

THIRTEENTH CONGRESS OF THE REPUBLIC)
 OF THE PHILIPPINES)
 First Regular Session)

04 JUN 30 P12:17

SENATE

S. No. RECEIVED BY: 

 Introduced by Senator Flavier

AN ACT

PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE 1992 INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE AND THE 1992 INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The Philippines is a signatory to the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. As a signatory to the said Conventions, it is necessary that specific guidelines will be provided for its implementation.

In general terms, this bill provides a scheme of adequate compensation to victims of oil pollution damage and the institutional mechanism to process such claims; enables the victims of oil pollution damage to directly proceed against the shipowner involved in any oil pollution incident; imposes a system of strict but limited liability against owners of ships involved in oil pollution incident.

The salient features of this bill are as follows:

- a) Imposes liability on the owner of a ship involved in an oil pollution incident which causes oil pollution damage.
- b) Imposes joint and several liability on the owners of two or more ships involved in an oil pollution incident causing pollution damage where the latter is not reasonably separable.
- c) Provides a system of strict but limited liability for oil pollution damage based on the vessel's tonnage.
- d) Constitutes a Fund, which would be used to cover incidents causing oil pollution damage.
- e) Directs all owners of ships registered in the Philippines to maintain adequate financial security for oil pollution damage.
- f) Authorizes the Maritime Industry Authority (MARINA) to entertain, adjudicate and settle actions and claims for compensation arising from oil pollution incidents.
- g) Penalizes the non-compliance with the provisions of the Act which include: failure to maintain financial security, failure to contribute to the International Oil Pollution Compensation Act; and the non-submission of the report of contributing Oil.

Given the fact that our country is a party to the said conventions, immediate passage of this bill is therefore earnestly requested.


 JUAN M. FLAVIER
 Senator

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled.

Chapter I

General Provisions

Section 1. *Short Title.* – This Act shall be known as the “Oil Pollution Compensation Act”.

Sec. 2. *Declaration of Policy.* - The State, in the protection of its marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, adopts internationally accepted measures which impose strict liability for oil pollution damage and ensure prompt and adequate compensation for persons who suffer such damage. This Act adopts and implements the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

Sec. 3. *Definition of Terms.* – For the purpose of this Act:

(a) “1992 Civil Liability Convention” means the 1992 International Convention on Civil Liability for Oil Pollution Damage;

(b) “1992 Fund Convention” means the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;

(c) “MARINA” means Maritime Industry Authority;

(d) “PCG” means Philippine Coast Guard;

(e) “PPA” means Philippines Ports Authority;

(f) “Affiliate Corporation” means corporation that is owned or subject to common corporate control by another corporation, and operated as part of the latter’s business;

(g) “Contributing Oil” means crude oil and fuel oil as herein defined:

(1) “Crude Oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude

1 oils from which certain distillate fractions have been removed (which sometimes
2 referred to as “topped crudes”) or to which certain distillate fractions have been
3 added (sometimes referred to as “spiked” or “reconstituted” crudes); and

4 (2) “Fuel Oil” means heavy distillates or residues from crude oil or blends of such
5 materials intended for use as fuel for the production of heat or power of a quality
6 equivalent to the “American Society for Testing and Materials Specification for
7 Number Four Fuel Oil (Designation D 396-69)” or heavier;

8 (h) “Incident” means any occurrence or series of occurrences having the same origin, which
9 causes pollution damage or creates a grave and imminent threat of causing such damage; provided
10 that a series of occurrences shall be treated as having occurred on the date of the first such
11 occurrence;

12 (i) “Oil” means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy
13 diesel oil, and lubricating oil, whether carried on board a ship as cargo or in bunkers of such a ship;

14 (j) “Owner” means the person or persons registered as the owner of the ship or, in the
15 absence of registration, the person or persons owning the ship. However in case of a ship owned by
16 a State and operated by a company which in that State is registered as the ship’s operator, “owner”
17 shall mean such company;

18 (k) “Person” means any individual or partnership or any public or private body, whether
19 corporate or not, including a State or Government or its constituent subdivisions;

20 (l) “Pollution Damage” means:

21 (1) Loss or damage caused outside the ship by contamination resulting from the escape
22 or discharge of oil from the ship, wherever such escape or discharge may occur,
23 provided that compensation for impairment of the environment other than loss of
24 profit from such impairment shall be limited to costs of reasonable measures of
25 reinstatement actually undertaken or to be undertaken; and

26 (2) The costs of preventive measures and further loss or damage caused by preventive
27 measure;

28 (m) “Preventive Measures” means any reasonable measures taken by any person after an
29 incident has occurred to prevent or minimize pollution damage;

30 (n) “Ship” means any sea-going vessel and sea-borne craft of any type whatsoever
31 constructed or adapted for the carriage of oil in bulk as cargo; *Provided*, that a ship capable of
32 carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in
33 bulk as cargo and during any voyage following such carriage unless it is proved that it has no
34 residues of such carriage of oil in bulk aboard;

35 (o) “State of the ship’s registry” means in relation to registered ships, the State of
36 registration of the ship, and in relation to unregistered ships, the State whose flag the ship is flying;

37 (p) “Subsidiary Corporation” means a corporation in which control, in the form of
38 ownership of majority shares, is in another corporation, called the parent corporation.

1 (b) The pilot or any other person who, without being a member of the crew, performs
2 services for the ship;

3 (c) Any charterer - howsoever described, including a bareboat charterer – manager or
4 operator of the ship;

5 (d) Any person performing salvage operations with the consent of the owner or on the
6 instructions of a competent public authority;

7 (e) Any person taking preventive measures; and

8 (f) All servants or agents of persons mentioned in paragraphs (c), (d) and (e) hereof, unless
9 the damage resulted from their personal act or omission, committed with the intent to cause such
10 damage, or committed recklessly and with knowledge that such damage would probably result.
11 Provided, that nothing in this Act shall prejudice any right of recourse of the owner against third
12 parties.

13 *Sec. 9. Joint and Several Liability.* – When an incident involving two or more ships
14 occurs and pollution damage results therefrom, the owners of all the ships concerned, unless
15 exonerated under Section 7, shall be jointly and severally liable for all such damage which is not
16 reasonably separable, without prejudice, however, to the right of recourse of any of such owners to
17 proceed against each other or third parties.

18 Chapter III

19 System of Limitation of Liability

20 *Sec. 10. Limitation of Liability* – The owner of a ship shall be entitled to limit his liability
21 under this Act with respect to a particular incident to a total amount calculated as follows:

22 (a) Three million (3,000,000) units of account for a ship not exceeding 5,000 units of
23 tonnage;

24 (b) For a ship with a tonnage in excess thereof, for each unit of tonnage, four hundred
25 twenty (420) units of account for each unit in addition to the amount mentioned in par. (a).

26 *Provided, however,* that this aggregate amount shall not, in any event, exceeds 59.7 million
27 units of account. *Provided further,* that the limit of liability of the owner of a ship as
28 aforementioned shall be subject to adjustment according to subsequent amendments of the 1992
29 Civil Liability Convention.

30 The limited liability under this section may not be availed of by the owner if it has been
31 established that such pollution damage resulted from his personal act or omission, committed with
32 intent to cause such damage, or committed recklessly and with knowledge that such damage would
33 probably result.

34 The “unit of account” referred to in this section is the Special Drawing Right as defined by
35 the International Monetary Fund as so set forth in the 1992 Civil Liability Convention. The
36 abovesaid amount shall be converted into national currency on the basis of the value of the currency
37 by reference to the Special Drawing Right on the date that the fund is constituted under Sec. 11 of
38 this Act.

1 Sec. 11. *Constitution of a Fund.* – For the purpose of availing himself of the benefit of
2 limitation provided for under Section 10 of this Act following the occurrence of a particular
3 incident, the owner of ship registered in the Philippines shall be required to constitute a fund for the
4 total sum representing the limit of his liability with the MARINA to cover incidents causing oil
5 pollution damage, and against which a claim for pollution damage may directly be brought.

6 The fund can be constituted by depositing the sum or by producing a bank guarantee or
7 other financial guarantee acceptable under existing laws and considered to be adequate by the
8 MARINA.

9 **Chapter IV**

10 **System of Compulsory Insurance and Certification**

11 Sec. 12. *Maintenance of Compulsory Insurance or other Financial Security.* – All owners of
12 ships registered in the Philippines shall be required annually by the MARINA to maintain insurance
13 or other financial security for pollution damage in the sums fixed by applying the limits of liability
14 under Sec. 10 of this Act.

15 Sec. 13. *Issuance of a Certificate.* – A certificate attesting that insurance or other financial
16 security is in force in accordance with the provisions of this Act shall be issued to each ship
17 carrying more than 2,000 tons of oil in bulk as cargo by the MARINA. With respect to a ship not
18 registered in a convention-member state, such certificate may be issued or certified by the
19 MARINA. This certificate shall be in the form established by the 1992 Civil Liability Convention
20 and shall contain the following particulars:

21 (a) Name of ship and port of registration;

22 (b) Name and principal place of business of the owner;

23 (c) Type of security;

24 (d) Name and principal place of business of the insurer or other person giving security and,
25 where appropriate, place of business where the insurance or security is established; and

26 (e) Validity period of the certificate which shall not be longer than the period of validity of
27 the insurance or other financial security.

28 Sec. 14. *Enforcement.* – Ship carrying more than 2,000 tons of oil in bulk as cargo shall not
29 be allowed entry into Philippine territory or its exclusive economic zone without a valid certificate
30 of insurance or financial security for oil pollution damage required by this Act. For this purpose, the
31 PPA or any other port authorities shall deny port services to said ship without such certificate.

32 If any such ship is found within the said territory or zone without such certificate, said ship
33 shall be prevented from loading or unloading its cargo until it is able to produce the appropriate
34 insurance or financial security duly certified by the state of its registry if such country is a
35 convention-member state, otherwise, issued or certified by the MARINA or any convention-
36 member State.

37 The owner and master of the ship referred to in the immediately preceding paragraph shall
38 be jointly and severally liable to the fines set forth in this Act. Such ship shall be prevented from
39 leaving unless the appropriate fines shall have been paid to the full satisfaction of the MARINA.

1 The PCG shall conduct inspections of certificates of ships entering the territory of the
2 Philippines, or, in the case of ships registered in the Philippines, voyaging within the said territory,
3 provided, that such inspections shall not cause undue delay to the ships.
4

5 6 **Chapter V**

7 **Contribution to the International Oil Pollution Compensation Fund**

8 *Sec. 15. Contributions to the International Oil Pollution Compensation Fund.* - Any person
9 who has received more than one hundred fifty thousand (150,000) tons of contributing oil in a
10 calendar year in all ports or terminal installations in the Philippines through carriage by sea, shall
11 pay contributions to the International Oil Pollution Compensation (IOPC) Fund in accordance with
12 the provisions of the 1992 Fund Convention.

13 A person shall be deemed to have received contributing oil, for contribution purposes, if he
14 received the same:

15 (a) From another country; or

16 (b) From another port or terminal installation within the Philippines, notwithstanding that it
17 had already been previously received by him.

18 Where the quantity of contributing oil received by any person in the Philippines in a
19 calendar year, when aggregated with the quantity of contributing oil received in the Philippines in
20 that year by its subsidiary or affiliate corporation, exceeds one hundred fifty thousand (150,000)
21 tons, said person, including its subsidiaries, shall pay contributions in respect of the actual quantity
22 received by each, notwithstanding that the actual quantity received by each did not exceed 150,000
23 tons.

24 *Sec. 16. Reporting of Contributing Oil.* - Any person who, in a calendar year, has received in
25 the territory of the Philippines contributing oil, as defined in this Act, shall, not later than 1
26 February of the following year, report to the MARINA the quantity of such oil received. The
27 MARINA, through the Department of Foreign Affairs, shall communicate the data at a time and in
28 the manner prescribed by the 1992 Fund Convention.

29 **Chapter VI**

30 **Action for Compensation**

31 *Sec. 17. Action for Compensation.* - An action for compensation on account of pollution
32 damage resulting from the incident which occurred in the territory may be brought before the
33 MARINA against the following persons:

34 (a) owner of the polluting ship; or

35 (b) insurer or other person providing financial security of the said owner's liability for
36 pollution.

37 For this purpose, foreign corporation, partnership, association, or individual, whether or not licensed
38 to transact business in the Philippines by any appropriate government agencies, providing such

1 insurance or financial security for pollution damage shall be considered transacting or doing
2 business in the Philippines and shall be subject to the jurisdiction of MARINA.”

3 Such action shall be filed within three (3) years of the date on which the damage occurred,
4 but not later than six (6) years of the date of the incident.

5 For this purpose, the MARINA shall promulgate the procedure for the adjudication or
6 settlement of claims and for the execution of the same.

7 Sec. 18. *Adjudication or Settlement of Claims.* – The MARINA shall decide claims for
8 compensation, or certify the compromise agreement by the parties within a reasonable period.

9 Where the fund under the 1992 Civil Liability Convention is insufficient to satisfy the
10 claims of those who are entitled to compensation, the amount of compensation of each claimant
11 shall be distributed pro rata.

12 Where compensation was not obtained or satisfied under the 1992 Civil Liability
13 Convention, the claimant may seek compensation under the 1992 Fund Convention. The MARINA
14 shall furnish the IOPC Fund with its certified decision, together with pertinent documents, on a
15 claim for pollution damages.

16 The decision of MARINA shall be appealable to the Court of Appeals.

17 Sec. 19. *Intervention by the IOPC Fund.* - The IOPC Fund may intervene as a party to any
18 legal proceedings instituted against the owner of a ship or his guarantor under Article IX of the
19 1992 Civil Liability Convention.

20 Chapter VII

21 Penalty Provisions

22 Sec. 20. *Violations of the Act.* – The following acts shall be considered violations of the Act
23 and the persons responsible shall suffer the corresponding fines:

24 (i) Any person who fails to institute or maintain insurance of other financial security required under
25 Sec. 12 of this Act;

26 (a) Ships of 500 gross tons (GRT) and below - Not less than Fifty Thousand Pesos
27 (P50,000.00) but not more than Two Hundred Thousand Pesos (P200,000.00);

28 (b) Ships of above 500 to 1,000 GRT- Not less than Two Hundred Fifty Thousand Pesos
29 (P250,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00);

30 (c) Ships of above 1,000 to 5,000 GRT – Not less than Five Hundred Thousand Pesos
31 (P500,000.00) but not more than One Million Pesos (P1,000,000.00);

32 (d) Ships of above 5,000 to 10,000 GRT - Not less than One Million Pesos (P1,000,000.00)
33 but not more than Five Million Pesos (P5,000,000.00);

34 (e) Ships of above 10,000 to 20,000 GRT - Not less than Five Million Pesos
35 (P5,000,000.00) but not more than Ten Million Pesos (P10,000,000.00); and

36 (f) Ships of above 20,000 GRT and above - Not less than Ten Million Pesos
37 (P10,000,000.00) but not more than Fifteen Million Pesos (P15,000,000.00).

38 (ii) The owner and the master of a ship who operate a ship without maintaining on board a
39 certificate of insurance required under Section 13 of this Act;

1 (a) First Violation - Five Hundred Thousand Pesos (P500,000.00);

2 (b) Second Violation - One Million Pesos (P1,000,000.00); and

3 (c) Third Violation - One Million and Five Hundred Thousand Pesos (P1,500,000.00).

4 (iii) Any person required under Sec. 15 of this Act to contribute to the International Oil Pollution
5 Compensation Fund but nevertheless fails to comply therewith after due notice by the MARINA;

6 (a) First Violation - Three Million Pesos (P3,000,000.00);

7 (b) Second Violation - Four Million Pesos (P4,000,000.00); and

8 (c) Third Violation - Five Million Pesos (P5,000,000.00).

9 (iv) Failure to Submit Report of Contributing Oil. - Any person required under Sec. 16 of this Act
10 to submit report of contributing oil and notwithstanding 10-day notice thereto, fails to comply
11 therewith;

12 (a) First Violation - Five Hundred Thousand Pesos (P500,000.00);

13 (b) Second Violation - One Million Pesos (P1,000,000.00); and

14 (c) Third Violation - One Million and Five Hundred Thousand Pesos (P1,500,000.00).

15 The fines prescribed in this section and other sections of this Chapter shall be increased by
16 at least ten percent (10%) every three (3) years to compensate for inflation and to maintain the
17 deterrent function of such fines.

18 Sec. 21. *Institutional Mechanism* – The MARINA shall be the lead implementing agency
19 unless otherwise provided in this Act.

20 Chapter VIII

21 Final Provisions

22 Sec. 22. *Oil Pollution Management Fund*. – An Oil Pollution Management Fund to be
23 administered by the PCG is hereby established. Said fund shall be constituted from fines imposed
24 pursuant to this Act, from grants, donations, endowment from various sources, domestic or foreign,
25 and amounts specifically appropriated for Oil Pollution Management Fund under the annual
26 General Appropriations Act.

27 The fund shall be used to finance the following activities:

28 (a) Containment, removal, and clean-up operations of the PCG in all oil pollution cases,
29 whether covered by this Act or not; and

30 (b) Research, enforcement and monitoring activities of relevant agencies such as the PCG,
31 MARINA and PPA and other ports authority of the Department of Transportation and
32 Communications, Environmental Management Bureau of the Department of Environment and
33 Natural Resources, and the Department of Energy.

34 *Provided*, that ninety percent (90%) of the fund shall be maintained annually for the activities set
35 forth under item (a) of this paragraph. *Provided, further*, that the amounts specifically appropriated
36 for said fund under the General Appropriations Act shall be used exclusively for the activities set
37 forth under item (a) of this paragraph.

38 In no case, however, shall the fund be used for personal services expenditures.

1 SEC. 23. *Appropriations.* – The Secretary of the Department of Transportation and
2 Communications shall include in the Department’s program the implementation of this Act, the
3 funding of which shall be included in the Annual General Appropriations Act.

4 Sec. 24. *Implementing Rules and Regulations.* The MARINA, in coordination with other
5 concerned agencies and sectors, shall, within six (6) months after the effectivity of this Act,
6 promulgate rules and regulations for the effective implementation of this Act. A manual providing
7 for the procedures concerning the enforcement of claims under this Act shall, likewise, be
8 developed within the said period.

9 The said rules and regulations and manual shall be published in a newspaper of general
10 circulation also within the said period.

11 Sec. 25. *Separability Clause.* In the event that any provision of this Act is declared
12 unconstitutional, the validity of the remainder shall not be affected thereby.

13 Sec. 26. *Repealing Clause.* All laws, decrees, rules and regulations and executive orders
14 contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

15 Sec. 27. *Effectivity Clause.* This Act shall take effect after the completion of its publication
16 made once a week for three (3) consecutive weeks in at least two (2) newspapers of general
17 circulation.

18 Approved.