

HOUSE BILL NO. 196

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced: 3/6/91

Referred: House Special Committee on Oil and Gas, Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definition of 'response action'; and
4 providing for an effective date."

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

6 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) oil spill response action contractors operate in a crisis atmosphere and are required
8 to make immediate decisions on the basis of often incomplete information and poor communications;
9 the emergency nature of oil spill cleanup sets the activity apart from other more long-term forms of
10 environmental remediation;

11 (2) oil spill response action contractors with no involvement in the oil spill itself, and
12 who respond to the oil spill in good faith, face an unreasonable risk of involvement in litigation over
13 the oil spill;

14 (3) the magnitude and immediacy of the risk to the state's environment from the

1 production, transportation, and storage of oil in large quantities, particularly near and across state water,
2 require that special measures be taken to ensure that adequate containment and cleanup equipment are
3 promptly available within the state; no other commercial or industrial activity in the state presents the
4 same risk of sudden and catastrophic harm or requires the same extensive advance provision of local
5 response services;

6 (4) the unreasonable legal risks borne by oil spill response action contractors hinders the
7 state's goal of encouraging prompt and sufficient oil spill response by

8 (A) discouraging oil spill response action contractors from doing business in the
9 state;

10 (B) causing oil spill response action contractors to hesitate during the first critical
11 hours following the spill; and

12 (C) causing oil spill response action contractors to make their services available
13 to the private and public sectors only under impractical insurance and indemnification terms;

14 (5) the United States Congress and the legislatures of several coastal states have recently
15 enacted legislation insulating innocent oil spill response action contractors from these unreasonable legal
16 risks; this has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill
17 response services to the state; and

18 (6) damages occasioned by the good faith actions of an innocent oil spill response action
19 contractor, and the burdens of resultant litigation, should be borne by the persons responsible for the spill
20 rather than the response action contractor.

21 (b) It is the purpose of this Act to encourage prompt oil spill cleanup efforts by limiting the
22 liability of innocent oil spill response action contractors whose acts or omissions are a good faith
23 response to an oil spill.

24 * Sec. 2. AS 46.03.822(a) is amended to read:

25 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
26 set out in (b) of this section and the exception set out in (i) of this section, the following persons
27 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
28 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
29 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
30 containment, removal, or remedial action incurred by the state or a municipality, resulting from
31 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial

1 threat of an unpermitted release of a hazardous substance:

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

5 (2) the owner and the operator of a vessel or facility, from which there is a
6 release, or a threatened release that causes the incurrence of response costs, of a hazardous
7 substance;

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

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

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

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

23 (k) In this section, "damages" includes damage to persons or to public or private
24 property, damage to the natural resources of the state or a municipality, and damage caused by
25 acts or omissions of a response action contractor for which the response action contractor is not
26 liable under AS 46.03.823 or 46.03.825.

27 * Sec. 4. AS 46.03.823(a) is amended to read:

28 (a) A person who is a response action contractor with respect to a release or threatened
29 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
30 response plan or order by a state or federal agency having jurisdiction over the release or
31 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that

1 results from the release or threatened release unless the release or threatened release is caused
2 by an act or omission of the response action contractor that is negligent or grossly negligent or
3 constitutes intentional misconduct. To show negligence by a response action contractor, a
4 claimant must show that the acts or omissions of the contractor under the response action contract
5 were not in accordance with generally accepted professional standards and practices at the time
6 the response action services were performed.

7 * Sec. 5. AS 46.03 is amended by adding a new section to read:

8 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
9 is a response action contractor with respect to a release or threatened release of oil whose act or
10 omission is not contrary to a response plan or order of the federal or state on-scene coordinator
11 is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the
12 release or threatened release, or from the response action contractor's act or omission in response
13 to the release or threatened release, unless the person bringing a claim against the response action
14 contractor proves by a preponderance of the evidence that

15 (1) the response action contractor would have been liable for the release or
16 threatened release under state or federal law even if that contractor had not carried out a response
17 action with respect to the release or threatened release; or

18 (2) the response action contractor acted with gross negligence or intentional
19 misconduct.

20 (b) The limitation on liability contained in (a) of this section does not apply to an action
21 for personal injury or death.

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

23 (14) "response action" means an action taken in mitigation or cleanup of a
24 hazardous substance release or threatened release, including investigation, evaluation, plan
25 development, mapping and surveying, engineering, design and construction, removal, and
26 equipment provision;

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

30 (A) the department;

31 (B) another person who has entered into an agreement with the department

- 1 that provides for response action subject to the department's oversight and control;
- 2 (C) a federal agency with jurisdiction over the release or threatened
- 3 release; or
- 4 (D) another person potentially liable for the release or threatened release
- 5 under state or federal law;
- 6 (16) "response action contractor" means
- 7 (A) a person who enters into a response action contract with respect to a
- 8 release or threatened release of a hazardous substance and who is carrying out the
- 9 contract, including a cooperative organization formed to maintain and supply response
- 10 equipment and materials that enters into a response action contract relating to a release
- 11 or threatened release; and
- 12 (B) a person who is retained or hired by and is under the control of a
- 13 person described in (A) of this paragraph to provide services related to the response
- 14 action contract.
- 15 * Sec. 7. AS 46.03.823(g) is repealed.
- 16 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).