

CS FOR SENATE BILL NO. 154 (RESOURCES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/8/91  
Referred: Judiciary

Sponsor(s): SENATOR RODEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of financial institutions for environmental damage or the  
2 threat of environmental damage and to liens arising from environmental damage or the  
3 threat of environmental damage."

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

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

6 (a) Notwithstanding any other provision or rule of law and subject only to AS 46.03.825,  
7 the defenses set out in (b) of this section, and the exception set out in (i) of this section, the  
8 following persons are strictly liable, jointly and severally, for damages to persons or property,  
9 whether public or private, including damage to the natural resources of the state or a  
10 municipality, and for the costs of response, containment, removal, or remedial action incurred by  
11 the state or a municipality, resulting from an unpermitted release of a hazardous substance or,  
12 with respect to response costs, the substantial threat of an unpermitted release of a hazardous  
13 substance:

14 (1) the owner of, and the person having control over, the hazardous substance at

1 the time of the release or threatened release; this paragraph does not apply to a consumer product  
2 in consumer use;

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

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

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

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

20 \* Sec. 2. AS 46.03 is amended by adding a new section to read:

21 Sec. 46.03.825. FINANCIAL INSTITUTIONS. (a) Except as provided by (b) of this  
22 section, a financial institution is not liable under AS 46.03.822 - 46.03.828 for damages or costs  
23 resulting from an unpermitted release of a hazardous substance or the substantial threat of an  
24 unpermitted release of a hazardous substance at or from a facility or vessel that

25 (1) the institution acquires through foreclosure;

26 (2) the institution holds as a lessor under the terms of an extension of credit;

27 (3) is subject to the financial control or financial oversight of the institution under  
28 the terms of an extension of credit, if the institution does not exercise actual, direct, and continual  
29 managerial control that materially divests the borrower, debtor, or obligor of control of the  
30 facility or vessel; or

31 (4) the institution acquires in a fiduciary capacity.

1 (b) A financial institution may be required to reimburse the state for the actual benefit  
2 received by the institution that results from a response, containment, removal, or remedial action  
3 undertaken by the state involving a facility or vessel identified under (a)(1) of this section, but  
4 the liability for the reimbursement, including the payment of a state lien, may not exceed the fair  
5 market value of the facility or vessel.

6 (c) In this section, "financial institution" means

7 (1) a bank, credit union, or savings association if the deposits of the bank, credit  
8 union, or savings association are insured in whole or in part by the Federal Deposit Insurance  
9 Corporation, by another agency of the United States, or by an agency of the state;

10 (2) a trust company that is owned in whole or in part by a bank or that is subject  
11 to regulation by the United States Comptroller of the Currency.

12 \* Sec. 3. AS 46.08.075(a) is amended to read:

13 (a) The state has a lien for expenditures by the state from the oil and hazardous substance  
14 release response fund or from any other state fund, for the costs of response, containment,  
15 removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect  
16 to response costs, the substantial threat of a release of oil or a hazardous substance against the  
17 facility or vessel that is [ALL PROPERTY] owned by a person who is determined by the  
18 commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C.  
19 9607, or other state or federal law, and that is subject to the state's response, containment,  
20 removal, or remedial action. The lien includes interest, at the maximum rate allowable under  
21 AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of  
22 competent jurisdiction in order to foreclose on the lien.

23 \* Sec. 4. AS 46.08.075 is amended by adding a new subsection to read:

24 (f) The lien imposed by this section is subject to the rights of a purchaser, holder of a  
25 security interest, or judgment lien creditor if the interest of the purchaser, holder, or creditor is  
26 perfected under applicable law before notice of the lien is filed in the appropriate recorder's  
27 office under (b) of this section. The purchaser, holder of a security interest, or judgment lien  
28 creditor shall be afforded the same protections against the lien imposed by this section as are  
29 afforded under state law to a purchaser, holder of a security interest, or judgment lien creditor  
30 against a judgment lien that arises out of an unsecured obligation and that arises at the same time  
31 the notice of the lien created under this section is filed.

1 \* Sec. 5. AS 46.08.075(e) is repealed.

2 \* Sec. 6. AS 46.03.825, enacted by sec. 2 of this Act, applies according to its terms to a release or  
3 threat of a release that occurs after the effective date of this Act even if the facility or vessel was  
4 acquired or held by the financial institution before the effective date of this Act or was subject to the  
5 financial control or financial oversight of the institution before the effective date of this Act.