c) If a person fails to pay an administrative penalty assessed under this
8 section, the department may bring an action to collect the penalty. The amount of the
9 penalty is not subject to review by the court in an action to collect the penalty
10 described in this section.

11 (d) In a collection action under (c) of this section, the court shall award the
12 prevailing party full reasonable attorney fees and costs incurred in the collection
13 action.

14 (e) Action under this section by the department does not limit or otherwise
15 affect the authority of the department to otherwise enforce this chapter, AS 46.04,
16 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
17 recover damages, restoration expenses, investigation costs, court costs, attorney fees,
18 or other necessary expenses. The court shall set off against a judicial civil assessment
19 subsequently awarded under AS 46.03.758, 46.03.759, or 46.03.760 an amount
20 ordered to be paid under this section by the same person for the same discharge.

21 (f) For the purpose of determining the volume of discharged oil under this
22 section, the department shall include the produced water, if any, that was mixed with
23 the discharged oil at the time of the discharge.

24 (g) The department shall, every three years, increase the amounts of the
25 administrative penalties authorized in (b) of this section by a percentage equal to the
26 percentage of increase in all items of the Consumer Price Index for all urban
27 consumers for Anchorage, Alaska. The index for January of 2018 is the reference base
28 index.

29 (h) In this section,

30 (1) "discharge" means entry of oil into or on the water or public land of
31 the state, regardless of causation, except discharges into an enclosed and impervious

1 oil spill containment area;

2 (2) "oil" means crude oil, petroleum, and any substance refined from
3 petroleum.

4 * **Sec. 13.** AS 46.03.900 is amended by adding a new paragraph to read:

5 (38) "produced water" means water that is the byproduct of the
6 exploration, extraction, development, production, refining, processing, or disposal of
7 energy-related products.

8 * **Sec. 14.** AS 46.04 is amended by adding a new section to read:

9 **Sec. 46.04.057. Oil spill response plans for commercial motor vehicles.** (a)

10 If a person is required to submit an oil spill response plan under federal law, the
11 person may not operate a commercial motor vehicle transporting crude oil on a
12 highway or road maintained by the state unless the person has submitted to the
13 department, and the department has received, the oil spill response plan required under
14 federal law. The person shall submit the oil spill response plan to the department
15 electronically.

16 (b) Failure of a holder of a response plan submitted to the department under
17 this section to comply with the plan or to have access to the quality or quantity of
18 resources identified in the plan or to respond with those resources within the shortest
19 possible time in the event of a spill is a violation of this chapter for purposes of
20 AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of
21 a response plan submitted to the department under this section fails to respond to and
22 conduct cleanup operations of an unpermitted discharge of crude oil with the quality
23 and quantity of resources identified in the plan and in a manner required under the
24 plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed
25 under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that
26 discharge.

27 (c) In this section, "commercial motor vehicle" has the meaning given in
28 AS 19.10.399.

29 * **Sec. 15.** AS 46.03.758(c) and 46.03.760(b) are repealed.

30 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: REGULATIONS. The Department of Environmental Conservation
2 may adopt regulations necessary to implement the changes made by this Act. The regulations
3 take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2019.

4 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

5 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect January 1, 2019.