

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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SENATE
OFFICE OF THE SECRETARY

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SENATE

RECEIVED BY: *Abdo*

S. No. 737

INTRODUCED BY HON. MANUEL B. VILLAR, JR.

EXPLANATORY NOTE

With the growing global awareness on the dangers of pollution posed by the worldwide carriage of oil in bulk, the "1992 Civil Liability Convention" (CLC) and the "1992 Fund Convention" (FUND) were adopted in London on November 27, 1992. The two (2) conventions provide a regime for compensation for pollution damage and for the cost of recovery measures, whenever taken, to prevent or minimize such damage.

In consonance with the relevant provisions of the Constitution, to wit:


Sec. 16, Article II. The state shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Sec. 2, Article XII. x x x. The State shall protect the nation's marine wealth in its archipelagic waters, territorial seas, and exclusive economic zone x x x.

Sec. 7, Article XIII. The State shall protect the rights of subsistence fishermen, especially local fishermen, especially local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. x x x The State shall also protect, develop and conserve such resources. x x x.,

the Philippine Senate ratified the 1992 Protocols to the CLC and Fund Conventions in 1997. However, to date, we have yet to enact an implementing legislation to fully comply with our obligations to the conventions and to benefit therefrom.

For this reason, approval of this bill is earnestly sought.


MANUEL B. VILLAR, JR.

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S. No. 737

INTRODUCED BY HON. MANUEL B. VILLAR, JR.

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 VIOLATION THEREOF, AND FOR OTHER PURPOSES

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

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

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

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

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

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

(l) "Pollution Damage" means:

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

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

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

(n) "Ship" means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo; *Provided*, that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in

bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

(o) "State of the ship's registry" means in relation to registered ships, the State of registration of the ship, and in relation to unregistered ships, the State whose flag the ship is flying;

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

Sec. 4. Incorporation of the 1992 Civil Liability Convention and 1992 Fund Convention.

– Subject to the provisions of this Act, the 1992 Civil Liability Convention and 1992 Fund Convention shall form part of the law of the Republic of the Philippines.

Sec. 5. Scope of Application. - This law shall apply exclusively to pollution damage caused in Philippine territory, including its territorial sea and its exclusive economic zone, and to preventive measures, wherever taken, to prevent or minimize such damage.

Chapter II. - Strict Liability For Oil Pollution Damage

Sec. 6. Liability on Pollution Damage. - The owner of a ship at the time of an incident, or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

Such damages shall include but not be limited to:

- (a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;
- (b) Reasonable expenses of preventive measures and further loss or damage caused by preventive measures;
- (c) Loss, or loss of earnings suffered by owners or users of property contaminated or damaged as a direct result of an incident;
- (d) Pure economic loss, or loss of earnings sustained by persons whose property has not been polluted as a direct result of an incident;
- (e) Damage to human health or loss of life as a direct result of the incident; and
- (f) Environmental damages and other reasonable measures of environmental restoration.

Sec. 7. Exempting Circumstances. - No liability as stated in the immediately preceding section shall attach to the owner or his insurer if he proves that the damage:

- (a) resulted from an act of war, hostilities, civil war insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done with intent to cause damage by third party; and
- (c) was wholly caused by the negligence or other wrongful act of the government or its enforcement agencies responsible for the maintenance of lights or other navigational aids in the exercise of that function.

If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

Sec. 8. *Persons Exempted from Claims for Compensation for Pollution Damage.* – No claim for compensation for pollution damage under this Act may be made against:

- (a) The servants or agents of the owner or the members of the crew;
- (b) The pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) Any charterer - howsoever described, including a bareboat charterer – manager or operator of the ship;
- (d) Any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) Any person taking preventive measures; and
- (f) All servants or agents of persons mentioned in paragraphs (c), (d) and (e),

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Provided, that nothing in this act shall prejudice any right of recourse of the owner against third parties.

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

Chapter III. - System of Limitation of Liability

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

- (a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;
- (b) For a ship with a tonnage in excess thereof, for each unit of tonnage, 420 units of account for each unit in addition to the amount mentioned in par. (a).

Provided, however, that this aggregate amount shall not, in any event, exceed 59.7 million units of account.

The limited liability under this section may not be availed of by the owner if it has been established that such pollution damage resulted from his personal act or omission, committed

with intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The "unit of account" referred to in this section is the Special Drawing Right defined by the International Monetary Fund which shall be converted into national currency on the basis of the value of the currency by reference to the Special Drawing Right on the date that the Fund is constituted under Sec. 11 of this Act.

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

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

Chapter IV. - System of Compulsory Insurance and Certification

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

Sec. 13. *Issuance of a Certificate.* – A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each ship carrying more than 2,000 tons of oil in bulk as cargo by the Authority after it has determined that the requirements of the preceding section have been complied with. With respect to a ship not registered in a convention-member state, such certificate may be issued or certified by the Authority. This certificate shall be in the form established by the 1992 Civil Liability Convention and shall contain the following particulars:

- (a) Name of ship and port of registration;
- (b) Name and principal place of business of the owner;
- (c) Type of security;
- (d) Name and principal place of business of the insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (e) Validity period of the certificate which shall not be longer than the period of validity of the insurance or other financial security.

Sec. 14. *Enforcement.* – Ship carrying more than 2,000 tons of oil in bulk as cargo shall not be allowed entry into Philippine territory or its exclusive economic zone without a valid certificate of insurance or financial security for oil pollution damage required by this Act. For

this purpose, the PPA or any port authority shall deny port services to said ship without such certificate.

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

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

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

Chapter V. - Contribution to the International Oil Pollution Compensation Fund

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

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

(a) From another country; or

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

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

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

Chapter VI. - Action for Compensation

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

- (a) owner of the polluting ship; or
- (b) insurer or other person providing financial security of the said owner's liability for pollution.

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

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

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

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

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

The decision of Authority shall be final and executory.

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

Chapter VII. - Penalty Provisions

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

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

- (a) Ships of 500 gross tons (GT) and below - Two Hundred Thousand Pesos (P200,000.00);
- (b) Ships of 501 to 1,000 GT - Five Hundred Thousand Pesos (P500,000.00);
- (c) Ships of 1,001 to 5,000 GT - One Million Pesos (P1,000,000.00);
- (d) Ships of 5,001 to 10,000 GT - Five Million Pesos (P5,000,000.00);

- (e) Ships of 10,001 to 20,000 GT - Ten Million Pesos (P10,000,000.00); and
- (f) Ships of 20,001 GT and above - Fifteen Million Pesos (P15,000,000.00).

(ii) The owner and the master of a ship who operate a ship without maintaining on board a certificate of insurance required under Section 12 of this Act;

- (a) First Violation - Five Hundred Thousand Pesos (P500,000.00);
- (b) Second Violation - One Million Pesos (P1,000,000.00); and
- (c) Third Violation - One Million and Five Hundred Thousand Pesos (P1,500,000.00).

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

- (a) First Violation - Three Million Pesos (P3,000,000.00);
- (b) Second Violation - Four Million Pesos (P4,000,000.00); and
- (c) Third Violation - Five Million Pesos (P5,000,000.00).

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

- (a) First Violation - Five Hundred Thousand Pesos (P500,000.00);
- (b) Second Violation - One Million Pesos (P1,000,000.00); and
- (c) Third Violation - One Million and Five Hundred Thousand Pesos (P1,500,000.00).

(v) Any person who knowingly provides false information to the Authority, PCG or PPA and any other port authority on any matters required under this Act shall be punished by a fine of not less than One Million Pesos (P1,000,000.00) but not exceeding Three Million Pesos (P3,000,000.00).

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

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

Chapter VIII. – Final Provisions

Sec. 22. *Oil Pollution Management Fund*. – An Oil Pollution Management Fund to be administered by the Authority is hereby established. Said fund shall be constituted from the following sources:

- (a) Fines imposed pursuant to this Act, from donations, endowments and grants in the forms of contributions; and

(b) Amounts specifically appropriated for Oil Pollution Fund under the annual General Appropriations Act.

The established fund shall finance the following activities:

(a) Containment, removal, and clean-up operations of the PCG in oil pollution cases; and
(b) Research, enforcement and monitoring and capability building of relevant agencies such as the PCG, Authority and PPA of the Department of Transportation and Communication, Department of Environment and Natural Resources, and Department of Energy; *Provided however*, that eighty percent (80%) of the fund shall be maintained annually for the activities set forth under item (a) of this paragraph.

SEC. 23. *Appropriations.* - The heads of the concerned agencies shall immediately include in their programs the implementation of this Act, the funding of which shall be included in the Annual General Appropriations Act.

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

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

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

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

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

Approved,