

Amended: 4/7/89

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Offered: 3/31/89
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 68 (Judiciary) am
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; recovery
8 of state costs for an oil or hazardous substance
9 release; liability of response action contractors;
10 and providing for an effective date."

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

12 * Section 1. AS 40.17.110(b) is amended by adding a new paragraph to
13 read:

14 (60) a certificate relating to a lien under AS 46.08.075.

15 * Sec. 2. AS 46.03.822 is repealed and reenacted to read:

16 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
17 SUBSTANCES. (a) Notwithstanding any other provision or rule of law
18 and subject only to the defenses set out in (b) of this section, the
19 following persons are strictly liable, jointly and severally, for
20 damages to persons or property, whether public or private, including
21 damage to the natural resources of the state or a municipality, and
22 for the costs of response, containment, removal, or remedial action
23 incurred by the state or a municipality, resulting from an unpermitted
24 release of a hazardous substance or, with respect to response costs,
25 the substantial threat of an unpermitted release of a hazardous sub-
26 stance:

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

29 (2) the owner, and the operator, of the facility or vessel

1 from which the release occurred or was threatened to occur;

2 (3) in the case of an abandoned facility or vessel, the
3 owner, the operator, and any other person who controlled activities at
4 the facility or on the vessel immediately before the abandonment;

5 (4) a person who owned or operated the facility or vessel
6 from which the release occurred or was threatened to occur at the time
7 the hazardous substance was received by the facility or vessel;

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

15 (6) a person who transported the hazardous substance, or
16 accepted the hazardous substance for transport, to the facility or
17 vessel from which the release occurred or was threatened to occur, if
18 the person selected the facility or vessel.

19 (b) In an action to recover damages or costs, a person otherwise
20 liable under this section is relieved from liability under this
21 section if the person proves

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

24 (A) an act of war;

25 (B) except as provided under AS 46.03.823(c), an
26 intentional or negligent act or omission of a third party, other
27 than a party or its agents in privity of contract with, or em-
28 ployed by, the person, and that the person

29 (i) exercised due care with respect to the

1 hazardous substance; and

2 (ii) took reasonable precautions against the act

3 or omission of the third party and against the consequences

4 of the act or omission; or

5 (C) an act of God; and

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

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

8 (A) discovered the release or threatened release of

9 the hazardous substance; and

10 (B) began operations to contain and clean up the

11 hazardous substance.

12 (c) For purposes of (b)(1)(B) of this section, a third party or

13 an agent of a third party is in privity of contract with the person

14 who is otherwise liable, if the third party or its agent and the

15 person are parties to a land contract, deed, or other instrument

16 transferring title or possession of the real property on which the

17 facility in question is located, unless that property was acquired by

18 the person after the disposal or placement of the hazardous substance

19 on, in, or at the facility, and the person establishes that the person

20 has satisfied the requirements of (b)(1)(B) of this section and estab-

21 lishes that

22 (1) at the time the person acquired the facility the person

23 did not know and had no reason to know that a hazardous substance that

24 is the subject of the release or threatened release was disposed of

25 on, in, or at the facility; or

26 (2) the person is a governmental entity that acquired the

27 facility by escheat, or through another involuntary transfer or acqui-

28 sition, or through the exercise of eminent domain authority by pur-

29 chase or condemnation.

1 (d) To establish that a person had no reason to know that the
2 hazardous substance was disposed of on, in, or at the facility, as
3 provided in (c)(1) of this section, the person must have undertaken,
4 at the time of acquisition, all reasonable inquiries into the previous
5 ownership and uses of the property consistent with good commercial or
6 customary practice in an effort to minimize liability. For purposes
7 of this subsection a court shall take into account all relevant facts,
8 including

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

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

12 (3) commonly known or reasonably ascertainable information
13 about the property;

14 (4) the obviousness of the presence or likely presence of
15 contamination at the property; and

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

18 (e) This section does not diminish the liability of a person who
19 previously owned or operated a facility or vessel and who would other-
20 wise be liable. If the person obtained actual knowledge of the re-
21 lease or threatened release of a hazardous substance at the facility
22 or vessel and subsequently transferred ownership to another without
23 disclosing that knowledge, the person is liable under (a)(2) of this
24 section, and a defense under (b)(1)(B) of this section is not avail-
25 able to the person.

26 (f) This section does not diminish the liability of a person
27 who, by an act or omission, caused or contributed to the release or
28 threatened release of a hazardous substance that is the subject of the
29 action relating to the facility or vessel.

1 (g) An indemnification, hold harmless, or similar agreement, or
2 conveyance of any nature is not effective to transfer liability under
3 this section from the owner or operator of a facility or vessel or
4 from a person who might be liable for a release or substantial threat
5 of a release under this section. This subsection does not bar an
6 agreement to insure, hold harmless, or indemnify a party to the agree-
7 ment for liability under this section. This subsection does not bar a
8 cause of action that an owner, operator, or other person subject to
9 liability under this section, or a guarantor, has or would have, by
10 reason of subrogation or otherwise against another person.

11 (h) The state or a municipality is not liable under this section
12 for costs or damages as a result of actions taken in response to an
13 emergency created by a release or threatened release of a hazardous
14 substance generated by or from a facility or vessel owned by another
15 person unless the actions taken by the state or municipality consti-
16 tute gross negligence or intentional misconduct.

17 * Sec. 3. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

19 (a) A person who is a response action contractor with respect to a
20 release or threatened release of a hazardous substance is not civilly
21 liable for injuries, costs, damages, expenses, or other liability that
22 results from the release or threatened release unless the release or
23 threatened release is caused by an act or omission of the response
24 action contractor that is negligent or grossly negligent or consti-
25 tutes intentional misconduct. To show negligence by a response action
26 contractor, a claimant must show that the acts or omissions of the
27 contractor under the response action contract were not in accordance
28 with generally accepted professional standards and practices at the
29 time the response action services were performed.

1 (b) The liability limitation under (a) of this section does not
2 apply to a response action contractor who would otherwise be strictly
3 liable under any other provision of state or federal law.

4 (c) The defense provided in AS 46.03.822(b)(1)(B) is not avail-
5 able to a potentially liable person with respect to costs or damages
6 caused by an act or omission of a response action contractor.

7 (d) Except as provided in (c) of this section, this section does
8 not affect the liability under this chapter or under any other state
9 law of a person other than a response action contractor.

10 (e) This section does not affect the liability of a response
11 action contractor that may arise from the response action contractor's
12 failure to comply with the terms or conditions of a response action
13 contract or a remedial action plan if one has been approved by the
14 department.

15 (f) This section does not affect the liability of an employer
16 who is a response action contractor with respect to an employee of the
17 employer under any provision of law, including a law related to
18 workers' compensation.

19 (g) In this section,

20 (1) "response action" means an action taken in connection
21 with the mitigation or cleanup of a hazardous substance release or
22 threatened release, including investigation, evaluation, plan develop-
23 ment, mapping and surveying, engineering, design and construction,
24 removal, and equipment provision;

25 (2) "response action contract" means a written contract or
26 agreement to provide response action with respect to a release or
27 threatened release of a hazardous substance, entered into by a person
28 with

29 (A) the department; or

1 (B) another person who has entered into an agreement
2 with the department that provides for response action subject to
3 the department's oversight and control;

4 (3) "response action contractor" means

5 (A) a person who enters into a response action con-
6 tract with respect to a release or threatened release of a haz-
7 ardous substance and who is carrying out the contract; and

8 (B) a person who is retained or hired by and is under
9 the control of a person described in (A) of this paragraph to
10 provide services related to the response action contract.

11 * Sec. 4. AS 46.03.826(3) is amended to read:

12 (3) "having control over a hazardous substance" means
13 producing, handling, storing, transporting, or refining a hazardous
14 substance for commercial purposes immediately before entry of the
15 hazardous substance into the atmosphere or in or upon the water,
16 surface, or subsurface land of the state, and specifically includes
17 bailees and carriers of a hazardous substance;

18 * Sec. 5. AS 46.03.826(4) is amended to read:

19 (4) "hazardous substance" means

20 (A) an element or compound which, when it enters into
21 the atmosphere or in or upon the water or surface or subsurface
22 land of the state, presents an imminent and substantial danger to
23 the public health or welfare, including but not limited to fish,
24 animals, vegetation, or any part of the natural habitat in which
25 they are found; [OR]

26 (B) oil; or

27 (C) a substance defined as a hazardous substance under
28 42 U.S.C. 9601(14);

29 * Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

1 (8) "facility" includes a

2 (A) building, structure, installation, equipment,
3 well, pit, pond, lagoon, impoundment, ditch, landfill, storage
4 container, motor vehicle, rolling stock, aircraft, or pipe or
5 pipeline, including a pipe into a sewer or publicly-owned treat-
6 ment works;

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

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

14 (10) "vessel" means every description of watercraft or other
15 artificial contrivance that is used, or is capable of being used, as a
16 means of transportation on water, or that carries hazardous substances
17 for the purpose of incineration of the hazardous substances.

18 * Sec. 7. AS 46.08 is amended by adding a new section to read:

19 Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE
20 EXPENDITURES. (a) The state has a lien for expenditures by the state
21 from the oil and hazardous substance release response fund or from any
22 other state fund, for the costs of response, containment, removal, or
23 remedial action resulting from an oil or hazardous substance spill,
24 or, with respect to response, costs, the substantial threat of a
25 release of oil or a hazardous substance against all property owned by
26 a person who is determined by the commissioner to be liable for the
27 expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607,
28 or other state or federal law. The lien includes interest, at the
29 maximum rate allowable under AS 45.45.010(a), from the date of the

1 expenditures. The state may file an action in a court of competent
2 jurisdiction in order to foreclose on the lien.

3 (b) A lien established under this section against real property
4 is not effective until

5 (1) a certificate of lien is recorded in the district
6 recorder's office for the district in which the property is located,
7 describing the property and stating the amount of the lien, the name
8 of the owner as grantor, and, if known, the name of the person causing
9 the oil or hazardous substance release; and

10 (2) the commissioner sends a copy of the certificate of
11 lien by certified mail return receipt requested, or actually delivers
12 a copy of the certificate of lien, to the persons described in (1) of
13 this subsection and to all other persons of record holding an interest
14 in the property.

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

20 (d) The commissioner may, in his discretion, reduce, discharge
21 or partially release a lien under this section if a bond, or other
22 security, in a form and an amount satisfactory to the commissioner is
23 posted. The bond or other security shall include an amount sufficient
24 to cover the cost of execution, collection, or foreclosure, including
25 attorneys' fees. No reduction, discharge, or partial release shall be
26 granted under this subsection if it would be contrary to the public
27 interest. When a lien is reduced, discharged, or partially released
28 under this subsection, the commissioner shall, at the request of the
29 property owner, issue a certificate to that effect.

1 (e) A person with an ownership interest in property against
2 which a lien is recorded may bring an action in a court of competent
3 jurisdiction to require that the lien be released. The lien may be
4 released to the extent of that person's ownership interest if the
5 court finds that the person is not liable for the expenses incurred by
6 the state in connection with the costs of response, containment,
7 removal, or remedial action resulting from the oil or hazardous sub-
8 stance release or threat of release of oil or a hazardous substance.

9 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).