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**GOVERNMENT CODE - GOV**

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 1. GENERAL [8000 - 8899.95]** ( Division 1 enacted by Stats. 1943, Ch. 134. )

**CHAPTER 7.4. Oil Spill Response and Contingency Planning [8670.1 - 8670.73]** ( Chapter 7.4 added by Stats. 1990, Ch. 1248, Sec. 17. )

**ARTICLE 8.5. Damages [8670.56.5 - 8670.56.6]** ( Article 8.5 added by Stats. 1990, Ch. 1248, Sec. 17. )

**8670.56.5.** (a) A responsible party, as defined in Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured person that arise out of, or are caused by, a spill.

(b) A responsible party is not liable to an injured person under this section for any of the following:

- (1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, that could not have been prevented or avoided by the exercise of due care or foresight.
- (2) Damages caused solely by the negligence or intentional malfeasance of that injured person.
- (3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.
- (4) Natural seepage not caused by a responsible party.
- (5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.
- (6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) The defenses provided in subdivision (b) shall not be available to a responsible party who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(d) Upon motion and sufficient showing by a party deemed to be a responsible party under this section, the court shall join to the action any other party who may be a responsible party under this section.

(e) In determining whether a party is a responsible party under this section, the court shall consider the results of chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance that caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance that caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of a party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(f) The court may award reasonable costs of the suit, attorneys' fees, and the costs of necessary expert witnesses to a prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to a prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit pursuant to this section in bad faith or solely for purposes of harassing the defendant.

(g) This section does not prohibit a person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured person for loss or injury for which the person is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create a defense not otherwise available regarding an action brought under any other provision or principle of law, including, but not limited to, common law.

(h) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the California oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in an action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources, which shall be recoverable by a claimant who so uses natural resources that have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities that utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in an action brought by the state, a county, city, or district.

(i) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against a person.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of a person to bring an action for personal injury or wrongful death pursuant to any provision or principle of law.

(k) Payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(l) An action that a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue an action on behalf of a private individual or entity that requests the state not to pursue that action.

(m) For purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

*(Amended by Stats. 2016, Ch. 209, Sec. 9. (AB 2912) Effective January 1, 2017.)*

**8670.56.6.** (a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), a person, including, but not limited to, an oil spill response organization, its agents, subcontractors, or employees, shall not be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of response efforts.

(2) The qualified immunity under this section shall not apply to any response efforts that are inconsistent with the following:

(A) The directions of the unified command, consisting of at least the Coast Guard and the administrator.

(B) In the absence of a unified command, the directions of the administrator pursuant to Section 8670.27.

(C) In the absence of directions pursuant to subparagraph (A) or (B), applicable oil spill contingency plans implemented under this division.

(3) This section does not, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, for the discharged oil, or for the vessel, terminal, pipeline, or facility from which the oil was discharged. The responsible party or parties shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

(b) This section does not, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, or the responsible party's agents, employees, or subcontractors, except persons immunized under subdivision (a) for response efforts, for the discharged oil, or for the vessel, terminal, pipeline, or facility from which the oil was discharged.

(c) The responsible party or parties shall be subject to both of the following:

(1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5, or any other law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (h) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill response organization of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) This section does not immunize an oil spill response organization or any other person from liability for acts of gross negligence or willful misconduct in connection with response efforts.

(e) This section does not apply to any action for personal injury or wrongful death.

(f) [Reserved]

(g) Except for the responsible party, membership in an oil spill response organization shall not be grounds, in and of itself, for liability resulting from response efforts of the oil spill response organization.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall reimburse, in accordance with its terms, claims of any injured person for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with persons who are qualified and responsible are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in waters of the state for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall procure, to the maximum extent practicable, the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in waters of the state.

(2) In addition to the authority to negotiate contracts described in paragraph (1), the administrator may also negotiate and enter into indemnification agreements with persons who are qualified and financially responsible to respond to oil spills that may occur in waters of the state for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and clean up the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall procure, to the maximum extent practicable, the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(4) (A) The contracts required by this section, and any other contracts entered into by the administrator for response, containment, or cleanup of an existing spill, or for response of an imminent threat of a spill, the payment of which is to be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46, shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(B) The exemption specified in subparagraph (A) applies only to contracts for which the services are used for a period of less than 90 days, cumulatively, per year.

(C) This paragraph shall not be construed as limiting the administrator's authority to exercise the emergency powers granted pursuant to subdivision (c) of Section 8670.62, including the authority to enter into emergency contracts that are exempt from approval by the Department of General Services.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response

efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may extend, upon making all the following findings, the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated resources, (ii) threaten already contaminated resources with substantial additional contamination, or (iii) otherwise endanger the public health and safety or harm the environment.

(B) The remaining work is of a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) A person or their agents, subcontractors, or employees shall not incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to those response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of any person who is not regularly engaged in the business of responding to oil spills. A person who is not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) a person who is primarily dedicated to the preservation and rehabilitation of wildlife and (B) a person who derives his or her livelihood primarily from fishing.

*(Amended by Stats. 2016, Ch. 209, Sec. 10. (AB 2912) Effective January 1, 2017.)*