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1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 459 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for releases of hazard-  
7 ous substances."

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

9 \* Section 1. AS 46.03.822 is repealed and reenacted to read:

10 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS  
11 SUBSTANCES. (a) The following persons are strictly liable, jointly  
12 and severally, for damages to persons or property, public or private,  
13 including damage to the natural resources of the state and the costs  
14 of response, containment, removal, or remedial action incurred by the  
15 state or a municipality, resulting from a release of a hazardous  
16 substance or, with respect to response costs, the substantial threat  
17 of a release of a hazardous substance:

18 (1) the owner and the person having control over the hazard-  
19 ous substance at the time of the release or threatened release;

20 (2) the owner and the operator of the facility or vessel  
21 from which the release occurred or was threatened to occur; in the  
22 case of an abandoned facility or vessel, the owner, the operator, and  
23 any other person who controlled activities at the facility or on the  
24 vessel immediately before the abandonment;

25 (3) a person who owned or operated the facility or vessel  
26 from which the release occurred or was threatened to occur at the time  
27 the hazardous substance was received by the facility or vessel;

28 (4) a person who owned the hazardous substance and who  
29 arranged for disposal or treatment of the substance by another party

1 or entity, or arranged with a transporter to transport the substance  
2 for disposal or treatment by another party or entity, at a facility or  
3 incineration vessel that contained the substance and that was owned or  
4 operated by the party or entity; and

5 (5) a person who transported or accepted the hazardous  
6 substance for transport to the facility, vessel, or site from which  
7 the release occurred or was threatened to occur, if the person select-  
8 ed the facility, vessel, or site.

9 (b) In an action to recover damages, a person otherwise liable  
10 is relieved from strict liability if the person proves by clear and  
11 convincing evidence

12 (1) that the release or threatened release of the hazardous  
13 substance to which the damages relate occurred solely as a result of

14 (A) an act of war;

15 (B) an intentional or negligent act of a third party,  
16 other than a party or its employees in privity of contract with,  
17 or employed by, the person, and that the person

18 (i) exercised due care with respect to the haz-  
19 ardous substance; and

20 (ii) took reasonable precautions against the act  
21 of the third party and against the consequences of the act;  
22 or

23 (C) an act of God; and

24 (2) in relation to (1)(B) or (C) of this subsection, that  
25 the person, within a reasonable period of time after the act occurred,

26 (A) discovered the release or threatened release of  
27 the hazardous substance; and

28 (B) began operations to contain and clean up the  
29 hazardous substance.

1           (c) For purposes of (b)(1)(B) of this section, a third party or  
2           an employee of a third party is in privity of contract with the person  
3           who is otherwise liable if the third party or employee and the person  
4           are parties to a land contract, deed, or other instrument transferring  
5           title or possession, unless the real property on which the facility in  
6           question is located was acquired by the person after the disposal or  
7           placement of the hazardous substance on, in, or at the facility, and  
8           the person by a preponderance of the evidence establishes that the  
9           person has satisfied the requirements of (b)(1)(B) of this section and  
10          establishes one or more of the following circumstances:

11                 (1) at the time the person acquired the facility the person  
12          did not know and had no reason to know that a hazardous substance that  
13          is the subject of the release or threatened release was disposed of  
14          on, in, or at the facility;

15                 (2) the person is a government entity that acquired the  
16          facility by escheat, or through another involuntary transfer or acqui-  
17          sition, or through the exercise of eminent domain authority by pur-  
18          chase or condemnation;

19                 (3) the person acquired the facility by inheritance or  
20          bequest.

21           (d) To establish that a person had no reason to know that the  
22          hazardous substance was disposed of, on, in, or at the facility, as  
23          provided in (c)(1) of this section, the person must have undertaken,  
24          at the time of acquisition, all appropriate inquiries into the previ-  
25          ous ownership and uses of the property consistent with good commercial  
26          or customary practice in an effort to minimize liability. For pur-  
27          poses of this subsection the court shall take into account any spe-  
28          cialized knowledge or experience the person has; the relationship of  
29          the purchase price to the value of the property if uncontaminated;

1 commonly known or reasonably ascertainable information about the  
2 property; the obviousness of the presence or likely presence of con-  
3 tamination at the property; and the ability to detect contamination by  
4 appropriate inspection.

5 (e) This section does not diminish the liability of a person who  
6 previously owned or operated a facility and who would otherwise be  
7 liable; however, if the person obtained actual knowledge of the re-  
8 lease or threatened release of a hazardous substance at the facility  
9 and subsequently transferred ownership to another without disclosing  
10 that knowledge, the person is liable under (a)(2) of this section, and  
11 a defense under (b)(1)(B) of this section is not available to the  
12 person.

13 (f) This section does not affect the liability of a person who,  
14 by an act or omission, caused or contributed to the release or threat-  
15 ened release of a hazardous substance that is the subject of the  
16 action relating to the facility.

17 (g) An indemnification, hold harmless, or similar agreement or  
18 conveyance is not effective to transfer liability under this section  
19 from the owner or operator of a vessel or facility or from a person  
20 who may be liable for a release or substantial threat of a release  
21 under this section. This subsection does not bar an agreement to  
22 insure, hold harmless, or indemnify a party to the agreement for  
23 liability under this section. This subsection does not bar a cause of  
24 action that an owner or operator or other person subject to liability  
25 under this section, or a guarantor, has or would have, by reason of  
26 subrogation or otherwise against a person.

27 \* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

28 (8) "facility" includes a

29 (A) building; structure; installation; equipment; pipe

1 or pipeline, including a pipe into a sewer or publicly owned  
2 treatment works; well; pit; pond; lagoon; impoundment; ditch;  
3 landfill; storage container; motor vehicle; rolling stock; or  
4 aircraft; or

5 (B) site or area at which a hazardous substance has  
6 been deposited, stored, disposed of, placed, or otherwise locat-  
7 ed.