

No. 401
**ACT ON LIABILITY FOR OIL
POLLUTION FROM SHIPS**
May 30, 1980

Section 1

For the purposes of this Act:

oil means crude oil, all oil products derived therefrom, as well as vegetable oil and whale oils;

permanent oil means crude oil, heavy fuel and diesel oil, lubricating oil, whale oils and other oils of comparable permanence;

oil pollution means environmental damage caused by oil released from a ship, and the damage caused and expenses incurred by combating measures;

combating measures means all the necessary response procedures taken after the pollution incident has occurred in order to prevent or reduce the pollution damage or to restore the natural state of the environment;

pollution incident means an event or interrelated series of events causing oil pollution;

shipowner means the registered owner of a vessel or, if the ship is not registered, its owner; if a Government-owned vessel has a company registered as its user, said company shall be considered the owner;

SDR means Special Drawing Rights defined by the International Monetary Fund (IMF);

ship means any waterborne vessel or other floating craft moving under its own power or towed by another vessel;

ship capacity means the net tonnage of a vessel plus the tonnage attributable to machine space (deducted from the gross tonnage in defining the net tonnage); or, for vessels to which normal measurement regulations do not apply, 40% of the load-carrying capacity of the vessel; or, for vessels not intended for cargo transport, 30% of the displacement of the vessel in tonnes;

Convention means the Convention Relating to Civil Liability for Oil Pollution Damage concluded in Brussels on November 29, 1969 and the Protocol relating thereto concluded in London on November 19, 1976; and

member state means a country that has ratified the Convention.

Section 2

This Act shall apply to oil pollution caused in Finland or in any other member state by the discharge of permanent oil from a ship carrying a bulk cargo of oil. Oil pollution shall also include damage caused and expenses incurred by combating measures in response to oil pollution threatening the territory of a member state.

The applicability of this Act to oil pollution caused by a warship or other solely non-commercial Government-owned vessel, or a ship not carrying a bulk cargo of permanent oil, or

to oil pollution caused by other than permanent oil shall be defined below in section 23.

This Act shall apply notwithstanding the provisions concerning the applicability of foreign law in Finnish courts.

The provisions of this Act shall not be applied if such application would conflict with obligations that Finland has under international agreements.

Section 3

The shipowner shall be liable for compensating oil pollution of the kind referred to in Section 2 paragraphs 1 and 2, even if he or any other party causing pollution for which he is liable did not cause said pollution deliberately or through negligence. If a pollution incident consists of several inter-related events, the party liable for said pollution shall be the party who was shipowner at the time of the first event.

However, the shipowner shall be exempt from liability if he is able to show that the pollution was caused:

- 1) by war, hostilities, civil war or insurrection, or an exceptional, unavoidable and insurmountable natural phenomenon; or
- 2) solely by action or negligence on the part of a third party for the purpose of sabotage; or
- 3) solely by error or negligence on the part of the authority responsible for the maintenance of lighthouses or other navigation safeguards while on such duty.

Under this Act, compensation shall also be paid to a party responsible under a provision or regulation based on law to undertake oil pollution combating measures.

If the party suffering damage has contributed towards causing the pollution, compensation may be negotiated as reasonable.

Section 4

A claim may be pursued against the shipowner for compensation of oil pollution as referred to in section 2, paragraphs 1 and 2, only on the basis of this Act.

Compensation for oil pollution as referred to in section 2, paragraphs 1 and 2, cannot be demanded of a shipowner who does not own the ship in question, nor of the carrier or other party operating the ship in lieu of the shipowner, nor of the consigner, receiver of the cargo, owner of the cargo, pilot or any person otherwise performing or causing to be performed duties on board the ship or for the benefit of same. If pollution occurs in connection with salvage work concerning the ship or its cargo or in connection with combating measures, compensation cannot be demanded of any party undertaking said salvage or combating measures, unless said party has deliberately breached a prohibition issued by the authorities, or if such measures have been taken by some party other than the authorities in a case in which the shipowner or cargo owner has specifically and with reason prohibited them.

The compensation referred to above in paragraph 2 cannot be demanded of any person employed by the shipowner or by the persons referred to in paragraph 2.

Compensation paid under this Act for pollution caused by a pilot, a party performing salvage or combating measures or any person referred to in paragraph 3 can be claimed from the party causing the damage only if said party has caused said damage deliberately or through gross negligence. However, the compensation liability of an employee or civil servant shall follow the provisions of the Damage Compensation Act (412/74) and the Employment Contracts Act (320/70) concerning the compensation liability of employees and civil servants.

Section 5

The shipowner shall be entitled to limit his liability under this Act for each pollution incident to SDR 133 per tonne of the ship's capacity. However, his liability shall never be greater than SDR 14 million. This limitation is exclusive of interest and legal expenses.

If the pollution was caused by a specific error or negligence on part of the shipowner, he shall not be entitled to limit his liability.

If the shipowner is in a position to appeal to Finland's obligations towards a state that is not a member state of the Convention but is a member state of the International Convention relating to the Limitation of Liability of Owners of Seagoing Ships concluded in Brussels on October 10, 1957 (Finnish Treaty Series 4/68), the provisions of sections 10 to 23, inclusive, of the Maritime Act concerning the right of a shipowner to limit his liability shall apply.

Section 6

The shipowner shall be entitled to limit his liability in the manner described in section 5, paragraph 1, only if he, his insurer or any third party on his behalf sets up a limitation fund under the provisions of this Act or corresponding legislation in effect in another member state, the amount contained in the fund being equivalent to the shipowner's liability. The liability amount shall be converted from SDR to Finnish currency at the rate of exchange quoted on the date of establishment of said fund. In converting, the value of the Finnish mark shall be calculated according to the method of calculation employed by the IMF on said date in its own operations.

In Finland, a limitation fund may be set up at the court in which the claim for compensation has been filed. In setting up a limitation fund, a deposit of money or an acceptable guarantee for same, corresponding to the liability amount, shall be deposited with the executor-in-chief of the local authority in which the court is located.

More detailed provisions for the setting up and administration of a limitation fund will be issued by decree.

Section 7

If the liability amount defined in section 5, paragraph 1, is insufficient compensation for the parties entitled to compensation, the assets of the limitation fund shall be distributed among them in proportion to their claims.

If a limitation fund is set up in Finland and if there is reason to assume that the liability amount will be insufficient compensation for the parties entitled to compensation, the court can rule that, for the time being, only a certain portion of the compensation be paid.

Section 8

If a party has paid compensation for oil pollution as referred to in section 2, paragraphs 1 and 2, before the distribution of the limitation fund, he shall be considered to have suffered damage up to the amount of compensation already paid under this Act or under comparable legislation valid in another member state.

If the shipowner or any other party is able to show that he will, in the future, be liable for compensation which he could have required to be paid from the limitation fund as per paragraph 1, provided that said compensation would have been paid before the distribution of the limitation fund, the court can rule that a sum sufficient to cover such compensation be set aside so that the claim can be presented to the limitation fund at a later date.

If the shipowner has voluntarily met any expenses or suffered damage from combating measures, he shall be the same right to compensation from the limitation fund as all other parties that have suffered damage.

Section 9

If a limitation fund is set up under section 6 and not in the case referred to in section 5, paragraph 2, the shipowner shall not be held liable to cover with his other assets compensation which can be required to be paid from the limitation fund. However, this provision shall not apply to interest or legal expenses.

If any of the shipowner's assets have been confiscated or if any other measures have been directed against them in order to ensure payment on claims which can be required to be paid solely out of the limitation fund, said confiscation or other executive assistance shall be revoked upon the setting up of the limitation fund. If the shipowner has deposited a security to avoid such measures, said security shall be returned to him.

If the limitation fund is set up in another member state, the provisions of paragraphs 1 and 2 shall apply only if the party suffering damage has the right to pursue a claim in the court or authority with whom the limitation fund resides, and if it is possible for the share of the compensation due to him to be paid out of the assets of the fund.

Section 10

Any claim filed under the provisions of this Act for compensation for oil pollution shall be filed within three years of the occurrence of the incident. However, in no case may such a claim be filed if six years have elapsed from the date on which the pollution incident occurred or, if the pollution was caused by a series of interrelated events, from the date on which the first event occurred.

Section 11

Separate provisions concerning the right to receive compensation from the International Fund for Compensation for Oil Pollution Damage have been enacted.

Section 12

For any Finnish ship transporting a bulk cargo of more than 2,000 tonnes of permanent oil, the shipowner must take out and maintain insurance or establish some other security covering the shipowner's liability under this Act or under corresponding legislation in another member state up to the amount referred to in section 5, paragraph 1. However, the Government shall not be required to do so.

The insurance or security referred to above in paragraph 1 must be approved by the appropriate authority as provided by decree.

When the shipowner has fulfilled the duty provided in paragraph 1, he is entitled to receive a certificate from the authority approving the insurance or security in question to the effect that the duty has been fulfilled. In case of a Government-owned ship, the authority shall issue a certificate to the effect that the ship in question is owned by the Finnish Government and that its liability is covered up to the amount referred to in section 5, paragraph 1. This certificate must be kept aboard the ship, and a copy of it must be submitted to the National Board of Navigation.

More specific provisions concerning the certificate referred to in paragraph 3 will be issued by decree.

Section 13

Any foreign vessel visiting a Finnish port or using harbour facilities within Finnish territorial waters and at such a time carrying a bulk cargo of more than 2,000 tonnes of permanent oil must have insurance or other security covering the shipowner's liability for damages under this Act up to the amount provided in section 5. However, this provision shall not apply to a ship owned by another Government.

Such a ship must have on board a certificate to the effect that the insurance or security referred to in paragraph 1 is in force. A ship owned by another Government must have on board a certificate to the effect that the Government in question owns said ship and that its liability is covered up to

the amount provided in section 5.

More detailed provisions concerning the certificate referred to in paragraph 2 shall be issued by decree.

Section 14

Any party entitled to compensation may present any claim based on insurance as referred to in sections 12 and 13 directly to the insurer in question.

However, the insurer in question shall be exempt from liability in the cases mentioned in section 3, paragraph 2, and also when the shipowner himself has wilfully caused the damage. The insurer's liability shall in no case exceed the amounts referred to in section 5, paragraphs 1 and 3.

To release himself from liability to parties other than the shipowner, the insurer may invoke only the cases referred to in paragraph 2.

Section 15

If no condition to the contrary is imposed by the insurer, the insurance shall also be valid for the shipowner's benefit in case of a liability under this Act and any corresponding legislation in other member states.

Section 16

The provisions of sections 14 and 15 concerning insurance shall apply to the other security referred to in sections 12 and 13, *mutatis mutandis*.

Section 17

A claim for compensation under this Act may be filed in a Finnish court only if the oil pollution in question has occurred in Finland or if combating measures to prevent or limit such pollution have been undertaken in Finland.

If a claim is eligible for filing in a Finnish court as per paragraph 1, claims for other oil pollution caused by the same incident may also be filed in the same court.

Section 18

Any compensation claim for oil pollution eligible for filing in a Finnish court under section 17 shall be heard at the Helsinki City Court.

If a limitation fund as defined in section 6 is set up in Finland and if the shipowner or insurer against whom a compensation claim is being pursued in Finland or another member state is entitled to limit his liability, the court referred to in paragraph 1 shall consider matters concerning distribution of the limitation fund among the parties entitled to compensation.

Section 19

If a decision concerning compensation for oil pollution is issued in another member state and is legally valid and enforceable there, it shall also be enforced in Finland with no further hearing, unless the provisions of section 9 or section 18, paragraph 2, otherwise dictate, if said decision is within the jurisdiction of the courts of the member state in question according to the Convention. However, such enforcement is not mandatory if by doing so the shipowner's liability amount would be exceeded.

Enforcement must be applied for at the Helsinki Court of Appeal, when the following must be appended to the application:

- 1) the original decision or a copy thereof, certified correct by the relevant authority;
- 2) a statement by the appropriate authority in the state where the decision has been taken to the effect that said decision concerns a compensation as per the Convention, and that said decision is legally valid and enforceable in the state in question; and,
- 3) if the documents listed above are in some language other than Finnish or Swedish, translations thereof into Finnish or Swedish certified correct *ex officio*.

The documents referred to in paragraph 2, subparagraphs 1 and 2, shall bear an affirmation to the effect that the document was issued by a party authorized to issue such documents. Such affirmation shall be given by the Finnish embassy or consulate or the highest judicial administration authority of the state where the decision was taken.

An application for enforcement shall not be approved without granting the other party an opportunity to reply.

If the application is approved, the decision shall be enforced as if it had been taken by a Finnish court, unless the Supreme Court decrees otherwise on the basis of the application.

Section 20

If a limitation fund as defined in the Convention is set up in another member state under applicable legislation and if the shipowner or insurer against whom a claim is being pursued in a Finnish court is entitled to limit his liability, the court shall decree that the decision shall be enforceable only after issues regarding distribution of the limitation fund have been resolved in the member state in question.

Section 21

Supervision of the observance of sections 12 and 13 shall be provided by decree.

Any supervisory authority prescribed by decree shall have the power to prohibit a ship from sailing and to interrupt its voyage if the ship does not carry on board the certificate specified in section 12 or 13.



Section 22

Any party neglecting the duty to take out insurance or provide comparable security shall be sentenced to a fine or to not more than six months imprisonment for *failing to insure an oil cargo ship*.

Any shipowner allowing his ship to be used in navigation even though he knows or should know that no insurance or security exists shall be guilty as above, likewise the ship's master or any party supervising the use of the ship in lieu of the shipowner.

If a ship fails to carry the certificate specified in section 12 or 13, the ship's master shall be sentenced to a fine for *failing to carry an insurance certificate aboard an oil cargo ship*.

Section 23

This Act shall not apply to warships or any other vessel used solely for non-commercial Government purposes at the time of the pollution incident. If such a ship has caused oil pollution in Finland or if combating measures to prevent or limit such pollution have been undertaken in Finland, the provisions of sections 1, 3, 4, 5, 10 and 18 shall apply.

If any ship other than those referred to in paragraph 1 not carrying a bulk cargo of permanent oil at the time of the pollution incident causes oil damage in Finland or if combating measures to prevent or limit such pollution have been undertaken in Finland, the provisions of section 1, section 2, paragraph 4, and sections 3, 10 and 18 shall apply. These provisions shall also apply if the oil pollution is caused by other than permanent oil. Sections 12 to 23, inclusive, of the Maritime Act shall apply to the shipowner's right to limit his liability in these cases.

Section 24

This Act comes into force on a date to be provided by decree.