

CS FOR HOUSE BILL NO. 196 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/1/91  
Referred: 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'; relating to agreements between response action contractors and  
5 other persons; relating to a report by the Citizens Oversight Council on Oil and Other  
6 Hazardous Substances; providing for the repeal of changes made by this Act in one year;  
7 and providing for an effective date."

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

9 \* Section 1. AS 46.03.822(a) is amended to read:

10 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
11 set out in (b) of this section and the exception set out in (i) of this section, the following persons  
12 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,  
13 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL

1 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,  
2 containment, removal, or remedial action incurred by the state or a municipality, resulting from  
3 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial  
4 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

25 \* Sec. 2. AS 46.03.822(a) is repealed and reenacted to read:

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
27 set out in (b) of this section and the exception set out in (i) of this section, the following persons  
28 are strictly liable, jointly and severally, for damages to persons or property, whether public or  
29 private, including damage to the natural resources of the state or a municipality, and for the costs  
30 of response, containment, removal, or remedial action incurred by the state or a municipality,  
31 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,

1 the substantial 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" include damage to persons or to public or private property,  
24 damage to the natural resources of the state or a municipality, and damage caused by acts or  
25 omissions of a response action contractor for which the response action contractor is not liable  
26 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 46.03.823(a) is repealed and reenacted to read:

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

18 \* Sec. 6. AS 46.03.823(g) is repealed and reenacted to read:

19 (g) In this section, "response action" means an action taken in connection with the  
20 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,  
21 including investigation, evaluation, plan development, mapping and surveying, engineering,  
22 design and construction, removal, and equipment provision.

23 \* Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

24 (g) In this section,

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

29 (2) "response action contract" means a written contract or agreement to provide  
30 response action with respect to a release or threatened release of a hazardous substance, entered  
31 into by a person with

- 1 (A) the department;  
2 (B) another person who has entered into an agreement with the department  
3 that provides for response action subject to the department's oversight and control;  
4 (C) a federal agency with jurisdiction over the release or threatened  
5 release; or  
6 (D) another person potentially liable for the release or threatened release  
7 under state or federal law;

8 (3) "response action contractor" means

9 (A) a person who enters into a response action contract with respect to a  
10 release or threatened release of a hazardous substance and who is carrying out the  
11 contract, including a cooperative organization formed to maintain and supply response  
12 equipment and materials that enters into a response action contract relating to a release  
13 or threatened release; and

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

17 \* Sec. 8. AS 46.03 is amended by adding a new section to read:

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

25 (1) the response action contractor would have been liable for the initial release  
26 or threatened release under AS 46.03.822 even if that contractor had not carried out a response  
27 action;

28 (2) the response action contractor acted with gross negligence or intentional  
29 misconduct; or

30 (3) the response action contractor, without approval by the federal or state on-  
31 scene coordinator, substantially deviated from an oil spill contingency plan previously approved

1 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible  
2 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms  
3 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

6 (2) an action for damages to tangible personal property not caused by oil; or

7 (3) an act or omission that occurs more than 15 days after the release.

8 (c) If the liability of an oil spill response action contractor is not limited under (a) of this  
9 section or if the provisions of (a) of this section do not apply because of (b) of this section, the  
10 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or  
11 other liability that results from the response action contractor's act or omission with respect to  
12 a release or threatened release of oil unless the act or omission of the oil spill response action  
13 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection  
14 does not apply to an oil spill response action contractor who would have been liable for the  
15 initial release or threatened release of oil under AS 46.03.822 even if that contractor had not  
16 carried out a response action.

17 (d) A response action contract entered into by a person who is required to show financial  
18 responsibility under AS 46.04.040, and a response action contractor under this section that  
19 requires the person to demonstrate financial ability to respond to the response action contractor  
20 in damages must provide that the person may demonstrate financial responsibility in any of the  
21 forms allowed under AS 46.04.040(e), and regulations adopted under that section, if the form of  
22 financial responsibility is approved by the department. A term that violates this subsection is  
23 void and severable from the remainder of the agreement.

24 (e) In this section, "response action" means an action taken to respond to a release or  
25 threatened release of oil, including but not limited to mitigation, clean up, or removal of a release  
26 or threatened release of oil.

27 \* Sec. 9. AS 46.03.826 is amended by adding new paragraphs to read:

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

31 (A) the department;

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

3 (C) a federal agency with jurisdiction over the release or threatened  
4 release; or

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

7 (15) "response action contractor" means

8 (A) a person who enters into a response action contract with respect to a  
9 release or threatened release of a hazardous substance and who is carrying out the  
10 contract, including a cooperative organization formed to maintain and supply response  
11 equipment and materials that enters into a response action contract relating to a release  
12 or threatened release;

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

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

17 \* Sec. 10. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

18 \* Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances  
19 (AS 24.20.600) shall review the entire subject of response action contractor civil liability and the status  
20 of oil spill contingency plan holders. The review of both subjects shall be completed and a report  
21 submitted to the legislature before January 15, 1992. The report must address whether further  
22 modifications are necessary to state laws on response action contractor civil liability, and include an  
23 analysis of whether the present state laws that require shippers and owners to hold contingency plans  
24 and that enable shippers and owners to contract with response action contractors to carry out contingency  
25 plans are adequate to protect the public in the event of an oil spill.

26 \* Sec. 12. AS 46.03.825(d), enacted by sec. 8 of this Act, applies to a response action contract  
27 entered into or renewed on or after the effective date of sec. 8 of this Act.

28 \* Sec. 13. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

29 \* Sec. 14. Sections 1, 3, 4, 6, 8, 9, 11, and 12 of this Act take effect immediately under  
30 AS 01.10.070(c).