

Wilson

AMENDMENT #2

OFFERED IN THE HOUSE

TO: HCS SB 64(RLS)

1 Page 1, line 1, following "An Act": *(Title amendment)*
2 Insert "relating to the liability of a person for the release or threatened release of
3 hazardous substances present on certain land;"
4

5 Page 1, following line 5:

6 Insert new bill sections to read:

7 **** Section 1.** AS 46.03.822(a) is amended to read:

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

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

23 (2) the owner and the operator of a vessel or facility, from which there

1 is a release, or a threatened release that causes the incurrence of response costs, of a
2 hazardous substance;

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

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

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

18 * Sec. 2. AS 46.03.822(d) is amended to read:

19 (d) To establish that a person had no reason to know that the hazardous
20 substance was disposed of on, in, or at the facility, as provided in (c)(1) and (l) of this
21 section, **or to establish that a person had no reason to know that the hazardous**
22 **substance was present on the land at the time the ownership of the land was**
23 **transferred to the person, as provided in (n) of this section,** the person must have
24 undertaken, at the time of voluntary acquisition, all reasonable inquiries into the
25 previous ownership and uses of the property consistent with good commercial or
26 customary practice in an effort to minimize liability. For purposes of this subsection a
27 court shall take into account all relevant facts, including

28 (1) any specialized knowledge or experience the person has;

29 (2) the relationship of the purchase price to the value of the property if
30 it were uncontaminated;

31 (3) commonly known or reasonably ascertainable information about

1 the property;

2 (4) the obviousness of the presence or likely presence of contamination
3 at the property; and

4 (5) the ability to detect contamination by appropriate inspection.

5 * **Sec. 3.** AS 46.03.822 is amended by adding a new subsection to read:

6 (n) In an action to recover damages or costs, a person otherwise liable under
7 this section for a release or threatened release of a hazardous substance on the person's
8 land is relieved from liability under this section if the person proves that the

9 (1) person did not know and had no reason to know that the hazardous
10 substance was present on the land at the time the ownership of the land was transferred
11 to the person; and

12 (2) hazardous substance was present on the land at the time the
13 ownership of the land was transferred to the person."
14

15 Page 1, line 6:

16 Delete "**Section 1**"

17 Insert "**Sec. 4**"

18

19 Renumber the following bill sections accordingly.

20

21 Page 13, line 26, following "implement":

22 Insert "sec. 4 of"

23

24 Page 13, line 29:

25 Delete "**Section 2**"

26 Insert "**Section 5**"