

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/11/92

Referred: Rules

Sponsor(s): SENATOR RODEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of certain security interest holders arising out of an
2 unpermitted release of a hazardous substance or the substantial threat of an unpermitted
3 release of a hazardous substance, and to liens on the property of certain security interest
4 holders resulting from an oil or hazardous substance spill or the threat of an oil or
5 hazardous substance spill."

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

7 * **Section 1.** AS 46.03.826 is amended by adding new paragraphs to read:

8 (16) "indicia of ownership" means evidence of interests in real or personal
9 property held as security for a loan or other obligation, including full title to real or personal
10 property acquired through foreclosure or an equivalent procedure, and including a mortgage, deed
11 of trust, assignment, lien, pledge, or other right to or other form of encumbrance against property
12 that is recognized under applicable law as establishing a bona fide security interest;

13 (17) "participating in the management of a vessel or facility" means the actual

1 participation in the management or operational affairs by the person who is the holder of the
2 security interest; in this paragraph, "participating in the management of a vessel or facility"

3 (A) includes exercising

4 (i) decision-making control over the borrower's environmental
5 compliance, to the degree that the security holder has undertaken responsibility for
6 the borrower's actions that result in a release or threatened release;

7 (ii) management level control encompassing the borrower's
8 environmental compliance responsibilities comparable to that of a manager of the
9 borrower's enterprise;

10 (B) does not include

11 (i) the mere capacity or ability to influence, or the unexercised
12 right to control, facility operations;

13 (ii) undertaking or requiring an environmental audit or inspection;

14 (iii) imposing a requirement that the borrower clean up the vessel
15 or facility before or during the term of the security interest;

16 (iv) imposing a requirement of assurance that the vessel or facility
17 remains or is maintained in compliance with all applicable local, state, and federal
18 laws and regulations for the life of the loan or security interest; or

19 (v) periodic or regular monitoring of the borrower's business or
20 financial condition, loan workouts, or other actions that are reasonably necessary
21 for the security holder to adequately maintain the security interest;

22 (18) "primarily to protect a security interest" means that the indicia of ownership
23 in the vessel or facility are held for the purpose of securing payment or performance of a
24 financial obligation, including a mortgage, installment sale, trust receipt transaction, assignment,
25 or other financing arrangement; "primarily to protect a security interest" does not include an
26 ownership interest in property held for investment purposes, or for purposes other than as
27 protection of a security interest.

28 * Sec. 2. AS 46.08.075 is amended by adding new subsections to read:

29 (f) Notwithstanding (a) of this section, if the property subject to the response,
30 containment, removal, or remedial action by the state is owned by a person who, under
31 AS 46.03.826(8)(B), is not considered an owner or operator under AS 46.03.822 - 46.03.828, the

1 state may file a lien against only that property that was subject to the state's action. If the lien
2 is filed, the lien and the person's liability to the state for the state's costs of the action is limited
3 to the difference, if any, in the positive fair market value of the property before the state's action
4 and the fair market value of the property after the conclusion of the state's action, to the extent
5 the difference has resulted directly from the state's action. In this subsection,

6 (1) "action" means response, containment, removal, and remedial action;

7 (2) "person" has the meaning given in AS 46.03.900.

8 (g) The lien imposed by (f) of this section is subject to the rights of a purchaser, holder
9 of a security interest, or judgment lien creditor if the interest of the purchaser, holder, or creditor
10 is perfected under applicable law before notice of the lien imposed by (f) of this section is filed
11 in the appropriate recorder's office under (b) of this section. The purchaser, holder of a security
12 interest, or judgment lien creditor shall be afforded the same protections against the lien imposed
13 by (f) of this section as are afforded under state law to a purchaser, holder of a security interest,
14 or judgment lien creditor against a judgment lien that arises out of an unsecured obligation and
15 that arises at the same time the notice of the lien created under (f) of this section is filed.