

AMENDED IN ASSEMBLY MAY 30, 1995  
AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1868**

**Introduced by Assembly Members Katz and Olberg**

February 24, 1995

An act to add Section 3333.4 to the Civil Code, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Katz. Pipeline corporations: damages.

Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including pipeline corporations. Existing law also sets forth the measure of damages in various situations.

This bill would require each pipeline corporation that qualifies as a public utility that transports crude oil in a public utility oil pipeline, ~~and the pipeline owners and oil owners, as defined, of the public utility oil pipeline to be jointly, severally, and strictly liable in tort for any and all injuries or death to persons and any and all damage to property or natural resources that results from or responds to any leak, rupture, or other release~~ *damages incurred by any injured person which arise out of, or are caused by, the discharge or leaking* of crude oil or any fraction thereof from the public utility pipeline except as otherwise specified.



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

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

1 SECTION 1. (a) This act shall be known as the Oil  
2 Pipeline Environmental Responsibility Act.

3 (b) The Legislature finds and declares that the  
4 transportation of crude oil and related products through  
5 public utility pipelines within the State of California is an  
6 activity that is required to sustain the economic life of the  
7 state but that necessarily entails hazards to the life,  
8 health, safety, and property of those within proximity to  
9 an oil pipeline, as well as to the natural resources of the  
10 state. Public utility oil pipelines are subject to leaks and  
11 ruptures from a variety of causes and these leaks can  
12 result in the spillage of oil in substantial volumes. These  
13 oil spills may result in degradation of the environment  
14 and natural resources, significantly damage property, and  
15 jeopardize the life, health, and safety of individuals in the  
16 vicinity of the oil spill. In addition, substantial resources  
17 must be expended to stop, contain, and clean up oil spills,  
18 including the cost of extended monitoring of the damage  
19 and long-term remediation of the environment.

20 (c) The Legislature further finds and declares that in  
21 order to mitigate the risks and hazards of public utility oil  
22 pipeline operation, and to clarify the liability and  
23 responsibility for preventing, abating, and remediating  
24 oil spills from pipelines, the parties engaged in the  
25 transportation of crude oil or related products, including  
26 the owners of the public utility oil pipeline and the  
27 owners of the oil being transported in those pipelines,  
28 should be strictly liable in tort for damages caused by oil  
29 pipeline leaks, ruptures, or other events that result in oil  
30 spills from a public utility oil pipeline.

31 (d) The Legislature also finds and declares that the  
32 practice of the oil industry in California to utilize  
33 extremely complex arrangements to control ownership  
34 interests in oil and to arrange for the sale and  
35 transportation of oil necessitates the extension of



1 responsibility for oil spills from public utility oil pipelines  
2 to those parties who control the ownership of oil and oil  
3 pipelines in addition to those entities specifically vested  
4 with title to the oil and the pipelines.

5 ~~SEC. 2.—Section 3333.4 is added to the Civil Code, to~~

6 *SEC. 2. Section 3333.4 is added to the Civil Code, to*  
7 *read:*

8 *3333.4. (a) Each pipeline corporation that qualifies*  
9 *as a public utility within Section 216 of the Public Utilities*  
10 *Code that transports any crude oil or fraction thereof in*  
11 *a public utility oil pipeline shall be absolutely liable*  
12 *without regard to fault for any damages incurred by any*  
13 *injured person that arise out of, or are caused by, the*  
14 *discharge or leaking of crude oil or fraction thereof from*  
15 *the public utility pipeline.*

16 *(b) A pipeline corporation is not liable to an injured*  
17 *person under this section for any of the following:*

18 *(1) Damages, other than costs of removal incurred by*  
19 *the state or a local government caused solely by an act of*  
20 *war, hostilities, civil war, or insurrection or by an*  
21 *unanticipated grave natural disaster or other act of God*  
22 *of an exceptional, inevitable, and irresistible character,*  
23 *other than an earthquake, which could not have been*  
24 *prevented or avoided by the exercise of due care or*  
25 *foresight.*

26 *(2) Damages in the proportion caused by the*  
27 *negligence, intentional malfeasance, or criminal act of*  
28 *the landowner, or an agent, employee, or contractor of*  
29 *the landowner, upon whose property the pipeline is*  
30 *located.*

31 *(3) Except as provided by paragraph (2), damages*  
32 *caused solely by the negligence or intentional*  
33 *malfeasance of the injured person.*

34 *(4) Except as provided by paragraph (2), damages*  
35 *caused solely by the criminal act of a third party other*  
36 *than the pipeline corporation or an agent or employee of*  
37 *the pipeline corporation.*

38 *(5) Natural seepage not caused by the pipeline*  
39 *corporation.*



1 (6) Damages that arise out of, or are caused by, a  
2 discharge that is authorized by a state or federal permit.

3 (c) Damages for which a pipeline corporation is liable  
4 under this section are the following:

5 (1) All costs of response, containment, cleanup,  
6 removal, and treatment, including, but not limited to,  
7 monitoring and administration costs.

8 (2) Injury to, or economic losses resulting from  
9 destruction of or injury to, real or personal property.

10 (3) Injury to, destruction of, or loss of, natural  
11 resources, including, but not limited to, the reasonable  
12 cost of rehabilitating wildlife, habitat, and other resources  
13 and the reasonable cost of assessing that injury,  
14 destruction, or loss, in any action brought by the state, a  
15 county, city, or district.

16 (4) Loss of taxes, royalties, rents, use, or profit shares  
17 caused by the injury, destruction, loss, or impairment of  
18 use of real property, personal property, or natural  
19 resources.

20 (5) Loss of use and enjoyment of natural resources and  
21 other public resources or facilities in any action brought  
22 by the state, county, city, or district.

23 (d) The court may award reasonable costs of the suit,  
24 attorneys' fees, and the cost of any necessary expert  
25 witnesses to any prevailing plaintiff. The court may award  
26 reasonable costs of the suit, attorneys' fees, and the cost  
27 of any necessary expert witnesses to any prevailing  
28 defendant if the court finds that the plaintiff commenced  
29 or prosecuted the suit under this section in bad faith or  
30 solely for purposes of harassing the defendant.

31 (e) (1) A pipeline corporation shall immediately  
32 clean up all crude oil, or any fraction thereof, that leaks  
33 or is discharged from a pipeline subject to this section.  
34 Additionally, the pipeline corporation shall abate the  
35 effects of the discharge and take all other necessary  
36 remedial action.

37 (2) A pipeline corporation may recover the costs of the  
38 activities specified in this subdivision for which it is not at  
39 fault by means of any appropriate legal action, including,  
40 but not limited to, indemnification or subrogation.



1 (f) This section shall not apply to claims, or causes of  
2 action, for damages for personal injury or wrongful death.

3 (g) This section shall apply to all pipelines completed  
4 on or after January 1, 1996, that otherwise meet the  
5 conditions imposed by this section.

6 (h) (1) No pipeline subject to this section shall be  
7 permitted to operate unless the State Fire Marshal  
8 certifies that the pipeline corporation demonstrates  
9 sufficient financial responsibility to respond to the  
10 damages imposed by this section. The minimum financial  
11 responsibility required by the State Fire Marshal shall be  
12 seven hundred fifty dollars (\$750) times the maximum  
13 capacity of the pipeline in the number of barrels per day  
14 up to a maximum of one hundred million dollars  
15 (\$100,000,000) per pipeline system, or a maximum of two  
16 hundred million dollars (\$200,000,000) per multiple  
17 pipeline systems.

18 (2) For the purposes of this section, financial  
19 responsibility may be demonstrated by evidence of  
20 insurance, surety bond, letter of credit, guaranty,  
21 qualification as a self-insurer, or combination thereof or  
22 any other evidence of financial responsibility that is  
23 substantially equivalent to that required under Section  
24 8670.37.54 of the Government Code.

25 (i) The State Fire Marshal shall determine that  
26 appropriate evidence of financial responsibility is present  
27 for postclosure cleanup costs. This evidence of financial  
28 responsibility shall be discontinued upon certification of  
29 closure and cleanup by the State Fire Marshal.

30 read:

31 ~~3333.4. (a) Each pipeline corporation that qualifies~~  
32 ~~as a public utility within Section 216 of the Public Utilities~~  
33 ~~Code that transports any crude oil or any fraction thereof~~  
34 ~~in a public utility oil pipeline, the pipeline owners, and oil~~  
35 ~~owners are jointly, severally, and strictly liable in tort for~~  
36 ~~any and all injuries or death to persons, and any and all~~  
37 ~~damage to property or natural resources that results from~~  
38 ~~or responds to any leak, rupture, or other release of crude~~  
39 ~~oil or any fraction thereof from the public utility pipeline.~~  
40 ~~That liability shall include, but not be limited to,~~



1 consequential damages; damages for loss of use; the actual  
2 and reasonable costs of investigating and monitoring, and  
3 for performing any remediation, removal, or disposal  
4 activities affecting the property or natural resources of  
5 the party incurring the costs; and reasonable costs and  
6 expenses, including attorneys' fees, expended to enforce  
7 that liability.

8 (b) The pipeline corporation, pipeline owner, and oil  
9 owner shall not be liable to an injured party under this  
10 section for any of the following:

11 (1) Damages, other than costs of removal incurred by  
12 the state or a local government, caused solely by any act  
13 of war, hostilities, civil war, or insurrection.

14 (2) Damages caused solely by the negligence or  
15 intentional malfeasance of that injured party.

16 (3) Damages caused solely by the criminal,  
17 intentional, or negligent act of a third party other than  
18 the pipeline corporation, pipeline owner, oil owner or an  
19 agent, employee, or contractor of any of them.

20 (4) Natural seepage not caused by a responsible party.

21 (5) Damages that arise out of, or are caused by, a  
22 discharge that is authorized by a state or federal permit.

23 (e) For the purposes of this section, "pipeline owner"  
24 means either of the following:

25 (1) Any person or corporation within the definition of  
26 a pipeline corporation, as set forth in Section 228 of the  
27 Public Utilities Code.

28 (2) Any person or corporation that qualifies as a  
29 controlling party of a pipeline corporation within the  
30 definition of Section 228 of the Public Utilities Code.

31 (d) For the purposes of this section, "oil owner" means  
32 any of the following:

33 (1) Any person or corporation that owned all or any  
34 part of the crude oil or any fraction thereof that was  
35 present in a public utility oil pipeline at the time that the  
36 pipeline sustained a leak, rupture, or other release of  
37 crude oil or any fraction thereof.

38 (2) Any person or corporation that owned all or any  
39 part of any crude oil or any fraction thereof immediately  
40 prior to its delivery into a public utility oil pipeline if the



1 ~~crude oil was present in a public utility oil pipeline at the~~  
2 ~~time that the pipeline sustained a leak, rupture, or other~~  
3 ~~release of crude oil or any fraction thereof.~~

4 ~~(3) Any person or corporation that owned or held a~~  
5 ~~right to own all or any part of any crude oil or any fraction~~  
6 ~~thereof or immediately upon its delivery out of or~~  
7 ~~discharge from a public utility oil pipeline if the crude oil~~  
8 ~~or any fraction thereof was present in a public utility oil~~  
9 ~~pipeline at the time that the pipeline sustained a leak,~~  
10 ~~rupture, or other release of crude oil or any fraction~~  
11 ~~thereof.~~

12 ~~(4) Any person or corporation that qualifies as a~~  
13 ~~controlling party of an entity that is an oil owner under~~  
14 ~~paragraph (1), (2), or (3).~~

15 ~~(e) For the purposes of this section, the “controlling~~  
16 ~~party” of a pipeline corporation or an oil owner is defined~~  
17 ~~as any person, partnership, corporation, or other entity~~  
18 ~~that directly or indirectly, either individually or in~~  
19 ~~conjunction with agents, intermediate entities, or other~~  
20 ~~controlling parties, does any of the following:~~

21 ~~(1) Owns or has the power to vote 10 percent or more~~  
22 ~~of the common stock or other evidence of equity~~  
23 ~~ownership of the entity.~~

24 ~~(2) Guarantees, or provides commitments or~~  
25 ~~assurances substantially equivalent to a guarantee,~~  
26 ~~respecting any class or issue of debt of the entity.~~

27 ~~(3) Controls or has the ability to control the operation~~  
28 ~~or management of the entity, either individually or in~~  
29 ~~conjunction with others.~~

30 ~~(e) for purposes of this section, “fraction” means a~~  
31 ~~group of compounds collected by fractional distillation~~  
32 ~~that condenses within the same temperature band.~~

