

SENATE BILL NO. 173

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY SENATOR MICCICHE

Introduced: 2/2/18
Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the liability of a person or the state for the release of certain**
2 **pesticides during application on a utility pole."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.243. Liability of persons and the state for the application of**
6 **pesticides on a utility pole.** (a) Notwithstanding AS 46.03.822(a), neither the state
7 nor a person is subject to liability under AS 46.03.822 for costs or damages, as defined
8 in AS 46.03.822(m), for the release of a pesticide registered under 7 U.S.C. 136a
9 (Federal Insecticide, Fungicide, and Rodenticide Act) if

10 (1) the release resulted from the application of the pesticide on a wood
11 utility pole during the installation, use, or removal of the utility pole; and

12 (2) the use of the utility pole is or was intended to provide a utility
13 service in the state.

14 * **Sec. 2.** AS 46.03.822(a) is amended to read:

1 (a) Notwithstanding any other provision or rule of law and subject only to the
2 defenses set out in (b) of this section, the exception set out in (i) of this section, the
3 **exceptions** [EXCEPTION] set out in AS 09.65.240 **and 09.65.243**, and the limitation
4 on liability provided under AS 46.03.825, the following persons are strictly liable,
5 jointly and severally, for damages, for the costs of response, containment, removal, or
6 remedial action incurred by the state, a municipality, or a village, and for the
7 additional costs of a function or service, including administrative expenses for the
8 incremental costs of providing the function or service, that are incurred by the state, a
9 municipality, or a village, and the costs of projects or activities that are delayed or lost
10 because of the efforts of the state, the municipality, or the village, resulting from an
11 unpermitted release of a hazardous substance or, with respect to response costs, the
12 substantial threat of an unpermitted release of a hazardous substance:

13 (1) the owner of, and the person having control over, the hazardous
14 substance at the time of the release or threatened release; this paragraph does not apply
15 to a consumer product in consumer use;

16 (2) the owner and the operator of a vessel or facility, from which there
17 is a release, or a threatened release that causes the incurrence of response costs, of a
18 hazardous substance;

19 (3) any person who at the time of disposal of any hazardous substance
20 owned or operated any facility or vessel at which the hazardous substances were
21 disposed of, from which there is a release, or a threatened release that causes the
22 incurrence of response costs, of a hazardous substance;

23 (4) any person who by contract, agreement, or otherwise arranged for
24 disposal or treatment, or arranged with a transporter for transport for disposal or
25 treatment, of hazardous substances owned or possessed by the person, other than
26 domestic sewage, or by any other party or entity, at any facility or vessel owned or
27 operated by another party or entity and containing hazardous substances, from which
28 there is a release, or a threatened release that causes the incurrence of response costs,
29 of a hazardous substance;

30 (5) any person who accepts or accepted any hazardous substances,
31 other than refined oil, for transport to disposal or treatment facilities, vessels or sites

- 1 selected by the person, from which there is a release, or a threatened release that
- 2 causes the incurrence of response costs, of a hazardous substance.