

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (RESOURCES)**

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

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 4/21/92**

**Referred: 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, MacLean**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the liability of the state for certain registration, planning, and  
2 response activities related to oil spills; relating to liability for release or threatened release  
3 of a hazardous substance; relating to the liability of an oil spill response action contractor  
4 for release or threatened release of a hazardous substance; relating to the duty of, and  
5 charges or financial responsibility requirements related to that duty imposed by, the  
6 common operating agent for the holders and lessees of the right-of-way agreement for the  
7 Trans Alaska Pipeline System to control and contain oil discharges; relating to oil  
8 discharge and contingency plans; relating to registration of an oil spill response action  
9 contractor; repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for  
10 an effective date."

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

12 \* Section 1. AS 09.50.250 is amended to read:

1           Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or  
2 corporation having a contract, quasi-contract, or tort claim against the state may bring an action  
3 against the state in the superior court. A person who may present the claim under AS 44.77 may  
4 not bring an action under this section except as set out in AS 44.77.040(c). A person who may  
5 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except  
6 as set out in AS 36.30.685. However, an action may not be brought under this section if the  
7 claim

8           (1) is an action for tort, and is based upon an act or omission of an employee of  
9 the state, exercising due care, in the execution of a statute or regulation, whether or not the  
10 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance  
11 or the failure to exercise or perform a discretionary function or duty on the part of a state agency  
12 or an employee of the state, whether or not the discretion involved is abused;

13           (2) is for damages caused by the imposition or establishment of a quarantine by  
14 the state;

15           (3) arises out of assault, battery, false imprisonment, false arrest, malicious  
16 prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with  
17 contract rights; [OR]

18           (4) arises out of the use of an ignition interlock device certified under  
19 AS 33.05.020(c); or

20           (5) arises out of

21           (A) registration and approval of an oil spill primary response action  
22 contractor under AS 46.04.035;

23           (B) approval of an oil spill contingency plan under AS 46.04.030; or

24           (C) an act or omission of the state, an employee of the state, or a  
25 person who contracts with the state in responding to or directing a response to a  
26 release or threatened release of oil, unless the act or omission resulted from gross  
27 negligence or intentional misconduct; in this subparagraph, "oil" has the meaning  
28 given in AS 46.03.826.

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

30           (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
31 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. 3. AS 46.03.822(b) is amended to read:

30 (b) In an action to recover damages or costs, a person otherwise liable under this section  
31 is relieved from liability under this section if the person proves

1 (1) that the release or threatened release of the hazardous substance to which the  
2 damages relate occurred solely as a result of

3 (A) an act of war;

4 (B) except as provided under AS 46.03.823(c) and 46.03.825(e), an  
5 intentional or negligent act or omission of a third party, other than a party or its agents  
6 in privity of contract with, or employed by, the person, and that the person

7 (i) exercised due care with respect to the hazardous substance; and

8 (ii) took reasonable precautions against the act or omission of the  
9 third party and against the consequences of the act or omission; or

10 (C) an act of God; and

11 (2) in relation to (1)(B) or (C) of this subsection, that the person, within a  
12 reasonable period of time after the act occurred,

13 (A) discovered the release or threatened release of the hazardous  
14 substance; and

15 (B) began operations to contain and clean up the hazardous substance.

16 \* Sec. 4. AS 46.03.822(k) is amended to read:

17 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes  
18 [INCLUDE] damage to persons or to public or private property, damage to the natural resources  
19 of the state or a municipality, and damage caused by acts or omissions of a response action  
20 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

21 \* Sec. 5. AS 46.03.825(a) is repealed and reenacted to read:

22 (a) A response action contractor who responds to a release or threatened release of oil  
23 is not civilly liable for removal costs or damages that result from an act or omission in the course  
24 of providing care, assistance, or advice

25 (1) consistent with a contingency plan

26 (A) approved under AS 46.04.030 if the response action contractor is listed  
27 in the contingency plan; or

28 (B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the  
29 response action contractor is not listed in the contingency plan; or

30 (2) as otherwise directed by the federal or state on-scene coordinator.

31 \* Sec. 6. AS 46.03.825(b) is amended to read:

1 (b) The limitation on liability contained in (a) of this section does not apply to  
2 (1) an action for personal injury or death;  
3 (2) a response action contractor who  
4 (A) would otherwise have been liable for the release or threatened  
5 release under AS 46.03.822;  
6 (B) acts with gross negligence or intentional misconduct;  
7 (C) is not registered with the department under AS 46.04.035, and  
8 who agrees in writing to be listed and who is listed as a primary response action  
9 contractor in a contingency plan approved under AS 46.04.030, that is being  
10 implemented to respond to a release or threatened release of oil; or  
11 (D) has agreed in writing to be listed as a primary response action  
12 contractor, who is listed as a primary response action contractor in a contingency  
13 plan approved under AS 46.04.030, and who fails to respond to a release or  
14 threatened release of oil that the primary response action contractor was required  
15 to respond to under its contract with the applicable contingency plan holder; this  
16 subparagraph does not apply to a primary response action contractor if the failure  
17 to respond to a release or threatened release of oil results from a concurrent  
18 response under another contingency plan approved under AS 46.04.030 in which the  
19 primary response action contractor has the primary duty to respond [AN ACTION  
20 FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL];  
21 or  
22 (3) an act or omission that occurs more than 30 [15] days after the release.

23 \* Sec. 7. AS 46.03.825(d) is amended to read:

24 (d) In this section,  
25 (1) "primary response action contractor" has the meaning given in  
26 AS 46.04.035;  
27 (2) "registered" means registered under AS 46.04.035;  
28 (3) "response action" means an action taken to respond to a release or threatened  
29 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release  
30 or threatened release of oil.

31 \* Sec. 8. AS 46.03.825 is amended by adding new subsections to read:

1 (e) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable  
2 person with respect to costs or damages caused by an act or omission of a response action  
3 contractor.

4 (f) Except as provided in (e) of this section, this section does not affect the liability under  
5 this chapter or under any other state law of a person other than a response action contractor.

6 (g) A response action contractor is not civilly liable for removal costs or damages  
7 resulting solely from the response action contractor's decision to terminate its response efforts  
8 because of the expiration of the limited liability provided under this section. A response action  
9 contractor's decision to terminate response efforts because of the expiration of the limited liability  
10 provided under this section does not in any manner impair, curtail, limit, or otherwise affect the  
11 limited liability conferred on the contractor with regard to the contractor's response efforts  
12 undertaken during the period of time that limited liability under this section applied to those  
13 response efforts.

14 \* Sec. 9. AS 46.04.020(a) is amended to read:

15 (a) A person causing or permitting the discharge of oil shall immediately contain and  
16 clean up the discharge. [THE DEPARTMENT MAY WAIVE THIS REQUIREMENT

17 (1) IF IT DETERMINES, IN CONSULTATION WITH THE UNITED STATES  
18 COAST GUARD OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
19 AS APPROPRIATE, THAT CONTAINMENT OR CLEANUP IS TECHNICALLY NOT  
20 FEASIBLE; OR

21 (2) IF THE CLEANUP OR CONTAINMENT ACTIVITIES WOULD RESULT  
22 IN GREATER ENVIRONMENTAL DAMAGE THAN THE DISCHARGE ITSELF.]

23 \* Sec. 10. AS 46.04.020 is amended by adding new subsections to read:

24 (g) In addition to its existing obligations under state and federal law, and the provisions  
25 of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common  
26 operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska  
27 pipeline shall immediately provide for the initial containment and clean up of a discharge or  
28 threatened discharge of crude oil transported by or due to the operation of the Trans Alaska  
29 Pipeline System or due to related activities, including operation of a tank vessel while berthed  
30 at the Trans Alaska pipeline marine terminal or while traveling within 72 tanker lane miles to  
31 or from the marine terminal. The duty to respond imposed under this subsection does not affect

1 the duty of any other person. A charge or financial responsibility requirement imposed by the  
2 common operating agent for holders and lessees of the right-of-way agreement for the Trans  
3 Alaska Pipeline System on a tank vessel traveling on an intrastate voyage from a marine terminal  
4 for the purpose of containing and cleaning up a discharge of crude oil is subject to review by the  
5 Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441. Review of a charge or  
6 financial responsibility requirement allowed under this subsection may occur at the request of a  
7 tank vessel owner, operator, or lessee, or as allowed by the Alaska Public Utilities Commission.

8 (h) The department may waive an oil discharge containment and cleanup requirement  
9 imposed under (a) or (g) of this section if

10 (1) the department determines, in consultation with the United States Coast Guard  
11 or the United States Environmental Protection Agency, as appropriate, that containment or  
12 cleanup is technically not feasible; or

13 (2) the cleanup or containment activities would result in greater environmental  
14 damage than the discharge itself.

15 \* Sec. 11. AS 46.04.030(e) is amended to read:

16 (e) The department may attach reasonable terms and conditions to its approval or  
17 modification of a contingency plan that the department determines are necessary to ensure that  
18 the applicant for a contingency plan has access to sufficient resources to protect environmentally  
19 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or  
20 vessel as provided in (k) of this section, and to ensure that the applicant complies with the  
21 contingency plan. If a contingency plan submitted to the department for approval relies on  
22 the services of an oil spill primary response action contractor, the department may not  
23 approve the contingency plan unless the primary response action contractor is registered  
24 and approved under AS 46.04.035. The contingency plan must provide for the use by the  
25 applicant of the best technology that was available at the time the contingency plan was  
26 submitted or renewed. The department may require an applicant or holder of an approved  
27 contingency plan to take steps necessary to demonstrate its ability to carry out the contingency  
28 plan, including

29 (1) periodic training;

30 (2) response team exercises; and

31 (3) verifying access to inventories of equipment, supplies, and personnel identified

1 as available in the approved contingency plan.

2 \* Sec. 12. AS 46.04 is amended by adding a new section to read:

3 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION  
4 CONTRACTORS. (a) A person may apply to the department for registration as an oil spill  
5 primary response action contractor. The department shall adopt regulations governing the  
6 registration and approval of oil spill primary response action contractors. Regulations adopted  
7 by the department under this section must include

8 (1) minimum training standards for personnel;

9 (2) verification requirements that ensure the existence of resources, including  
10 personnel, equipment, services, and an adequate deployment plan necessary to a response action  
11 or as required by a contingency plan in which the contractor has agreed in writing to be listed  
12 and is listed;

13 (3) minimum professional response action standards and practices; and

14 (4) minimum performance standards for oil spill primary response action  
15 contractors listed in an oil spill contingency plan approved under AS 46.04.030.

16 (b) Notwithstanding (a) of this section, the department may substitute a primary response  
17 action contractor approval program, and a subsequent process to approve primary response action  
18 contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for  
19 regulations required under (a)(1) - (3) of this section if the approval program and subsequent  
20 process are developed by the United States Coast Guard.

21 (c) The department shall establish fees applicable to registration under this section in an  
22 amount necessary to cover the costs of the registration program. The fees shall be collected by  
23 the department.

24 (d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations  
25 under this section.

26 (e) The department shall develop and maintain a list of oil spill primary response action  
27 contractors registered under this section. The department shall provide the list on request to  
28 interested persons.

29 (f) A primary response action contractor registered under this section shall annually  
30 provide to the department a list of all contingency plans approved under AS 46.04.030 in which  
31 the primary response action contractor has agreed in writing to be listed as a responder.

1 (g) In this section,

2 (1) "oil" has the meaning given in AS 46.03.826;

3 (2) "primary response action contractor" means a person who enters into a  
4 response action contract with respect to a release or threatened release of oil and who is carrying  
5 out the contract, including a cooperative organization formed to maintain and supply response  
6 equipment and materials that enters into a response action contract relating to a release or  
7 threatened release of oil;

8 (3) "response action" has the meaning given in AS 46.03.825.

9 \* Sec. 13. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

10 \* Sec. 14. TRANSITION. The Department of Environmental Conservation shall adopt regulations  
11 to implement AS 46.04.035(a), enacted in sec. 12 of this Act, on or before January 1, 1993.

12 \* Sec. 15. If this Act takes effect after June 30, 1992, sec. 13 of this Act is retroactive to June 30,  
13 1992.

14 \* Sec. 16. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to  
15 AS 46.03.822 and 46.03.825, made by secs. 2 - 8 of this Act, apply only to causes of action accruing  
16 on or after the effective date of secs. 2 - 8 of this Act.

17 (b) The provisions of AS 46.03.825(b)(2)(C) apply only to causes of action accruing on or after  
18 the effective date of that paragraph under sec. 17 of this Act.

19 \* Sec. 17. AS 46.03.825(b)(2)(C), added by sec. 6 of this Act, and sec. 11 of this Act take effect  
20 July 1, 1993.

21 \* Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect immediately under  
22 AS 01.10.070(c).