

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 270
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Introduced: 4/8/92
Referred: O&G, Judiciary

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 the liability of an oil spill response
3 action contractor, to registration of response action contractors, and to oil discharge and
4 contingency plans; relating to liability for release of a hazardous substance; relating to the
5 duty of, and charges or financial responsibility requirements related to that duty imposed
6 by, the common operating agent for the holders and lessees of the right-of-way agreement
7 for the trans-Alaska pipeline system to control and contain oil discharges; and providing
8 for an effective date."

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

10 * **Section 1. FINDINGS.** The legislature finds that

11 (1) 25 percent of the country's crude oil supply moves through Alaska state waters; in
12 particular, 650,000,000 barrels of crude oil move through Prince William Sound each year;

1 (2) crude oil, once discharged into the environment, is highly damaging to the
2 environment, to the resources of the state, to wildlife, and to the commercial and subsistence livelihoods
3 of state residents; crude oil is also persistent in the environment and becomes increasingly difficult to
4 remove the longer it remains in the environment;

5 (3) experience from oil spill response in the state and throughout the world has
6 demonstrated that response activities must occur as aggressively as possible in the first few days
7 following a spill in order to be effective; experience has also shown that the critical initial response has
8 the best chance of success when it is conducted by trained personnel using a previously prepared, well-
9 practiced, and site-specific contingency plan;

10 (4) following the oil spill from the tanker vessel Exxon Valdez, there was a confusing
11 and time consuming transfer of spill response management from the oil spill contingency plan holder
12 and one of the parties responsible for the oil spill; this transfer of management delayed efficient and
13 effective response efforts in the critical period of initial response;

14 (5) under the provisions of the state Trans-Alaska Pipeline System Right-of-Way
15 Agreement, the lessees, the holders, and their common operating agent are required to contain and clean
16 up crude oil spills within state waters, in particular, in Prince William Sound;

17 (6) it is very important that initial oil spill response efforts be immediate, well-trained,
18 well-drilled, and certain; the response should not be subject to successive management transfers or to
19 the risk of interruption due to disagreements or disputes among contingency plan holders, parties
20 responsible for oil spills, and private responders relied upon for oil spill response.

21 * Sec. 2. AS 09.50.250 is amended to read:

22 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or
23 corporation having a contract, quasi-contract, or tort claim against the state may bring an action
24 against the state in the superior court. A person who may present the claim under AS 44.77 may
25 not bring an action under this section except as set out in AS 44.77.040(c). A person who may
26 bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except
27 as set out in AS 36.30.685. However, an action may not be brought under this section if the
28 claim

29 (1) is an action for tort, and is based upon an act or omission of an employee of
30 the state, exercising due care, in the execution of a statute or regulation, whether or not the
31 statute or regulation is valid; or is an action for tort, and based upon the exercise or performance

1 or the failure to exercise or perform a discretionary function or duty on the part of a state agency
2 or an employee of the state, whether or not the discretion involved is abused;

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

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

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

10 (5) arises out of

11 (A) registration and approval of an oil spill response action contractor
12 under AS 46.04.035;

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

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

19 * Sec. 3. AS 46.03.822(a) is amended to read:

20 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
21 set out in (b) of this section and the exception set out in (i) of this section, the following persons
22 are strictly liable, jointly and severally, for damages, for the costs of response, containment,
23 removal, or remedial action incurred by the state, a municipality, or a village, and for the
24 additional costs of a function or service, including administrative expenses for the incremental
25 costs of providing the function or service, that are incurred by the state, a municipality, or a
26 village, and the costs of projects or activities that are delayed or lost because of the efforts of the
27 state, the municipality, or the village, resulting from an unpermitted release of a hazardous
28 substance or, with respect to response costs, the substantial threat of an unpermitted release of
29 a hazardous substance:

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

1 in consumer use;

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

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

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

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

19 (6) a response action contractor who has agreed in writing to be listed and
20 who is listed in a contingency plan approved under AS 46.04.030 who fails to respond to a
21 release or threatened release of oil that the response action contractor was required to
22 respond to under the contingency plan; this paragraph does not apply to a response action
23 contractor if the failure to respond to a release or threatened release of oil results from a
24 concurrent response under another contingency plan approved under AS 46.04.030 in which
25 the response action contractor has the primary duty to respond.

26 * Sec. 4. AS 46.03.822(b) is amended to read:

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

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

31 (A) an act of war;

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

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

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

7 (C) an act of God; and

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

10 (A) discovered the release or threatened release of the hazardous
11 substance; and

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

13 * Sec. 5. AS 46.03.822(k) is amended to read:

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

18 * Sec. 6. AS 46.03.825(a) is repealed and reenacted to read:

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

22 (1) consistent with a contingency plan approved under AS 46.04.030 or prepared
23 under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d); or

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

25 * Sec. 7. AS 46.03.825(b) is amended to read:

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

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

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

29 (3) an act or omission that occurs more than 60 [15] days after the release;
30 provided, however, that the period of time described in this paragraph may be extended for
31 not more than 60 days by a written order of the state on-scene coordinator issued on or

1 **before the 60th day after the release;**

2 **(4) a response action contractor who**

3 **(A) would otherwise have been liable for the release or threatened**
4 **release under AS 46.03.822;**

5 **(B) acts with gross negligence or intentional misconduct; or**

6 **(C) is not registered by the department, who agrees in writing to be**
7 **listed and who is listed as a response action contractor in a contingency plan**
8 **approved under AS 46.04.030, that is being implemented to respond to a release or**
9 **threatened release of oil, and who has executed a written agreement with the**
10 **contingency plan holder.**

11 * Sec. 8. AS 46.03.825(c) is amended to read:

12 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
13 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
14 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the response action contractor's act or omission with respect to
16 a release or threatened release of oil unless the act or omission of the oil spill response action
17 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
18 does not apply to an oil spill response action contractor who **is liable under AS 46.03.822(a)(6)**
19 **or who** would have been liable for the initial release or threatened release of oil under
20 AS 46.03.822 even if that contractor had not carried out a response action.

21 * Sec. 9. AS 46.03.825(d) is amended to read:

22 (d) In this section,

23 **(1) "registered" means registered under AS 46.04.035;**

24 **(2) "response action" means an action taken to respond to a release or threatened**
25 **release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, or removal of a release**
26 **or threatened release of oil.**

27 * Sec. 10. AS 46.03.825 is amended by adding new subsections to read:

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

31 (f) Except as provided in (e) of this section, this section does not affect the liability under

1 this chapter or under any other state law of a person other than a response action contractor.

2 * Sec. 11. AS 46.04.020(a) is amended to read:

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

5 (1) IF IT DETERMINES, IN CONSULTATION WITH THE UNITED STATES
6 COAST GUARD OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
7 AS APPROPRIATE, THAT CONTAINMENT OR CLEANUP IS TECHNICALLY NOT
8 FEASIBLE; OR

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

11 * Sec. 12. AS 46.04.020 is amended by adding new subsections to read:

12 (g) The common operating agent for the holders and lessees of the right-of-way
13 agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of
14 crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to
15 related activities, including operation of a tank vessel while berthed at a marine terminal or while
16 traveling within state waters to or from a marine terminal. A charge or financial responsibility
17 requirement imposed by the common operating agent for holders and lessees of the right-of-way
18 agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage
19 from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil
20 is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441.
21 Review of a charge or financial responsibility requirement allowed under this subsection may
22 occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska
23 Public Utilities Commission.

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

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

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

31 * Sec. 13. AS 46.04.030(e) is amended to read:

1 (e) The department may attach reasonable terms and conditions to its approval or
2 modification of a contingency plan that the department determines are necessary to ensure that
3 the applicant for a contingency plan has access to sufficient resources to protect environmentally
4 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
5 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
6 contingency plan. If a contingency plan submitted to the department for approval relies on
7 the services of an oil spill response action contractor, the department may not approve the
8 contingency plan unless the response action contractor is registered and approved under
9 AS 46.04.035. The contingency plan must provide for the use by the applicant of the best
10 technology that was available at the time the contingency plan was submitted or renewed. The
11 department may require an applicant or holder of an approved contingency plan to take steps
12 necessary to demonstrate its ability to carry out the contingency plan, including

13 (1) periodic training;

14 (2) response team exercises; and

15 (3) verifying access to inventories of equipment, supplies, and personnel identified
16 as available in the approved contingency plan.

17 * Sec. 14. AS 46.04 is amended by adding a new section to read:

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

23 (1) minimum training standards for personnel;

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

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

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

31 (b) Notwithstanding (a) of this section, the department may substitute a response action

1 contractor approval program, and a subsequent process to approve response action contractors
2 who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations
3 required under (a)(1) - (3) of this section if the approval program and subsequent process are
4 developed by the United States Coast Guard.

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

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

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

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

16 (g) In this section,

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

18 (2) "response action" has the meaning given in AS 46.03.825;

19 (3) "response action contractor" means

20 (A) a person who enters into a response action contract with respect to a
21 release or threatened release of oil and who is carrying out the contract, including a
22 cooperative organization formed to maintain and supply response equipment and materials
23 that enters into a response action contract relating to a release or threatened release of oil;

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

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

28 * **Sec. 15. TRANSITION.** The Department of Environmental Conservation shall adopt regulations
29 to implement AS 46.04.035(a), enacted in sec. 14 of this Act, on or before January 1, 1993.

30 * **Sec. 16. REPORT.** The Department of Environmental Conservation shall report to the legislature
31 by March 31, 1993, on the progress of the department in developing the ability of the state to respond

1 to oil spills of an unknown origin and enhance regional response and coastline protection.

2 * Sec. 17. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

3 * Sec. 18. If this Act takes effect after June 30, 1992, sec. 17 of this Act is retroactive to June 30,
4 1992.

5 * Sec. 19. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
6 AS 46.03.822 and 46.03.825, made by secs. 3 - 10 of this Act, apply only to causes of action accruing
7 on or after the effective date of secs. 3 - 10 of this Act.

8 (b) The provisions of AS 46.03.825(b)(4)(C) apply only to causes of action accruing on or after
9 the effective date of that paragraph under sec. 20 of this Act.

10 * Sec. 20. AS 46.03.825(b)(4)(C), added by sec. 7 of this Act, and sec. 13 of this Act take effect
11 July 1, 1993.

12 * Sec. 21. Except as provided in sec. 20 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c).