

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

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/2/91

Referred: Rules

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 a report by the Citizens Oversight Council on Oil
5 and Other Hazardous Substances; providing for the repeal on July 1, 1992, of changes
6 made by this Act; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

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

1 containment, removal, or remedial action incurred by the state or a municipality, resulting from
2 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
3 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

24 * Sec. 2. AS 46.03.822(a) is repealed and reenacted 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, whether public or
28 private, including damage to the natural resources of the state or a municipality, and for the costs
29 of response, containment, removal, or remedial action incurred by the state or a municipality,
30 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
31 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

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

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

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

6 * Sec. 5. AS 46.03.823(a) is repealed and reenacted to read:

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

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

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

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

23 (g) In this section,

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

28 (2) "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 (3) "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; and

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.

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

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

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

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

29 (3) the response action contractor, without approval by the federal or state on-
30 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
31 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible

1 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
2 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

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

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

16 (d) In this section, "response action" means an action taken to respond to a release or
17 threatened release of oil, including but not limited to mitigation, clean up, or removal of a release
18 or threatened release of oil.

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

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

23 (A) the department;

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

26 (C) a federal agency with jurisdiction over the release or threatened
27 release; or

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

30 (15) "response action contractor" means

31 (A) a person who enters into a response action contract with respect to a

1 release or threatened release of a hazardous substance and who is carrying out the
2 contract, including a cooperative organization formed to maintain and supply response
3 equipment and materials that enters into a response action contract relating to a release
4 or threatened release;

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

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

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

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

18 * Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

19 * Sec. 13. Sections 1, 3, 4, 6, 8, 9, and 11 of this Act take effect immediately under AS 01.10.070(c).