

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Alejo

February 18, 2011

~~An act to amend Section 8670.3 of the Government Code, relating to oil spill prevention and response. An act to amend Section 11751.5 of the Insurance Code, relating to workers' compensation insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as amended, Alejo. ~~Lempert-Keene-Seastrand Oil Spill Prevention and Response Act: definitions. Workers' compensation insurance: rating organizations: statistical agent.~~

Existing law requires the Insurance Commissioner to designate a licensed rating organization, as defined, as his or her statistical agent to gather and compile workers' compensation insurers' loss and expense experience statistics, and all licensed rating organizations are required to report loss and expense experiences of their member workers' compensation insurers to the statistical agent. Subject to reasonable rules approved by the commissioner, the statistical agent is required to make those compiled experience statistics available to all licensed rating organizations. The statistical agent is authorized to make a reasonable charge to other ratings organizations for the expense incurred by it in combining, tabulating, and compiling the experience of all workers' compensation insurers.

This bill would prohibit the commissioner from designating a rating organization as his or her statistical agent unless the rating organization agrees to comply with the Bagley-Keene Open Meeting Act and the

California Public Records Act with regard to those activities that are associated with its role as the commissioner’s statistical agent.

The bill would require any dispute arising between the commissioner’s designated rating organization and any party seeking to enforce the Bagley-Keene Open Meeting Act or the California Public Records Act be resolved in a court of competent jurisdiction, and would provide that the commissioner shall not be obligated to defend or represent the rating organization in those proceedings.

The bill would prohibit the designated rating organization from releasing any information or communications, pursuant to the Bagley-Keene Open Meeting Act or the California Public Records Act, determined to be confidential, as provided.

~~The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, preparedness, containment, and cleanup, as prescribed. The act defines specified terms for its purposes.~~

~~This bill would make various technical, nonsubstantive changes in those provisions defining terms for purposes of the act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION. 1 Section 11751.5 of the Insurance Code is amended
- 2 to read:
- 3 11751.5. (a) The commissioner, after notice and hearing, may
- 4 promulgate reasonable rules and statistical plans, which may be
- 5 modified from time to time and which shall be used thereafter in
- 6 the recording and reporting by insurers of their loss and expense
- 7 experience in order that the experiences of all insurers may be
- 8 made available in such form and detail as may be necessary to aid
- 9 the commissioner in administering the provisions of Article 2
- 10 (commencing with Section 11730).~~The~~
- 11 (b) The commissioner shall designate a rating organization
- 12 licensed under this article as his or her statistical agent to gather
- 13 and compile such experience statistics and all licensed rating
- 14 organizations shall report the experience of their members to such
- 15 designated rating organization. Subject to reasonable rules
- 16 approved by the commissioner,~~such~~ *the* designated rating

1 organization shall make ~~such~~ *those* experience statistics, when
2 compiled, available to all licensed rating organizations and may
3 make a reasonable charge to other rating organizations for the
4 expense incurred by it in combining, tabulating and compiling the
5 experience of all workers' compensation insurers.

6 *(c) (1) The commissioner shall not designate a rating*
7 *organization as his or her statistical agent unless that rating*
8 *organization agrees to comply with the Bagley-Keene Open*
9 *Meeting Act (Article 9 (commencing with Section 11120) of*
10 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
11 *Code) and the California Public Records Act (Chapter 3.5*
12 *(commencing with Section 6250) of Division 7 of Title 1 of the*
13 *Government Code), with regard to those activities that are*
14 *associated with its role as the commissioner's statistical agent.*

15 *(2) Notwithstanding Section 11753.1, any dispute arising*
16 *between the commissioner's designated rating organization and*
17 *any party seeking to enforce the Bagley-Keene Open Meeting Act*
18 *(Article 9 (commencing with Section 11120) of Chapter 1 of Part*
19 *1 of Division 3 of Title 2 of the Government Code) or the California*
20 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
21 *of Division 7 of Title 1 of the Government Code) shall be resolved*
22 *in a court of competent jurisdiction, and the commissioner shall*
23 *not be obligated to defend or represent the designated rating*
24 *organization in those proceedings.*

25 *(3) As the commissioner's statistical agent, the designated rating*
26 *organization shall not release any information or communications,*
27 *pursuant to the Bagley-Keene Open Meeting Act (Article 9*
28 *(commencing with Section 11120) of Chapter 1 of Part 1 of*
29 *Division 3 of Title 2 of the Government Code) or the California*
30 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
31 *of Division 7 of Title 1 of the Government Code), determined to*
32 *be confidential pursuant to any provision of this code.*

33 ~~SECTION 1. Section 8670.3 of the Government Code is~~
34 ~~amended to read:~~

35 ~~8670.3. Unless the context requires otherwise, the following~~
36 ~~definitions shall govern the construction of this chapter:~~

37 ~~(a) "Administrator" means the administrator for oil spill response~~
38 ~~who is appointed by the Governor pursuant to Section 8670.4.~~

39 ~~(b) (1) "Best achievable protection" means the highest level of~~
40 ~~protection that can be achieved through both the use of the best~~

1 ~~achievable technology and those manpower levels, training~~
2 ~~procedures, and operational methods that provide the greatest~~
3 ~~degree of protection achievable. The administrator's determination~~
4 ~~of which measures provide the best achievable protection shall be~~
5 ~~guided by the critical need to protect valuable coastal resources~~
6 ~~and marine waters, while also considering all of the following:~~

7 ~~(A) The protection provided by the measure.~~

8 ~~(B) The technological achievability of the measure.~~

9 ~~(C) The cost of the measure.~~

10 ~~(2) The administrator shall not use a cost-benefit or~~
11 ~~cost-effectiveness analysis or any particular method of analysis to~~
12 ~~determine which measures provide the best achievable protection.~~
13 ~~The administrator shall instead, when determining which measures~~
14 ~~provide best achievable protection, give reasonable consideration~~
15 ~~to the protection provided by the measures, the technological~~
16 ~~achievability of the measures, and the cost of the measures when~~
17 ~~establishing the requirements to provide the best achievable~~
18 ~~protection for coastal and marine resources.~~

19 ~~(e) (1) "Best achievable technology" means that technology~~
20 ~~that provides the greatest degree of protection, taking into~~
21 ~~consideration both of the following:~~

22 ~~(A) Processes that are being developed, or could feasibly be~~
23 ~~developed anywhere in the world, given overall reasonable~~
24 ~~expenditures on research and development.~~

25 ~~(B) Processes that are currently in use anywhere in the world.~~

26 ~~(2) In determining what is the best achievable technology~~
27 ~~pursuant to this chapter, the administrator shall consider the~~
28 ~~effectiveness and engineering feasibility of the technology.~~

29 ~~(d) "Dedicated response resources" means equipment and~~
30 ~~personnel committed solely to oil spill response, containment, and~~
31 ~~cleanup that are not used for any other activity that would adversely~~
32 ~~affect the ability of that equipment and personnel to provide oil~~
33 ~~spill response services in the timeframes for which the equipment~~
34 ~~and personnel are rated.~~

35 ~~(e) "Director" means the Director of Fish and Game.~~

36 ~~(f) "Environmentally sensitive area" means an area that is~~
37 ~~defined pursuant to the applicable area contingency plans, as~~
38 ~~created and revised by the Coast Guard and the administrator.~~

- 1 ~~(g) “Inland spill” means a release of at least one barrel (42~~
2 ~~gallons) of oil into inland waters that is not authorized by any~~
3 ~~federal, state, or local governmental entity.~~
4 ~~(h) “Inland waters” means waters of the state other than marine~~
5 ~~waters, but not including groundwater.~~
6 ~~(i) “Local government” means a chartered or general law city,~~
7 ~~a chartered or general law county, or a city and county.~~
8 ~~(j) (1) “Marine facility” means any facility of any kind, other~~
9 ~~than a tank ship or tank barge, that is or was used for the purposes~~
10 ~~of exploring for, drilling for, producing, storing, handling,~~
11 ~~transferring, processing, refining, or transporting oil and is located~~
12 ~~in marine waters, or is located where a discharge could impact~~
13 ~~marine waters unless the facility is either of the following:~~
14 ~~(A) Subject to Chapter 6.67 (commencing with Section 25270)~~
15 ~~or Chapter 6.75 (commencing with Section 25299.10) of Division~~
16 ~~20 of the Health and Safety Code.~~
17 ~~(B) Placed on a farm, nursery, logging site, or construction site~~
18 ~~and does not exceed 20,000 gallons in a single storage tank.~~
19 ~~(2) For the purposes of this chapter, “marine facility” includes~~
20 ~~a drill ship, semisubmersible drilling platform, jack-up type drilling~~
21 ~~rig, or any other floating or temporary drilling platform.~~
22 ~~(3) For the purposes of this chapter, “marine facility” does not~~
23 ~~include a small craft refueling dock.~~
24 ~~(k) (1) “Marine terminal” means any marine facility used for~~
25 ~~transferring oil to or from a tank ship or tank barge.~~
26 ~~(2) “Marine terminal” includes, for purposes of this chapter, all~~
27 ~~piping not integrally connected to a tank facility, as defined in~~
28 ~~subdivision (m) of Section 25270.2 of the Health and Safety Code.~~
29 ~~(l) “Marine waters” means those waters subject to tidal~~
30 ~~influence, and includes the waterways used for waterborne~~
31 ~~commercial vessel traffic to the Port of Sacramento and the Port~~
32 ~~of Stockton.~~
33 ~~(m) “Mobile transfer unit” means a small marine fueling facility~~
34 ~~that is a vehicle, truck, or trailer, including all connecting hoses~~
35 ~~and piping, used for the transferring of oil at a location where a~~
36 ~~discharge could impact marine waters.~~
37 ~~(n) “Nondedicated response resources” means those response~~
38 ~~resources identified by an Oil Spill Response Organization for oil~~
39 ~~spill response activities that are not dedicated response resources.~~

- 1 (o) “Nonpersistent oil” means a petroleum-based oil, such as
 2 gasoline or jet fuel, that evaporates relatively quickly and is an oil
 3 with hydrocarbon fractions, at least 50 percent of which, by
 4 volume, distills at a temperature of 645 degrees Fahrenheit, and
 5 at least 95 percent of which, by volume, distills at a temperature
 6 of 700 degrees Fahrenheit.
- 7 (p) “Nontank vessel” means a vessel of 300 gross tons or greater
 8 that carries oil, but does not carry that oil as cargo.
- 9 (q) “Oil” means any kind of petroleum, liquid hydrocarbons,
 10 or petroleum products or any fraction or residues therefrom,
 11 including, but not limited to, crude oil, bunker fuel, gasoline, diesel
 12 fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and
 13 liquid distillates from unprocessed natural gas.
- 14 (r) “Oil spill cleanup agent” means a chemical, or any other
 15 substance, used for removing, dispersing, or otherwise cleaning
 16 up oil or any residual products of petroleum in, or on, any of the
 17 waters of the state.
- 18 (s) “Oil spill contingency plan” or “contingency plan” means
 19 the oil spill contingency plan required pursuant to Article 5
 20 (commencing with Section 8670.28).
- 21 (t) (1) “Oil Spill Response Organization” or “OSRO” means
 22 an individual, organization, association, cooperative, or other entity
 23 that provides, or intends to provide, equipment, personnel, supplies,
 24 or other services directly related to oil spill containment, cleanup,
 25 or removal activities.
- 26 (2) A “rated OSRO” means an OSRO that has received a
 27 satisfactory rating from the administrator for a particular rating
 28 level established pursuant to Section 8670.30.
- 29 (3) “OSRO” does not include an owner or operator with an oil
 30 spill contingency plan approved by the administrator or an entity
 31 that only provides spill management services, or who provides
 32 services or equipment that are only ancillary to containment,
 33 cleanup, or removal activities.
- 34 (u) “Onshore facility” means a facility of any kind that is located
 35 entirely on lands not covered by marine waters.
- 36 (v) (1) “Owner” or “operator” means any of the following:
- 37 (A) In the case of a vessel, a person who owns, has an ownership
 38 interest in, operates, charters by demise, or leases, the vessel.
- 39 (B) In the case of a marine facility, a person who owns, has an
 40 ownership interest in, or operates the marine facility.

1 ~~(C) Except as provided in subparagraph (D), in the case of a~~
2 ~~vessel or marine facility, where title or control was conveyed due~~
3 ~~to bankruptcy, foreclosure, tax delinquency, abandonment, or~~
4 ~~similar means to an entity of state or local government, a person~~
5 ~~who owned, held an ownership interest in, operated, or otherwise~~
6 ~~controlled activities concerning the vessel or marine facility~~
7 ~~immediately beforehand.~~

8 ~~(D) An entity of the state or local government that acquired~~
9 ~~ownership or control of a vessel or marine facility, when the entity~~
10 ~~of the state or local government has caused or contributed to a spill~~
11 ~~or discharge of oil into marine waters.~~

12 ~~(2) “Owner” or “operator” does not include a person who,~~
13 ~~without participating in the management of a vessel or marine~~
14 ~~facility, holds indicia of ownership primarily to protect the person’s~~
15 ~~security interest in the vessel or marine facility.~~

16 ~~(3) “Operator” does not include a person who owns the land~~
17 ~~underlying a marine facility or the facility itself if the person is~~
18 ~~not involved in the operations of the facility.~~

19 ~~(w) “Person” means an individual, trust, firm, joint stock~~
20 ~~company, or corporation, including, but not limited to, a~~
21 ~~government corporation, partnership, and association. “Person”~~
22 ~~also includes a city, county, city and county, district, and the state~~
23 ~~or any department or agency thereof, and the federal government,~~
24 ~~or any department or agency thereof, to the extent permitted by~~
25 ~~law.~~

26 ~~(x) “Pipeline” means a pipeline used at any time to transport~~
27 ~~oil.~~

28 ~~(y) “Reasonable worst case spill” means, for the purposes of~~
29 ~~preparing contingency plans for a nontank vessel, the total volume~~
30 ~~of the largest fuel tank on the nontank vessel.~~

31 ~~(z) “Responsible party” or “party responsible” means any of~~
32 ~~the following:~~

33 ~~(1) The owner or transporter of oil or a person or entity accepting~~
34 ~~responsibility for the oil.~~

35 ~~(2) The owner, operator, or lessee of, or a person that charters~~
36 ~~by demise, a vessel or marine facility, or a person or entity~~
37 ~~accepting responsibility for the vessel or marine facility.~~

38 ~~(aa) “Small craft” means a vessel, other than a tank ship or tank~~
39 ~~barge, that is less than 20 meters in length.~~

- 1 ~~(ab) “Small craft refueling dock” means a waterside operation~~
2 ~~that dispenses only nonpersistent oil in bulk and small amounts of~~
3 ~~persistent lubrication oil in containers primarily to small craft and~~
4 ~~meets both of the following criteria:~~
5 ~~(1) Has tank storage capacity not exceeding 20,000 gallons in~~
6 ~~any single storage tank or tank compartment.~~
7 ~~(2) Has total usable tank storage capacity not exceeding 75,000~~
8 ~~gallons.~~
9 ~~(ac) “Small marine fueling facility” means either of the~~
10 ~~following:~~
11 ~~(1) A mobile transfer unit.~~
12 ~~(2) A fixed facility that is not a marine terminal, that dispenses~~
13 ~~primarily nonpersistent oil, that may dispense small amounts of~~
14 ~~persistent oil, primarily to small craft, and that meets all of the~~
15 ~~following criteria:~~
16 ~~(A) Has tank storage capacity greater than 20,000 gallons but~~
17 ~~not more than 40,000 gallons in any single storage tank or storage~~
18 ~~tank compartment.~~
19 ~~(B) Has total usable tank storage capacity not exceeding 75,000~~
20 ~~gallons.~~
21 ~~(C) Had an annual throughput volume of over-the-water transfers~~
22 ~~of oil that did not exceed 3,000,000 gallons during the most recent~~
23 ~~preceding 12-month period.~~
24 ~~(ad) “Spill” or “discharge” means a release of at least one barrel~~
25 ~~(42 gallons) of oil into marine waters that is not authorized by a~~
26 ~~federal, state, or local government entity.~~
27 ~~(ae) “State Interagency Oil Spill Committee” means the~~
28 ~~committee established pursuant to Article 3.5 (commencing with~~
29 ~~Section 8574.1) of Chapter 7.~~
30 ~~(af) “California oil spill contingency plan” means the California~~
31 ~~oil spill contingency plan prepared pursuant to Article 3.5~~
32 ~~(commencing with Section 8574.1) of Chapter 7.~~
33 ~~(ag) “Tank barge” means a vessel that carries oil in commercial~~
34 ~~quantities as cargo but is not equipped with a means of~~
35 ~~self-propulsion.~~
36 ~~(ah) “Tank ship” means a self-propelled vessel that is~~
37 ~~constructed or adapted for the carriage of oil in bulk or in~~
38 ~~commercial quantities as cargo.~~
39 ~~(ai) “Tank vessel” means a tank ship or tank barge.~~

- 1 ~~(aj) “Vessel” means a watercraft or ship of any kind, including~~
2 ~~every structure adapted to be navigated from place to place for the~~
3 ~~transportation of merchandise or persons.~~
4 ~~(ak) “Vessel carrying oil as secondary cargo” means a vessel~~
5 ~~that does not carry oil as a primary cargo, but does carry oil in~~
6 ~~bulk as cargo or cargo residue.~~

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