

HOUSE OF REPRESENTATIVES

H. No. 4363

BY REPRESENTATIVES ROMAN, GOLEZ, JAWORSKI, CHATTO, ROQUERO,
REMULLA (G.), BACULIO, CHUNGALAO, ZUBIRI AND MERCADO, PER
COMMITTEE REPORT NO. 834

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 House of Representatives of the Philippines in Congress assembled:

1 CHAPTER I

2 GENERAL PROVISIONS

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

5 SEC. 2. *Declaration of Policy.* – The State, in the protection of its
6 marine wealth in its archipelagic waters, territorial sea and exclusive
7 economic zone, adopts internationally accepted measures which impose strict
8 liability for oil pollution damage and ensure prompt and adequate
9 compensation for persons who suffer such damage. This Act adopts and
10 implements the provisions of the 1992 International Convention on Civil
11 Liability for Oil Pollution Damage and the 1992 International Convention on

1 the Establishment of an International Fund for Compensation for Oil Pollution
2 Damage.

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

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

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

9 (c) “MARINA” means Maritime Industry Authority;

0 (d) “PCG” means Philippine Coast Guard;

1 (e) “PPA” means Philippine Ports Authority;

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

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

6 (1) “Crude Oil” means any liquid hydrocarbon mixture occurring
7 naturally in the earth whether or not treated to render it suitable for
8 transportation. It also includes crude oils from which certain distillate
9 fractions have been removed (which sometimes referred to as “topped
0 crudes”) or to which certain distillate fractions have been added (sometimes
1 referred to as “spiked” or “reconstituted” crudes); and

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

7 (h) “Incident” means any occurrence or series of occurrences having
8 the same origin, which causes pollution damage or creates a grave and
9 imminent threat of causing such damage: *Provided*, That a series of

1 occurrences shall be treated as having occurred on the date of the first such
2 occurrence;

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

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

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

14 (l) "Pollution Damage" means:

15 (1) Loss or damage caused outside the ship by contamination resulting
16 from the escape or discharge of oil from the ship, wherever such escape or
17 discharge may occur: *Provided*, That compensation for impairment of the
18 environment other than loss of profit from such impairment shall be limited to
19 costs of reasonable measures of reinstatement actually undertaken or to be
20 undertaken; and

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

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

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

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

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

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

9 SEC. 4. *Incorporation of the 1992 Civil Liability Convention and 1992*
10 *Fund Convention.* – Subject to the provisions of this Act, the 1992 Civil
11 *Liability Convention and 1992 Fund Convention and their subsequent*
12 *amendments shall form part of the law of the Republic of the Philippines.*

13 SEC. 5. *Scope of Application.* – This law shall apply exclusively to
14 pollution damage caused in Philippine territory, including its territorial sea
15 and its exclusive economic zone, and to preventive measures, wherever taken,
16 to prevent or minimize such damage.

17 CHAPTER II

18 STRICT LIABILITY FOR OIL POLLUTION DAMAGE

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

23 Such damages shall include, but not be limited to:

24 (a) Reasonable expenses actually incurred in clean-up operations at
25 sea or on shore;

26 (b) Reasonable expenses of preventive measures and further loss or
27 damage caused by preventive measures;

28 (c) Consequential loss or loss of earnings suffered by owners or users
29 of property contaminated or damaged as a direct result of an incident;

1 (d) Pure economic loss or loss of earnings sustained by persons
2 although the property contaminated or damaged as a direct result of an
3 incident does not belong to them;

4 (e) Damage to human health or loss of life as a direct result of the
5 incident; and

6 (f) Environmental damages and other reasonable measures of
7 environmental restoration.

8 SEC. 7. *Exempting Circumstances* – No liability as stated in the
9 immediately preceding section shall attach to the owner or his insurer if he
10 proves that the damage:

11 (a) *Resulted from an act of war, hostilities, civil war insurrection or a*
12 *natural phenomenon of an exceptional, inevitable and irresistible character;*

13 (b) *Was wholly caused by an act or omission done with intent to cause*
14 *damage by third party; and*

15 (c) *Was wholly caused by the negligence or other wrongful act of the*
16 *government or other enforcement agencies responsible for the maintenance of*
17 *lights or other navigational aids in the exercise of that function.*

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

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

25 (a) The servants or agents of the owner or the members of the crew;

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

28 (c) Any charterer – howsoever described, including a bareboat
29 charterer – manager or operator of the ship;

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

3 (e) Any person taking preventive measures; and

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

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

16 CHAPTER III

17 SYSTEM OF LIMITATION OF LIABILITY

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

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

23 (b) For a ship with a tonnage in excess thereof, for each unit of
24 tonnage, four hundred twenty (420) units of account for each unit in addition
25 to the amount mentioned in paragraph (a): *Provided, however*, That this
26 aggregate amount shall not, in any event, exceeds 59.7 million units of
27 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
29 amendments of the 1992 Civil Liability Convention.

1 The limited liability under this Section may not be availed of by the
2 owner if it has been established that such pollution damage resulted from his
3 personal act or omission, committed with intent to cause such damage, or
4 committed recklessly and with knowledge that such damage would probably
5 result.

6 The “unit of account” referred to in this Section is the Special Drawing
7 Right as defined by the International Monetary Fund as so set forth in the
8 1992 Civil Liability Convention. The abovesaid amount shall be converted
9 into national currency on the basis of the value of the currency by reference to
10 the Special Drawing Right on the date that the fund is constituted under
11 Section 11 of this Act.

12 SEC. 11. *Constitution of a Fund.* – For the purpose of availing himself
13 of the benefit of limitation provided for under Section 10 of this Act
14 following the occurrence of a particular incident, the owner of ship registered
15 in the Philippines shall be required to constitute a fund for the total sum
16 representing the limit of his liability with the Regional Trial Court (RTC) to
17 cover incidents causing oil pollution damage, and against which a claim for
18 pollution damage may directly be brought.

19 The fund can be constituted by depositing the sum or by producing a
20 bank guarantee or other financial guarantee acceptable under existing laws
21 and considered to be adequate by the Department of Transportation and
22 Communications (DOTC).

23 CHAPTER IV

24 SYSTEM OF COMPULSORY INSURANCE AND CERTIFICATION

25 SEC. 12. *Maintenance of Compulsory Insurance or other Financial*
26 *Security.* – All owners of ships registered in the Philippines shall be required
27 annually by the MARINA to maintain insurance or other financial security for
28 pollution damage in the sums fixed by applying the limits of liability under
29 Section 10 of this Act.

1 SEC. 13. *Issuance of a Certificate.* – A certificate attesting that
2 insurance or other *financial security* is in force in accordance with the
3 provisions of this Act shall be issued to each ship carrying more than two
4 thousand (2,000) tons of oil in bulk as cargo by the MARINA. With respect
5 to a ship not registered in a convention-member State, such certificate may be
6 issued or certified by the MARINA. This certificate shall be in the form
7 established by the 1992 Civil Liability Convention and shall contain the
8 following particulars:

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

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

11 (c) Type of security;

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

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

17 SEC. 14. *Enforcement.* – Ship carrying more than two thousand
18 (2,000) tons of oil in bulk as cargo shall not be allowed entry into Philippine
19 territory or its exclusive economic zone without a valid certificate of
20 insurance or financial security for oil pollution damage required by this Act.
21 For this purpose, the PPA or any other port authorities shall deny port services
22 to said ship without such certificate.

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

29 The owner and master of the ship referred to in the immediately
30 preceding paragraph shall be jointly and severally liable to the fines set forth

1 in this Act. Such ship shall be prevented from leaving unless the appropriate
2 fines shall have been paid to the full satisfaction of the MARINA.

3 The PCG shall conduct inspections of certificates of ships entering the
4 territory of the Philippines, or, in the case of ships registered in the
5 Philippines, voyaging within the said territory: *Provided*, That such
6 inspections shall not cause undue delay to the ships.

7 CHAPTER V

8 CONTRIBUTION TO THE INTERNATIONAL 9 OIL POLLUTION COMPENSATION FUND

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

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

18 (a) From another country; or

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

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

28 SEC 16. *Reporting of Contributing Oil.* – Any person who, in a
29 calendar year, has received in the territory of the Philippines contributing oil,
30 as defined in this Act, shall, not later than February 1 of the following year,

1 report to the Department of Energy (DOE) the quantity of such oil received.
2 The DOE, through the Department of Foreign Affairs, shall communicate the
3 data at a time and in the manner prescribed by the 1992 Fund Convention.

4 CHAPTER VI

5 ACTION FOR COMPENSATION

6 SEC. 17. *Action for Compensation.* – An action for compensation on
7 account of pollution damage resulting from the incident which occurred in the
8 territory may be brought before the RTC against the following persons:

9 (a) Owner of the polluting ship; or

10 (b) Insurer or other person providing financial security of the said
11 owner's liability for pollution.

12 For this purpose, foreign corporation, partnership, association or
13 individual, whether or not licensed to transact business in the Philippines by
14 any appropriate government agencies, providing such insurance or financial
15 security for pollution damage shall be considered transacting or doing
16 business in the Philippines and shall be subject to the jurisdiction of the
17 regular judicial courts of the country.

18 Such action shall be filed within three years of the date on which the
19 damage occurred, but not later than six years of the date of the incident.

20 The PCG shall investigate, *motu proprio* or through written
21 undertaking of a complainant, any incident, claim for compensation or
22 violation of this Act, and shall forthwith file appropriate action with the RTC.
23 It shall likewise provide the complainant necessary technical evidence or any
24 assistance, whether or not testimonial or documentary, insofar as the claim for
25 compensation or violation of this Act.

26 Filing of the actions under this Section and constitution of a fund under
27 Section 11 of this Act shall only be required filing fees equivalent to ten *per*
28 *centum* (10%) of the regular rates established therefor by the Supreme Court
29 of the Philippines.

1 (4) Ships of above 5,000 to 10,000 GRT – not less than One million
2 pesos (P1,000,000.00) but not more than Five million pesos (P5,000,000.00);

3 (5) Ships of above 10,000 to 20,000 GRT – not less than Five million
4 pesos (P5,000,000.00) but not more than Ten million pesos (P10,000,000.00);
5 and

6 (6) Ships of above 20,000 GRT – not less than Ten million pesos
7 (P10,000,000.00) but not more than Fifteen million pesos (P15,000,000.00).

8 (b) The owner and the master of a ship who operate a ship without
9 maintaining on board a certificate of insurance required under Section 13 of
10 this Act:

11 (1) First violation - Five hundred thousand pesos (P500,000.00);

12 (2) Second violation - One million pesos (P1,000,000.00); and

13 (3) Third violation - One million and five hundred thousand pesos
14 (P1,500,000.00).

15 (c) Any person required under Section 15 of this Act to contribute to
16 the IOPC Fund but nevertheless fails to comply therewith after due notice by
17 the MARINA:

18 (1) First violation - Three million pesos (P3,000,000.00);

19 (2) Second violation - Four million pesos (P4,000,000.00); and

20 (3) Third violation - Five million pesos (P5,000,000.00).

21 (d) Failure to Submit Report of Contributing Oil. – Any person
22 required under Section 16 of this Act to submit report of contributing oil and
23 notwithstanding 10-day notice thereto, fails to comply therewith:

24 (1) First violation – Five hundred thousand pesos (P500,000.00);

25 (2) Second violation – One million pesos (P1,000,000.00); and

26 (3) Third violation – One million and five hundred thousand pesos
27 (P1,500,000.00).

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

1 procedures concerning the enforcement of claims under this Act shall,
2 likewise, be developed within the said period.

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

5 SEC. 25. *Separability Clause.* – In the event that any provision of this
6 Act is declared unconstitutional, the validity of the remainder shall not be
7 affected thereby.

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

11 SEC. 27. *Effectivity Clause.* – This Act shall take effect after the
12 completion of its publication made once a week for three consecutive weeks
13 in at least two newspapers of general circulation.

Approved,

O