

tion II above. The phrase "Provided, that there shall be no such liability where such discharge was due to an Act of God" is excised as being unnecessary because, under this redraft, negligence is the basis for liability. If negligence is not to be the basis for liability, then there would have to be a myriad of other exclusions in order for the legislation to be fair—for example; war, sabotage, acts of trespassers or other unauthorized persons, etc.

SEC. 19. (f) This section as proposed by the API provides for the reversal of the burden of proof discussed by Mr. Shearer at page 454 of the Transcript of April 24th hearings and which is, we understand, recommended for incorporation in the proposed IMCO convention. That position may be justified for reasons of international agreements. Our law providing for burden of proof under the principle of *res ipsa loquitur* protects our government and our citizens. The balance of this new section as proposed by the API is designed to make it clear that the Secretary of the Interior can proceed against anyone whose negligence caused or contributed to the discharge of oil and also to prevent the reversal of burden of proof in favor of the Secretary from affecting the rights of vessels or shore installations against each other.

SEC. 19. (g) The suggested additional phrase broadens the uses to which the revolving fund can be put.

SEC. 19. (h) As stated by Mr. Calhoun, President of MEBA, in testifying before this committee on April 25th, the suspension or revocation of a license without a finding of negligence or willfulness imposes "an intolerable burden on American maritime officers and other seamen."

SEC. 19. (j) The addition of a specific provision for research and issuance of technical information seems wise.

SEC. 19. (k) This section is necessary in order to preserve rights of owners of shore installations or vessels who pay for clean-up operations initially.

SEC. 19. (l) This is the "Good Samaritan" provision testified to by Mr. Checkett on April 24th.

SEC. 19. (m) The deletions and changes are designed to protect the civil rights of persons suspected of violating this statute, and also to preserve the constitutionality of this section.

SEC. 19. (o) This new section makes it clear that the Federal Government pre-empts this field insofar as navigable waters or adjacent shorelines are concerned. Such pre-emption is conducive to uniform laws and enforcement thereof—all making for equal treatment of citizens or foreign nationals alike under law.

CONCLUSION

In its zeal to enact legislation to improve the condition of the waters and shorelines of the United States, Congress should not overlook other essential aspects of the American social and economic scene. The MLA suggests that H.R. 14000 as originally drafted has fatal flaws which not only may adversely affect our merchant marine and international trade but, by so doing, make the legislation largely self-defeating. It is submitted that the MLA redraft of Section 19 of H.R. 14000 will be more effective than the original in dealing with the problem of oil pollution while at the same time preserving well established principles of maritime and constitutional law.

Respectfully submitted.

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GORDON W. PAULSEN.

Dated: New York, N.Y., May 24, 1968.

APPENDIX A

RESOLUTIONS OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, EXECUTIVE COMMITTEE

To the U.S. Senate Committee on Commerce, 89th Congress, 2d Session:

Whereas a bill, S. 3251, has been introduced and referred to the Committee on Commerce to repeal the laws authorizing limitation of shipowners' liability for personal injury or death, to require evidence of adequate financial responsibility to pay judgments for personal injury and death, or to repay fares in the event of nonperformance of voyages, or for other purposes;