

**CS FOR HOUSE BILL NO. 196 (OIL & GAS)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**Offered: 3/13/91**

**Referred: Resources, Judiciary, Finance**

**Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**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 definitions of 'response action' and  
4 'response action contractor'; and 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

22 (1) define the liability of oil spill response action contractors in light of the crisis  
23 atmosphere in which they operate, and the uniquely severe consequences to the state of inadequate  
24 locally available oil spill cleanup capability;

25 (2) remove the existing deterrent to prompt and sufficient oil spill cleanup in this state;

26 (3) place this state on an equal competitive footing with other states in attracting oil spill  
27 cleanup capability to this state; and

28 (4) place the liability for good faith response action on the person responsible for the  
29 spill, rather than the response action contractor.

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

31 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

1 set out in (b) of this section and the exception set out in (i) of this section, the following persons  
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,  
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL  
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,  
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from  
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial  
7 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

29 (k) In this section, "damages" includes damage to persons or to public or private  
30 property, damage to the natural resources of the state or a municipality, and damage caused by  
31 acts or omissions of a response action contractor for which the response action contractor is not

1           liable under AS 46.03.823 or 46.03.825.

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

3           (a) A person who is a **response action contractor** with respect to a release or threatened  
4   release of a hazardous substance **other than oil** whose acts or omissions are not contrary to a  
5   response plan or order by a state or federal agency having jurisdiction over the release or  
6   threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that  
7   results from the release or threatened release unless the release or threatened release is caused  
8   by an act or omission of the response action contractor that is negligent or grossly negligent or  
9   constitutes intentional misconduct. To show negligence by a response action contractor, a  
10   claimant must show that the acts or omissions of the contractor under the response action contract  
11   were not in accordance with generally accepted professional standards and practices at the time  
12   the response action services were performed.

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

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

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

24           (2) the response action contractor acted with gross negligence or intentional  
25   misconduct.

26           (b) The limitation on liability contained in (a) of this section does not apply to

27           (1) an action for personal injury or death; or

28           (2) an act or omission contrary to a representation of the response action  
29   contractor asserting limited liability under (a) of this section, if

30           (A) the representation was incorporated into a contingency plan approved  
31   under AS 46.04.030 of a person responsible for the release or threatened release under

1 AS 46.03.822; and

2 (B) the act or omission was the result of gross negligence or intentional  
3 misrepresentation.

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

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

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

12 (A) the department;

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

15 (C) a federal agency with jurisdiction over the release or threatened  
16 release; or

17 (D) another person potentially liable for the release or threatened release  
18 under state or federal law;

19 (16) "response action contractor" means

20 (A) a person who enters into a response action contract with respect to a  
21 release or threatened release of a hazardous substance and who is carrying out the  
22 contract, including a cooperative organization formed to maintain and supply response  
23 equipment and materials that enters into a response action contract relating to a release  
24 or threatened release;

25 (B) a person who is retained or hired by and is under the control of a  
26 person described in (A) of this paragraph to provide services related to the response  
27 action contract; and

28 (C) a person who acts as a volunteer and is engaged in a response action.

29 \* Sec. 7. AS 46.03.823(g) is repealed.

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