

Original sponsor: Resources Committee
by request

Offered: 4/19/72
Referred: Judiciary by
Chair

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 374

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for the discharge of
7 hazardous substances; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 46.03 is amended by adding new sections to read:

11 Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS
12 SUBSTANCES. To the extent not otherwise preempted by federal law, a
13 person owning or having control over a hazardous substance which enters
14 in or upon the waters, surface or subsurface lands of the state is
15 strictly liable, without regard to fault, for the damages to persons or
16 property, public or private, caused by the entry. If an action is
17 brought by the state to recover damages for oil pollution, liability is
18 limited as specified in sec. 760(b) of this chapter. In an action to
19 recover damages, the person is relieved from strict liability, without
20 regard to fault, if he can prove

21 (1) that the hazardous substance to which the damages relate
22 entered in or upon the waters, surface or subsurface lands of the state
23 solely as a result of

24 (A) an act of war,

25 (B) an intentional act or a negligent act of a third
26 party, other than a party (or its employees) in privity of contract
27 with, or employed by, the person,

28 (C) negligence on the part of the United States govern-
29 ment or the State of Alaska, or

1 (D) an act of God; and

2 (2) in relation to (1)(B), (C) or (D) of this section, that
3 he discovered the entry of the hazardous substance in or upon the waters,
4 surface or subsurface lands of the state and began operations to contain
5 and clean up the hazardous substance within a reasonable period of time.

6 Sec. 46.03.824. DAMAGES. Damages include but are not limited to
7 injury to or loss of persons or property, real or personal, loss of in-
8 come, loss of the means of producing income, or the loss of an economic
9 benefit.

10 Sec. 46.03.826. DEFINITIONS. In secs. 822 - 828 of this chapter

11 (1) "act of God" means an act of nature which is unforeseeable
12 in kind or degree;

13 (2) "economic benefit" means a benefit measurable in economic
14 terms, including but not limited to the gathering, catching, or killing
15 of food or other items utilized in a subsistence economy and their re-
16 placement cost;

17 (3) "hazardous substance" means

18 (A) an element or compound which, when it enters in or
19 upon the waters or surface or subsurface lands of the state,
20 presents an imminent and substantial danger to the public health or
21 welfare, including but not limited to fish, animals, vegetation, or
22 any part of the natural habitat in which they are found; or

23 (B) oil;

24 (4) "oil" means a derivative of a liquid hydrocarbon and
25 includes crude oil, lubricating oil, sludge, oil refuse or another
26 petroleum-related product or by-product;

27 (5) "owning or having control over a hazardous substance"
28 means producing, handling, storing, transporting or refining a hazardous
29 substance for commercial purposes immediately before entry of the

1 hazardous substance in or upon the waters, surface or subsurface lands of
2 the state, and specifically includes bailees and carriers of a hazardous
3 substance;

4 (6) "Subsistence economy" means an economy which utilizes on
5 a regular basis an item which is owned in common by the people of the
6 state, or the United States, including but not limited to fish, game, fur
7 bearing animals, birds, timber or any part of the natural habitat for
8 noncommercial purposes;

9 (7) "waters, surface or subsurface lands of the state" mean
10 all waters, surface or subsurface lands within the territorial limits of
11 the State of Alaska.

12 Sec. 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED. Nothing in
13 secs. 822 - 828 of this chapter abridges or alters a right of action or
14 remedy under another statute, in equity, or at common law. However, an
15 award of damages to a person or the state on a cause of action for an in-
16 jury under sec. 822 of this chapter bars recovery in an action by another
17 person or the state on the same cause of action for the same injury.

18 * Sec. 2. AS 46.03.870 is amended to read:

19 Sec. 46.03.870. ACTIONABLE RIGHTS. (a) Except as specified in
20 secs. 822 - 828 of this chapter, the THE] bases for proceedings or ac-
21 tions resulting from violations of this chapter or a regulation promul-
22 gated under this chapter inure solely to and are for the benefit of the
23 state, and are not intended to in any way create new, or enlarge existing
24 rights of persons or groups of persons in the state.

25 (b) Except as specified in secs. 822-828 of this chapter, a [A]
26 determination or order of the department creates no presumption of law or
27 finding of fact inuring to or for the benefit of persons other than the
28 state.

29 (c) This chapter does not estop the state, persons or political

1 subdivisions of the state in the exercise of their rights to suppress
2 nuisances, to seek damages, or to otherwise abate or recover for the
3 effects of pollution or other environmental degradation.

4 * Sec. 3. This Act takes effect on the day after its passage and approval
5 or on the day it becomes law without approval.