

CS FOR SENATE BILL NO. 39(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/6/97

Referred: Finance

Sponsor(s): SENATOR LEMAN, Kelly, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to hazardous chemicals, hazardous materials, and hazardous
2 waste."

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. 09.65.240. Liability of the state and regional educational attendance**
6 **areas for release of hazardous substances.** (a) Notwithstanding AS 46.03.822(a),
7 neither the state nor a regional educational attendance area established under AS 14.08,
8 nor an agent or employee of the state or a regional educational attendance area acting
9 within the scope of that agency or employment, is subject to liability under
10 AS 46.03.822 for damages, as defined in AS 46.03.822(k) and 46.03.824, for the
11 release of a hazardous substance at or from any facility used in relation to a regional
12 educational attendance area school as described in AS 14.08.151 or at or from any
13 facility used in relation to a school operated by the state under AS 14.16.

14 (b) In this section,

1 (1) "facility" has the meaning given in AS 46.03.826;

2 (2) "hazardous substance" has the meaning given in AS 46.03.826.

3 * **Sec. 2.** AS 18.70.090 is amended to read:

4 **Sec. 18.70.090. Enforcement authority.** The Department of Public Safety and
5 the chief of each fire department recognized under regulations adopted by the
6 Department of Public Safety, and their authorized representatives in their respective
7 areas, may enforce the regulations adopted by the Department of Public Safety for the
8 prevention of fire or for the protection of life and property against fire or panic. All
9 state peace officers may assist the Department of Public Safety in the enforcement of
10 AS 18.70.010 - 18.70.100 [, 18.70.310,] and the regulations adopted under those
11 sections. The authority conferred in AS 18.70.010 - 18.70.100 [AND 18.70.310]
12 extends to the enforcement of the provisions of AS 11.46.400 - 11.46.430.

13 * **Sec. 3.** AS 18.70.100(a) is amended to read:

14 (a) A person who violates a provision of AS 18.70.010 - 18.70.100 [,
15 18.70.310,] or a regulation adopted under those sections, or who fails to comply with
16 an order issued under AS 18.70.010 - 18.70.100, [OR 18.70.310] is guilty of a class
17 B misdemeanor. When not otherwise specified, each 10 days that the violation or
18 noncompliance continues is a separate offense.

19 * **Sec. 4.** AS 29.35.500(a) is amended to read:

20 (a) If a municipality establishes a program for the reporting of hazardous
21 chemicals, hazardous materials, and hazardous wastes, then the municipality shall
22 require a business or a government agency that handles hazardous chemicals,
23 hazardous materials, or hazardous wastes to submit to a designated person or office of
24 the municipality, on a form approved by the **Alaska State Emergency Response**
25 **Commission** [DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE
26 PREVENTION], an inventory of the hazardous chemicals, hazardous materials, and
27 hazardous wastes the business or government agency handles.

28 * **Sec. 5.** AS 29.35.500(c) is amended to read:

29 (c) **Unless the Alaska State Emergency Response Commission or a**
30 **municipality, after public hearing, removes a substance listed in this subsection**
31 **from the reporting requirements within its jurisdiction, the** [THE] following

1 quantities of hazardous chemicals, hazardous materials, and hazardous wastes shall be
 2 reported in an inventory required under this section, and the commission [DIVISION
 3 OF FIRE PREVENTION] or a municipality may require the reporting of smaller
 4 quantities:

5 (1) any quantity of a hazardous material of the hazard class **identified**
 6 **in federal placarding regulations as** [OF]

7 (A) [POISON A;

8 (B)] Poison **Gas Hazard Division No. 2.3 and Poisons 6.1** [B];

9 **(B) Explosives 1.1** [(C) CLASS A EXPLOSIVE];

10 **(C) Explosives 1.2 and 1.3, excluding smokeless gunpowder,**
 11 **black powder, and ammunition** [(D) CLASS B EXPLOSIVE];

12 **(D)** [(E)] Flammable solid **Divisions 4.1, 4.2, and 4.3**
 13 [(DANGEROUS WHEN WET)]; or

14 **(E)** [(F)] Radioactive **Hazard Class 7;**

15 (2) [A CONSUMER COMMODITY OF A HAZARDOUS MATERIAL
 16 IN A QUANTITY OF MORE THAN 1,000 POUNDS;

17 (3)] a hazardous chemical, or a hazardous material other than one
 18 described in (1) of this subsection, if handled in a single day in an amount equal to or
 19 greater than **10,000** [500] pounds;

20 **(3)** [(4)] acute hazardous waste in a quantity of 2.2 pounds or more;

21 **(4)** [(5)] hazardous waste in a quantity of 220 pounds or more; **and**

22 **(5)** [(6)] extremely hazardous substances in a quantity equal to or more
 23 than 500 pounds or the threshold planning quantity, whichever is less [; AND

24 (7) COMPRESSED GASSES EQUAL TO OR MORE THAN 200
 25 CUBIC FEET AT STANDARD TEMPERATURE AND PRESSURE].

26 * **Sec. 6.** AS 29.35.510 is amended to read:

27 **Sec. 29.35.510. Inspections; penalties.** A municipality may conduct
 28 inspections, and establish and impose penalties, necessary to ensure compliance with
 29 reporting requirements adopted under AS 29.35.500 [AND PLACARDING
 30 REQUIREMENTS ADOPTED UNDER AS 18.70.310].

31 * **Sec. 7.** AS 29.35.520 is amended to read:

1 **Sec. 29.35.520. Fees.** A municipality may impose appropriate fees to fully or
 2 partially compensate for the cost of processing reports and administering inspections
 3 under AS 29.35.500 - 29.35.510 [AND THE COST OF PROVIDING PLACARDS
 4 UNDER AS 18.70.310. THE MUNICIPALITY MAY ESTABLISH A FEE
 5 SCHEDULE DIFFERENT FROM THE SCHEDULE ESTABLISHED BY THE
 6 DEPARTMENT OF PUBLIC SAFETY UNDER AS 18.70.310].

7 * **Sec. 8.** AS 29.35.530(a) is amended to read:

8 (a) The municipality [DEPARTMENT OF PUBLIC SAFETY, DIVISION OF
 9 FIRE PREVENTION], at the request of a business or government agency required to
 10 submit an inventory under AS 29.35.500 [OR OF A MUNICIPALITY], shall provide

11 (1) a descriptive summary of the hazardous chemicals, hazardous
 12 materials, and hazardous wastes that are required to be included in an inventory; and

13 (2) inventory forms approved by the Alaska State Emergency
 14 Response Commission.

15 * **Sec. 9.** AS 29.35.590(6) is repealed and reenacted to read:

16 (6) "hazardous chemical" has the meaning given in 29 C.F.R.
 17 1910.1200(c) except that it does not include

18 (A) a food, food additive, color additive, drug, or cosmetic
 19 regulated by the federal Food and Drug Administration;

20 (B) a substance present as a solid in a manufactured item to the
 21 extent exposure to the substance does not occur under normal conditions of
 22 use;

23 (C) a substance to the extent it is used for personal, family, or
 24 household purposes, or is present in the same form and concentration as a
 25 product packaged for distribution and use by the general public;

26 (D) a substance to the extent it is used in a research laboratory
 27 or a hospital or other medical facility under the direct supervision of a
 28 technically qualified individual; or

29 (E) a substance to the extent it is used in routine agricultural
 30 operations or is a fertilizer held for sale by a retailer to the ultimate customer.

31 * **Sec. 10.** AS 29.35.590(7) is amended to read:

1 (7) "hazardous material" means a material or substance, as defined in
 2 49 C.F.R. 171.8, and any other substance determined by the **Alaska State Emergency**
 3 **Response Commission in regulations** [DIVISION OF FIRE PREVENTION, OR BY
 4 A MUNICIPALITY FOR PURPOSES OF ITS OWN REPORTING PROGRAM,] to
 5 pose a significant health and safety hazard; "hazardous material" does not include food,
 6 drugs, alcoholic beverages, cosmetics, tobacco, or tobacco products intended for
 7 personal consumption;

8 * **Sec. 11.** AS 29.35.590(8) is amended to read:

9 (8) "hazardous waste" means

10 **(A) a hazardous waste as defined in AS 46.03.900;**

11 **(B) a hazardous waste as identified by the Environmental**
 12 **Protection Agency under 40 C.F.R. 261; [,] and**

13 **(C) any other hazardous waste defined by the Alaska State**
 14 **Emergency Response Commission in regulations** [DIVISION OF FIRE
 15 PREVENTION OR BY A MUNICIPALITY FOR PURPOSES OF ITS OWN
 16 REPORTING PROGRAM];

17 * **Sec. 12.** AS 46.03.822(a) is amended to read:

18 (a) Notwithstanding any other provision or rule of law and subject only to the
 19 defenses set out in (b) of this section, the exception set out in (i) of this section, **the**
 20 **exception set out in AS 09.65.240,** and the limitation on liability provided under
 21 AS 46.03.825, the following persons are strictly liable, jointly and severally, for
 22 damages, for the costs of response, containment, removal, or remedial action incurred
 23 by the state, a municipality, or a village, and for the additional costs of a function or
 24 service, including administrative expenses for the incremental costs of providing the
 25 function or service, that are incurred by the state, a municipality, or a village, and the
 26 costs of projects or activities that are delayed or lost because of the efforts of the state,
 27 the municipality, or the village, resulting from an unpermitted release of a hazardous
 28 substance or, with respect to response costs, the substantial threat of an unpermitted
 29 release of a hazardous substance:

30 (1) the owner of, and the person having control over, the hazardous
 31 substance at the time of the release or threatened release; this paragraph does not apply

1 to a consumer product in consumer use;

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

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

9 (4) any person who by contract, agreement, or otherwise arranged for
10 disposal or treatment, or arranged with a transporter for transport for disposal or
11 treatment, of hazardous substances owned or possessed by the person, other than
12 domestic sewage, or by any other party or entity, at any facility or vessel owned or
13 operated by another party or entity and containing hazardous substances, from which
14 there is a release, or a threatened release that causes the incurrence of response costs,
15 of a hazardous substance;

16 (5) any person who accepts or accepted any hazardous substances, other
17 than refined oil, for transport to disposal or treatment facilities, vessels or sites selected
18 by the person, from which there is a release, or a threatened release that causes the
19 incurrence of response costs, of a hazardous substance.

20 * **Sec. 13.** AS 18.70.310; AS 29.35.530(b), and 29.35.590(2) are repealed.

21 * **Sec. 14.** APPLICABILITY. (a) Except as provided in (b) of this section, the provisions
22 of AS 09.65.240, enacted by sec. 1 of this Act, apply to claims for damages caused by a
23 release of a hazardous substance that are filed on or after the effective date of sec. 1 of this
24 Act.

25 (b) The provisions of AS 09.65.240, enacted by sec. 1 of this Act, do not apply to a
26 claim by a person damaged by a release of a hazardous substance that occurs before the
27 effective date of sec. 1 of this Act if the claim is filed not more than one year after the person
28 knew or should have known that the person was damaged by the release of a hazardous
29 substance.

30 * **Sec. 15.** The Alaska State Emergency Response Commission shall approve an inventory
31 form for use under AS 29.35.500 so that it is available for distribution to municipalities under

1 AS 29.35.530 by January 1, 1998.