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1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 68

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to liability for the release or
7 threatened release of a hazardous substance and to
8 recovery of state costs for an oil or hazardous
9 substance release; and providing for an effective
10 date."

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

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 AS 46.03.822 is repealed and reenacted to read:

13 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
14 SUBSTANCES. (a) Notwithstanding any other provision or rule of law,
15 the following persons are strictly liable, jointly and severally, for
16 damages to persons or property, whether public or private, including
17 damage to the natural resources of the state or a municipality, and
18 for the costs of response, containment, removal, or remedial action
19 incurred by the state or a municipality, resulting from a release of a
20 hazardous substance or, with respect to response costs, the substan-
21 tial threat of a release of a hazardous substance:

22 (1) the owner of, and the person having control over, the
23 hazardous substance at the time of the release or threatened release;

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

29 (3) a person who owned or operated the facility or vessel

1 from which the release occurred or was threatened to occur at the time
2 the hazardous substance was received by the facility or vessel;

3 (4) a person who owned, controlled, or possessed the haz-
4 ardous substance and who arranged for disposal, storage, or treatment
5 of the substance by another party or entity, or arranged with a trans-
6 porter to transport the substance for disposal, storage, or treatment
7 by another party or entity, if the release occurred or was threatened
8 to occur at a facility or vessel that contained the substance and that
9 was owned or operated by another party or entity; and

10 (5) a person who transported the hazardous substance, or
11 accepted the hazardous substance for transport, to the facility,
12 vessel, or site from which the release occurred or was threatened to
13 occur, if the person selected the facility, vessel, or site.

14 (b) In an action to recover damages or costs, a person otherwise
15 liable under this section is relieved from strict liability if the
16 person proves by clear and convincing evidence

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

19 (A) an act of war;

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

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

25 (ii) took reasonable precautions against the act
26 of the third party and against the consequences of the act;

27 or

28 (C) an act of God; and

29 (2) in relation to (1)(B) or (C) of this subsection, that

1 the person, within a reasonable period of time after the act occurred,

2 (A) discovered the release or threatened release of
3 the hazardous substance; and

4 (B) began operations to contain and clean up the
5 hazardous substance.

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

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

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

24 (3) the person acquired the facility by inheritance or
25 bequest.

26 (d) To establish that a person had no reason to know that the
27 hazardous substance was disposed of on, in, or at the facility, as
28 provided in (c)(1) of this section, the person must have undertaken,
29 at the time of acquisition, all appropriate inquiries into the

1 previous ownership and uses of the property consistent with good
2 commercial or customary practice in an effort to minimize liability.
3 For purposes of this subsection a court shall take into account

4 (1) any specialized knowledge or experience the person has;
5 (2) the relationship of the purchase price to the value of
6 the property if uncontaminated; commonly known or reasonably ascer-
7 tainable information about the property;

8 (3) the obviousness of the presence or likely presence of
9 contamination at the property; and

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

12 (e) This section does not diminish the liability of a person who
13 previously owned or operated a facility and who would otherwise be
14 liable. If the person obtained actual knowledge of the release or
15 threatened release of a hazardous substance at the facility and subse-
16 quently transferred ownership to another without disclosing that
17 knowledge, the person is liable under (a)(2) of this section, and a
18 defense under (b)(1)(B) of this section is not available to the per-
19 son.

20 (f) This section does not diminish the liability of a person
21 who, by an act or omission, caused or contributed to the release or
22 threatened release of a hazardous substance that is the subject of the
23 action relating to the facility.

24 (g) An indemnification, hold harmless, or similar agreement, or
25 conveyance of any nature is not effective to transfer liability under
26 this section from the owner or operator of a vessel or facility or
27 from a person who might be liable for a release or substantial threat
28 of a release under this section. This subsection does not bar an
29 agreement to insure, hold harmless, or indemnify a party to the

1 agreement for liability under this section. This subsection does not
2 bar a cause of action that an owner or operator or other person sub-
3 ject to liability under this section, or a guarantor, has or would
4 have, by reason of subrogation or otherwise against another person.

5 * Sec. 2. AS 46.03.826 is amended by adding new paragraphs to read:

6 (8) "facility" includes a

7 (A) building, structure, installation, equipment, pipe
8 or pipeline, including a pipe into a sewer or publicly owned
9 treatment works, well, pit, pond, lagoon, impoundment, ditch,
10 landfill, storage container, motor vehicle, rolling stock, or
11 aircraft, or

12 (B) site or area at which a hazardous substance has
13 been deposited, stored, disposed of, placed, or otherwise locat-
14 ed;

15 (9) "natural resources" means land, fish, wildlife, biota,
16 air, water, ground water, drinking water supplies, and other such
17 resources belonging to, managed by, held in trust by, appertaining to,
18 or otherwise controlled by the state or a municipality;

19 (10) "vessel" means every description of watercraft or other
20 artificial contrivance that is used, or is capable of being used, as a
21 means of transportation on water, or that carries hazardous substances
22 for the purpose of incineration of such substances.

23 * Sec. 3. AS 46.08 is amended by adding a new section to read:

24 Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE
25 EXPENDITURES. (a) The state has a lien for expenditures by the state
26 from the oil and hazardous substance release response fund or from any
27 other state fund, for the costs of response, containment, removal, or
28 remedial action resulting from an oil or hazardous substance spill,
29 or, with respect to response, costs, the substantial threat of a

1 release of oil or a hazardous substance against all property owned by
2 a person who is determined by the commissioner to be liable for the
3 expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607,
4 or other state or federal law. The lien includes interest, at the
5 maximum rate allowable under AS 45.45.010(a), from the date of the
6 expenditures. The state may file an action in a court of competent
7 jurisdiction in order to foreclose on the lien.

8 (b) A lien established under this section against real property
9 is not effective unless

10 (1) a certificate of lien is recorded in the district
11 recorder's office for the district in which the property is located,
12 describing the property and stating the amount of the lien, the name
13 of the owner as grantor, and, if known, the name of the person causing
14 the oil or hazardous substance release; and

15 (2) the commissioner sends a copy of the certificate of
16 lien, by certified mail, to the persons described in (1) of this
17 subsection and to all other persons of record holding an interest in
18 the property.

19 (c) When any amount with respect to which a lien has been re-
20 corded under this section has been paid or reduced, the commissioner
21 shall, upon request of the property owner, issue a certificate dis-
22 charging or partially releasing the lien. That certificate may be
23 recorded in the office in which the certificate of lien was recorded.

24 (d) A person with an ownership interest in property against
25 which a lien is recorded may bring an action in a court of competent
26 jurisdiction to require that the lien be released. The lien may be
27 released to the extent of that person's ownership interest if the
28 court finds that that owner of the property is not liable for the
29 expenses incurred by the state in connection with the costs of

1 response, containment, removal, or remedial action resulting from the
2 oil or hazardous substance release or threat of release of oil or a
3 hazardous substance.

4 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).