

HOUSE BILL NO. 95
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 1/29/93

Referred: House Special Committee on Oil and Gas, Labor & Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

1 (17) "participating in the management of a vessel or facility" means the
2 actual participation in the management or operational affairs by the person who is the
3 holder of the security interest; in this paragraph, "participating in the management of
4 a vessel or facility"

5 (A) includes exercising

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

10 (ii) management level control encompassing the
11 borrower's environmental compliance responsibilities comparable to that
12 of a manager of the borrower's enterprise;

13 (B) does not include

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

16 (ii) undertaking or requiring an environmental audit or
17 inspection;

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

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

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

28 (18) "primarily to protect a security interest" means that the indicia of
29 ownership in the vessel or facility are held for the purpose of securing payment or
30 performance of a financial obligation, including a mortgage, installment sale, trust
31 receipt transaction, assignment, or other financing arrangement; "primarily to protect

1 a security interest" does not include an ownership interest in property held for
2 investment purposes, or for purposes other than as protection of a security interest.

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

4 (f) Notwithstanding (a) of this section, if the property subject to the response,
5 containment, removal, or remedial action by the state is owned by a person who, under
6 AS 46.03.826(8)(B), is not considered an owner or operator under AS 46.03.822 -
7 46.03.828, the state may file a lien against only that property that was subject to the
8 state's action. If the lien is filed, the lien and the person's liability to the state for the
9 state's costs of the action is limited to the difference, if any, in the positive fair market
10 value of the property before the state's action and the fair market value of the property
11 after the conclusion of the state's action, to the extent the difference has resulted
12 directly from the state's action. In this subsection,

13 (1) "action" means response, containment, removal, or remedial action;

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

15 (g) The lien imposed by (f) of this section is subject to the rights of a
16 purchaser, holder of a security interest, or judgment lien creditor if the interest of the
17 purchaser, holder, or creditor is perfected under applicable law before notice of the lien
18 imposed by (f) of this section is filed in the appropriate recorder's office under (b) of
19 this section. The purchaser, holder of a security interest, or judgment lien creditor
20 shall be afforded the same protections against the lien imposed by (f) of this section
21 as are afforded under state law to a purchaser, holder of a security interest, or
22 judgment lien creditor against a judgment lien that arises out of an unsecured
23 obligation and that arises at the same time the notice of the lien created under (f) of
24 this section is filed.