

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&G)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

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

**Offered: 3/11/92**

**Referred: Resources, Judiciary**

**Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act limiting the liability of an oil spill response action contractor for release or  
2 threatened release of a hazardous substance and for an act or omission that is not  
3 contrary to a state or national oil spill contingency plan or, notwithstanding the state or  
4 national plan, that is not contrary to an order of an on-scene coordinator; repealing the  
5 requirements that liability is not limited in an action for damages to personal property  
6 not caused by oil and is only limited if the act or omission occurs within 15 days after  
7 the release of oil; repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing  
8 for an effective date."

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

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

11 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
12 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the

1 **limitation on liability provided under AS 46.03.825**, the following persons are strictly liable,  
2 jointly and severally, for damages, for the costs of response, containment, removal, or remedial  
3 action incurred by the state, a municipality, or a village, and for the additional costs of a function  
4 or service, including administrative expenses for the incremental costs of providing the function  
5 or service, that are incurred by the state, a municipality, or a village, and the costs of projects  
6 or activities that are delayed or lost because of the efforts of the state, the municipality, or the  
7 village, resulting from an unpermitted release of a hazardous substance or, with respect to  
8 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

29 \* **Sec. 2.** AS 46.03.825(a) is amended to read:

30 (a) A person who is a response action contractor with respect to a release or threatened  
31 release of oil [**WHOSE ACT OR OMISSION IS NOT CONTRARY TO AN ORDER OF THE**

1 FEDERAL OR STATE ON-SCENE COORDINATOR] is not civilly liable for injuries, costs,  
2 damages, expenses, or other liability that results from the release or threatened release, or from  
3 the response action contractor's act or omission in response to the release or threatened release,  
4 unless the person bringing a claim against the response action contractor proves by a  
5 preponderance of the evidence that

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

9 (2) the response action contractor acted with gross negligence or intentional  
10 misconduct; [OR]

11 (3) the act or omission of the response action contractor was contrary to an  
12 order of the federal on-scene coordinator, or to the extent that the federal on-scene  
13 coordinator has not otherwise ordered, to an order of the state on-scene coordinator; or

14 (4) the act or omission of the response action contractor

15 (A) was contrary in a material or substantial respect to the national  
16 contingency plan prepared under 33 U.S.C. 1321(d), or to the extent that the national  
17 contingency plan has not otherwise provided, to the state contingency plan prepared  
18 under AS 46.04.200 or 46.04.210; and

19 (B) did not result from an order of the federal on-scene coordinator,  
20 or to the extent that the federal on-scene coordinator has not otherwise ordered,  
21 from an order of the state on-scene coordinator [THE RESPONSE ACTION  
22 CONTRACTOR, WITHOUT APPROVAL BY THE FEDERAL OR STATE ON-SCENE  
23 COORDINATOR, SUBSTANTIALLY DEVIATED FROM AN OIL SPILL  
24 CONTINGENCY PLAN PREVIOUSLY APPROVED UNDER AS 46.04.030, AND THE  
25 PLAN WAS EITHER PREPARED BY THAT CONTRACTOR FOR A PARTY  
26 RESPONSIBLE FOR THE RELEASE UNDER AS 46.03.822 OR THAT CONTRACTOR  
27 PREVIOUSLY AGREED TO COMPLY WITH THE TERMS OF THAT PLAN UNDER  
28 A CONTRACT WITH PARTIES RESPONSIBLE FOR THE RELEASE UNDER  
29 AS 46.03.822].

30 \* Sec. 3. AS 46.03.825(b) is amended to read:

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

1                    **[(1)] an action for personal injury or death [;**  
2                    **(2) AN ACTION FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY**  
3                    **NOT CAUSED BY OIL; OR**  
4                    **(3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER**  
5                    **THE RELEASE].**

6    \* **Sec. 4.** Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

7    \* **Sec. 5.** If this Act takes effect after June 30, 1992, sec. 4 of this Act is retroactive to June 30, 1992.

8    \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).