

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2066 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

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contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

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 AS 46.03.825(a) is repealed and reenacted to read:

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

(1) consistent with a contingency plan

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

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

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

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

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

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

(2) a response action contractor who

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

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

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 is in use [AN ACTION FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL;

OR

1 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
2 THE RELEASE].

3 * Sec. 8. AS 46.03.825(d) is amended to read:

4 (d) In this section,

5 (1) "consistent" means in substantial compliance with a contingency plan;

6 (2) "primary response action contractor" has the meaning given in

7 AS 46.04.035;

8 (3) "registered" means registered under AS 46.04.035;

9 (4) "response action" means an action taken to respond to a release or threatened
10 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, marine salvage, or
11 removal of a release or threatened release of oil.

12 * Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

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

18 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
19 or performance standard that must be met by a holder of a contingency plan or by a primary
20 response action contractor.

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

22 (g) In addition to existing obligations under state and federal law, and the provisions of
23 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
24 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
25 pipeline shall (1) immediately contain and clean up a discharge or threatened discharge of oil
26 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
27 activities, including activities related to a vessel en route to, berthed at, or transiting from the
28 Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William
29 Sound; and (2) provide services required in a response action under contract terms as provided
30 under AS 46.04.030(r). The obligations imposed under this subsection do not affect the response
31 action duties of another person or the liability of another person for a discharge or threatened

1 discharge. Upon the request of the person required to respond to a discharge or threatened
2 discharge under this subsection, the obligation imposed by this subsection may be transferred to
3 another person required by law to respond to the discharge or threatened discharge if the transfer
4 is approved by the federal and state on-scene coordinators. In this subsection, "Prince William
5 Sound" has the meaning given in AS 46.04.030(r).

6 (h) A charge, contract term, or financial responsibility requirement imposed by the
7 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the
8 holders and lessees' common operating agent, or the agent or representative of either the holders
9 and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal
10 and related to containing and cleaning up a discharge or threatened discharge of oil or the
11 obligations imposed under (g) of this section

12 (1) must be fair, reasonable, and nondiscriminatory; and

13 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,
14 must

15 (A) not exceed the potential cost of containment and cleanup as provided
16 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
17 expected to incur from a discharge or threatened discharge of oil from that vessel before
18 the transfer of cleanup and containment management and control to the responsible party;
19 in establishing the financial responsibility requirement, the common operating agent shall
20 assume that transfer of management and control will occur at the earliest practicable time
21 following the discharge or threat of discharge; and

22 (B) vary among each vessel in proportion to the volume of oil carried by
23 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
24 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
25 credits granted that vessel under regulations adopted by the department.

26 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
27 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin
28 a charge, contract term, or financial responsibility requirement described under (h) of this section
29 at the request of a vessel owner, operator, or charterer. Except as provided in this subsection,
30 nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

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

1 (c) 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 primary response action contractor, the department may not
8 approve the contingency plan unless the primary response action contractor is registered
9 and approved under AS 46.04.035. The contingency plan must provide for the use by the
10 applicant of the best technology that was available at the time the contingency plan was
11 submitted or renewed. The department may require an applicant or holder of an approved
12 contingency plan to take steps necessary to demonstrate its ability to carry out the contingency
13 plan, including

14 (1) periodic training;
15 (2) response team exercises; and
16 (3) verifying access to inventories of equipment, supplies, and personnel identified
17 as available in the approved contingency plan.

18 * Sec. 12. AS 46.04.030 is amended by adding new subsections to read:

19 (r) Except as provided in (n) of this section and in order to receive approval from the
20 department for an oil discharge prevention and contingency plan submitted under this section,
21 the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by
22 the Trans Alaska Pipeline System shall obtain by contract the services required in a response
23 action from the common operating agent for the holders and lessees of the right-of-way
24 agreement for the Trans Alaska Pipeline System. The contract must contain the following
25 provisions: (1) the common operating agent, as a primary response action contractor shall, unless
26 services required in a response action are transferred as provided in (3) of this subsection, provide
27 services required in a response action for a discharge or a threatened discharge of oil to the
28 owner, operator, or charterer of the vessel while the vessel is berthed at, en route to, or transiting
29 from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince
30 William Sound; (2) that its coverage for any particular vessel may not be terminated by the
31 common operating agent while that vessel is within Prince William Sound; this provision may

1 not be interpreted to limit the department's authority to revoke approval under this section for
2 an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer
3 of a vessel; and (3) the owner, operator, or charterer of the vessel shall accept a transfer of the
4 services required in a response action to a discharge or threatened discharge, after receiving not
5 less than 72 hours of advance notice and after the transfer has been approved by the federal and
6 state on-scene coordinators. In addition to the requirements of this subsection, the department
7 may require individual vessels to submit additional contingency plans to cover specific vessel
8 response, prevention equipment, and procedures. Nothing in this subsection is intended to
9 preclude the federal or state government from assuming management and control of an oil spill
10 response to a discharge or threatened discharge from a vessel under appropriate circumstances.
11 In this subsection, "Prince William Sound" means all marine waters within the boundary line
12 established at Cape Puget, southeasterly to Cape Cleare, along Montigue Island to Zaikof Point,
13 easterly to Cape Hinchinbrook, along Hinchinbrook Island to Point Bintinck, and easterly to Point
14 Whitshed.

15 * Sec. 13. AS 46.04 is amended by adding a new section to read:

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

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

26 (3) minimum professional response action standards and practices; and
27 (4) minimum planning standards for oil spill primary response action contractors
28 listed in an oil spill contingency plan approved under AS 46.04.030.

29 (b) Notwithstanding (a) of this section, the department may substitute a primary response
30 action contractor approval program, and a subsequent process to approve primary response action
31 contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for

1 regulations required under (a)(1) - (3) of this section if the approval program and subsequent
2 process are developed by the United States Coast Guard.

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

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

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

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

14 (g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup
15 or performance standard that must be met by a holder of a contingency plan or a response action
16 contractor.

17 (h) In this section,

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

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

24 * Sec. 14. AS 46.04.90 is amended by adding a new paragraph to read:

25 (22) "response action" means an action taken to respond to a release or threatened
26 release of oil, including mitigation, cleanup, or removal.

27 * Sec. 15. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

28 * Sec. 16. TRANSITION. The Department of Environmental Conservation shall adopt regulations
29 to implement AS 46.04.035(a), enacted in sec. 13 of this Act, on or before July 1, 1993.

30 * Sec. 17. If sec. 15 of this Act takes effect after June 30, 1992, sec. 15 of this Act is retroactive to
31 June 30, 1992.

1 * Sec. 18. APPLICABILITY. (a) The amendments to AS 46.03.822 and 46.03.825, made by secs.
2 2 - 9 of this Act, apply only to causes of action accruing on or after the effective date of secs. 2 - 9 of
3 this Act.
4 * Sec. 19. Section 11 of this Act takes effect January 1, 1994.
5 * Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect immediately under
6 AS 01.10.070(c).

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE OIL AND GAS COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for release or threatened release of a hazardous substance;
2 relating to the liability of an oil spill response action contractor for release or threatened
3 release of a hazardous substance; relating to contracts by and obligations of the common
4 operating agent for the holders and lessees of the right-of-way agreement for the Trans
5 Alaska Pipeline System to provide initial response services to vessels; relating to financial
6 responsibility and insurance provisions imposed on vessels; relating to oil discharge and
7 contingency plans; relating to registration of an oil spill response action contractor;
8 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
9 date."

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

11 * Section 1. PURPOSE. It is not the purpose of this Act to affect duties and responsibilities of
12 Alyeska Pipeline Service Company and its owners arising under the state and federal Trans Alaska

1 Pipeline System agreements.

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

3 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
4 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
5 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
6 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
7 action incurred by the state, a municipality, or a village, and for the additional costs of a function
8 or service, including administrative expenses for the incremental costs of providing the function
9 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
11 village, resulting from an unpermitted release of a hazardous substance or, with respect to
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

1 of a hazardous substance.

2 * Sec. 3. AS 46.03.822(b) is amended to read:

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

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

7 (A) an act of war;

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

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

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

14 (C) an act of God; and

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

17 (A) discovered the release or threatened release of the hazardous
18 substance; and

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

20 * Sec. 4. AS 46.03.822(h) is amended to read:

21 (h) The state, a municipality, [OR] a village, a person who acts as a volunteer and is
22 engaged in a response action under the direction of the federal or state on-scene
23 coordinator, and a vessel of opportunity engaged in a response action under the direction
24 of the federal or state on-scene coordinator are [IS] not liable under this section for costs or
25 damages as a result of actions taken in response to an emergency created by a release or
26 threatened release of a hazardous substance generated by or from a facility or vessel owned by
27 another person unless the actions taken by the state, the municipality, [OR] the village, the
28 volunteer, or the vessel constitute gross negligence or intentional misconduct.

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

30 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
31 [INCLUDE] damage to persons or to public or private property, damage to the natural resources

1 of the state or a municipality, and damage caused by acts or omissions of a response action
2 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

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

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

7 (1) consistent with a contingency plan

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

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

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

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

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

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

16 (2) a response action contractor who

17 (A) would otherwise have been liable for the release or threatened
18 release under AS 46.03.822;

19 (B) acts with gross negligence or intentional misconduct or;

20 (C) has agreed in writing to be listed as a primary response action
21 contractor, who is listed as a primary response action contractor in a contingency
22 plan approved under AS 46.04.030, and who fails to respond to a release or
23 threatened release of oil that the primary response action contractor was required
24 to respond to under its contract with the applicable contingency plan holder; this
25 subparagraph does not apply to a primary response action contractor if the failure
26 to respond to a release or threatened release of oil results from a prior and ongoing
27 response under another contingency plan approved under AS 46.04.030 in which the
28 primary response action contractor has the primary duty to respond and a
29 significant portion of the response action contractor's oil spill cleanup equipment
30 listed in the contingency plan approved under AS 46.04.030 is in use [AN ACTION
31 FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL;

1 OR

2 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
3 THE RELEASE].

4 * Sec. 8. AS 46.03.825(d) is amended to read:

5 (d) In this section,

6 (1) "consistent" means in substantial compliance with a contingency plan;

7 (2) "primary response action contractor" has the meaning given in

8 AS 46.04.035;

9 (3) "registered" means registered under AS 46.04.035;

10 (4) "response action" means an action taken to respond to a release or threatened
11 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, marine salvage, or
12 removal of a release or threatened release of oil.

13 * Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

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

19 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
20 or performance standard that must be met by a holder of a contingency plan or by a primary
21 response action contractor.

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

23 (g) In addition to existing obligations under state and federal law, and the provisions of
24 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
25 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
26 pipeline shall (1) immediately contain and clean up a discharge or threatened discharge of oil
27 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
28 activities, including activities related to a vessel en route to, berthed at, or transiting from the
29 Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince
30 William Sound; and (2) provide services required in a response action under contract terms as
31 provided under AS 46.04.030(r). The obligations imposed under this subsection do not affect the

1 response action duties of another person or the liability of another person for a discharge or
2 threatened discharge. Upon the request of the person required to respond to a discharge or
3 threatened discharge under this subsection, the obligation imposed by this subsection may be
4 transferred to another person required by law to respond to the discharge or threatened discharge
5 if the transfer is approved by the federal and state on-scene coordinators. In this subsection,
6 "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

7 (h) A charge, contract term, or financial responsibility requirement imposed by the
8 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the
9 holders and lessees' common operating agent, or the agent or representative of either the holders
10 and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal
11 and related to containing and cleaning up a discharge or threatened discharge of oil or the
12 obligations imposed under (g) of this section

13 (1) must be fair, reasonable, and nondiscriminatory; and

14 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,

15 must

16 (A) not exceed the potential cost of containment and cleanup as provided
17 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
18 expected to incur from a discharge or threatened discharge of oil from that vessel before
19 the transfer of cleanup and containment management and control to the responsible party;
20 in establishing the financial responsibility requirement, the common operating agent shall
21 assume that transfer of management and control will occur at the earliest practicable time
22 following the discharge or threat of discharge; and

23 (B) vary among each vessel in proportion to the volume of oil carried by
24 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
25 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
26 credits granted that vessel under regulations adopted by the department.

27 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
28 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review a charge,
29 contract term, or financial responsibility requirement described under (h) of this section. An
30 action to enforce this subsection may be brought in either forum at the election of a vessel owner,
31 operator, or lessee, or the owner of oil carried as cargo on the vessel.

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

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

15 (1) periodic training;

16 (2) response team exercises; and

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

19 * Sec. 12. AS 46.04.030 is amended by adding new subsections to read:

20 (r) Except as provided in (n) of this section and in order to receive approval from the
21 department for an oil discharge prevention and contingency plan submitted under this section,
22 the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by
23 the Trans Alaska Pipeline System shall obtain by contract the services required in a response
24 action from the common operating agent for the holders and lessees of the right-of-way
25 agreement for the Trans Alaska Pipeline System. The contract must contain the following
26 provisions: (1) the common operating agent, as a primary response action contractor shall, unless
27 services required in a response action are transferred as provided in (3) of this subsection, provide
28 services required in a response action for a discharge or a threatened discharge of oil to the
29 owner, operator, or charterer of the vessel while the vessel is berthed at, en route to, or transiting
30 from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince
31 William Sound; (2) that its coverage for any particular vessel may not be terminated by the

1 common operating agent while that vessel is within Prince William Sound; this provision may
2 not be interpreted to limit the department's authority to revoke approval under this section for
3 an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer
4 of a vessel; and, (3) if the contract provides for a transfer of any of the services required in a
5 response action to a discharge or threatened discharge either to an owner, operator, or charterer
6 of the vessel or to the federal government following a discharge or threatened discharge, the
7 contract must provide for not less than 72 hours notice to the owner, operator, or charterer of the
8 vessel that transfer of the services required in a response action will be required and must
9 stipulate that any transfer of the services required in the response action must first be approved
10 by the federal and state on-scene coordinators. In addition to the requirements of this subsection,
11 the department may require individual vessels to submit additional contingency plans to cover
12 specific vessel response, prevention equipment, and procedures. Nothing in this subsection is
13 intended to preclude the federal or state government from assuming management and control of
14 an oil spill response to a discharge or threatened discharge from a vessel under appropriate
15 circumstances. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R.
16 3.85-20.

17 * Sec. 13. 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 primary response action contractor. The department shall adopt regulations governing the
21 registration and approval of oil spill primary response action contractors. Regulations adopted
22 by the department under 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 planning standards for oil spill primary response action contractors
30 listed in an oil spill contingency plan approved under AS 46.04.030.

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

1 action contractor approval program, and a subsequent process to approve primary response action
2 contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for
3 regulations required under (a)(1) - (3) of this section if the approval program and subsequent
4 process are 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 primary response action
11 contractors registered under this section. The department shall provide the list on request to
12 interested persons.

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

16 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
17 or performance standard that must be met by a holder of a contingency plan or a response action
18 contractor.

19 (h) In this section,

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

21 (2) "primary response action contractor" means a person who enters into a
22 response action contract with respect to a release or threatened release of oil and who is carrying
23 out the contract, including a cooperative organization formed to maintain and supply response
24 equipment and materials that enters into a response action contract relating to a release or
25 threatened release of oil.

26 * Sec. 14. AS 46.04.900 is amended by adding a new paragraph to read:

27 (22) "response action" means an action taken to respond to a release or threatened
28 release of oil, including mitigation, cleanup, or removal.

29 * Sec. 15. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

30 * Sec. 16. TRANSITION. The Department of Environmental Conservation shall adopt regulations
31 to implement AS 46.04.035(a), enacted in sec. 13 of this Act, on or before July 1, 1993.

- 1 * Sec. 17. If sec. 15 of this Act takes effect after June 30, 1992, sec. 15 of this Act is retroactive to
2 June 30, 1992.
- 3 * Sec. 18. APPLICABILITY. (a) The amendments to AS 46.03.822 and 46.03.825, made by secs.
4 2 - 9 of this Act, apply only to causes of action accruing on or after the effective date of secs. 2 - 9 of
5 this Act.
- 6 * Sec. 19. Section 11 of this Act takes effect January 1, 1994.
- 7 * Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

5/11/92

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version

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE OIL AND GAS COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for release or threatened release of a hazardous substance;
2 relating to the liability of an oil spill response action contractor for release or threatened
3 release of a hazardous substance; relating to contracts by and obligations of the common
4 operating agent for the holders and lessees of the right-of-way agreement for the Trans
5 Alaska Pipeline System to provide initial response services to vessels; relating to financial
6 responsibility and insurance provisions imposed on vessels; relating to oil discharge and
7 contingency plans; relating to registration of an oil spill response action contractor;
8 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective
9 date."

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

11 * Section 1. PURPOSE. It is not the purpose of this Act to affect duties and responsibilities of
12 Alyeska Pipeline Service Company and its owners arising under the state and federal Trans Alaska

1 Pipeline System agreements.

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

3 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
4 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
5 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
6 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
7 action incurred by the state, a municipality, or a village, and for the additional costs of a function
8 or service, including administrative expenses for the incremental costs of providing the function
9 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
11 village, resulting from an unpermitted release of a hazardous substance or, with respect to
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

1 of a hazardous substance.

2 * Sec. 3. AS 46.03.822(b) is amended to read:

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

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

7 (A) an act of war;

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

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

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

14 (C) an act of God; and

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

17 (A) discovered the release or threatened release of the hazardous
18 substance; and

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

20 * Sec. 4. AS 46.03.822(h) is amended to read:

21 (h) The state, a municipality, [OR] a village, a person who acts as a volunteer and is
22 engaged in a response action under the direction of the federal or state on-scene
23 coordinator, and a vessel of opportunity engaged in a response action under the direction
24 of the federal or state on-scene coordinator are [IS] not liable under this section for costs or
25 damages as a result of actions taken in response to an emergency created by a release or
26 threatened release of a hazardous substance generated by or from a facility or vessel owned by
27 another person unless the actions taken by the state, the municipality, [OR] the village, the
28 volunteer, or the vessel constitute gross negligence or intentional misconduct.

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

30 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
31 [INCLUDE] damage to persons or to public or private property, damage to the natural resources

of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

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

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

(1) consistent with a contingency plan

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

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

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

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

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

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

(2) a response action contractor who

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

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

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 is in use [AN ACTION FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL;

1 OR

2 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
3 THE RELEASE].

4 * Sec. 8. AS 46.03.825(d) is amended to read:

5 (d) In this section,

6 (1) "consistent" means in substantial compliance with a contingency plan;

7 (2) "primary response action contractor" has the meaning given in

8 AS 46.04.035;

9 (3) "registered" means registered under AS 46.04.035;

10 (4) "response action" means an action taken to respond to a release or threatened
11 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, marine salvage, or
12 removal of a release or threatened release of oil.

13 * Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

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

19 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
20 or performance standard that must be met by a holder of a contingency plan or by a primary
21 response action contractor.

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

23 (g) In addition to existing obligations under state and federal law, and the provisions of
24 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
25 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
26 pipeline shall (1) immediately contain and clean up a discharge or threatened discharge of oil
27 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
28 activities, including activities related to a vessel en route to, berthed at, or transiting from the
29 Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince
30 William Sound; and (2) provide services required in a response action under contract terms as
31 provided under AS 46.04.030(r). The obligations imposed under this subsection do not affect the

1 response action duties of another person or the liability of another person for a discharge or
2 threatened discharge. Upon the request of the person required to respond to a discharge or
3 threatened discharge under this subsection, the obligation imposed by this subsection may be
4 transferred to another person required by law to respond to the discharge or threatened discharge
5 if the transfer is approved by the federal and state on-scene coordinators. In this subsection,
6 "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

7 (h) A charge, contract term, or financial responsibility requirement imposed by the
8 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the
9 holders and lessees' common operating agent, or the agent or representative of either the holders
10 and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal
11 and related to containing and cleaning up a discharge or threatened discharge of oil or the
12 obligations imposed under (g) of this section

13 (1) must be fair, reasonable, and nondiscriminatory; and

14 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,

15 must

16 (A) not exceed the potential cost of containment and cleanup as provided
17 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
18 expected to incur from a discharge or threatened discharge of oil from that vessel before
19 the transfer of cleanup and containment management and control to the responsible party;
20 in establishing the financial responsibility requirement, the common operating agent shall
21 assume that transfer of management and control will occur at the earliest practicable time
22 following the discharge or threat of discharge; and

23 (B) vary among each vessel in proportion to the volume of oil carried by
24 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
25 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
26 credits granted that vessel under regulations adopted by the department.

27 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
28 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review a charge,
29 contract term, or financial responsibility requirement described under (h) of this section. An
30 action to enforce this subsection may be brought in either forum at the election of a vessel owner,
31 operator, or lessee, or the owner of oil carried as cargo on the vessel.

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

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

- 15 (1) periodic training;
16 (2) response team exercises; and
17 (3) verifying access to inventories of equipment, supplies, and personnel identified
18 as available in the approved contingency plan.

19 * Sec. 12. AS 46.04.030 is amended by adding new subsections to read:

20 (r) Except as provided in (n) of this section and in order to receive approval from the
21 department for an oil discharge prevention and contingency plan submitted under this section,
22 the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by
23 the Trans Alaska Pipeline System shall obtain by contract the services required in a response
24 action from the common operating agent for the holders and lessees of the right-of-way
25 agreement for the Trans Alaska Pipeline System. The contract must contain the following
26 provisions: (1) the common operating agent, as a primary response action contractor shall, unless
27 services required in a response action are transferred as provided in (3) of this subsection, provide
28 services required in a response action for a discharge or a threatened discharge of oil to the
29 owner, operator, or charterer of the vessel while the vessel is berthed at, en route to, or transiting
30 from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince
31 William Sound; (2) that its coverage for any particular vessel may not be terminated by the

1 common operating agent while that vessel is within Prince William Sound; this provision may
2 not be interpreted to limit the department's authority to revoke approval under this section for
3 an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer
4 of a vessel; and, (3) if the contract provides for a transfer of any of the services required in a
5 response action to a discharge or threatened discharge either to an owner, operator, or charterer
6 of the vessel or to the federal government following a discharge or threatened discharge, the
7 contract must provide for not less than 72 hours notice to the owner, operator, or charterer of the
8 vessel that transfer of the services required in a response action will be required and must
9 stipulate that any transfer of the services required in the response action must first be approved
10 by the federal and state on-scene coordinators. In addition to the requirements of this subsection,
11 the department may require individual vessels to submit additional contingency plans to cover
12 specific vessel response, prevention equipment, and procedures. Nothing in this subsection is
13 intended to preclude the federal or state government from assuming management and control of
14 an oil spill response to a discharge or threatened discharge from a vessel under appropriate
15 circumstances. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R.
16 3.85-20.

17 * Sec. 13. 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 primary response action contractor. The department shall adopt regulations governing the
21 registration and approval of oil spill primary response action contractors. Regulations adopted
22 by the department under 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 planning standards for oil spill primary response action contractors
30 listed in an oil spill contingency plan approved under AS 46.04.030.

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

1 action contractor approval program, and a subsequent process to approve primary response action
2 contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for
3 regulations required under (a)(1) - (3) of this section if the approval program and subsequent
4 process are 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 primary response action
11 contractors registered under this section. The department shall provide the list on request to
12 interested persons.

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

16 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
17 or performance standard that must be met by a holder of a contingency plan or a response action
18 contractor.

19 (h) In this section,

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

21 (2) "primary response action contractor" means a person who enters into a
22 response action contract with respect to a release or threatened release of oil and who is carrying
23 out the contract, including a cooperative organization formed to maintain and supply response
24 equipment and materials that enters into a response action contract relating to a release or
25 threatened release of oil.

26 * Sec. 14. AS 46.04.900 is amended by adding a new paragraph to read:

27 (22) "response action" means an action taken to respond to a release or threatened
28 release of oil, including mitigation, cleanup, or removal.

29 * Sec. 15. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

30 * Sec. 16. TRANSITION. The Department of Environmental Conservation shall adopt regulations
31 to implement AS 46.04.035(a), enacted in sec. 13 of this Act, on or before July 1, 1993.

1 * Sec. 17. If ~~sec.~~ 15 of this Act takes effect after June 30, 1992, sec. 15 of this Act is retroactive to
2 June 30, 1992.

3 * Sec. 18. APPLICABILITY. (a) The amendments to AS 46.03.822 and 46.03.825, made by secs.
4 2 - 9 of this Act, apply only to causes of action accruing on or after the effective date of secs. 2 - 9 of
5 this Act.

6 * Sec. 19. Section 11 of this Act takes effect January 1, 1994.

7 * Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (JUDICIARY) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/8/92

Offered: 5/6/92

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for release or threatened release of a hazardous substance;
 2 relating to the liability of an oil spill response action contractor for release or threatened
 3 release of a hazardous substance; relating to contracts by the common operating agent for
 4 the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System
 5 to provide initial response services to tank vessels; relating to financial responsibility and
 6 insurance provisions imposed on vessels; relating to oil discharge and contingency plans;
 7 relating to registration of an oil spill response action contractor; repealing secs. 2, 5, 7
 8 10, and 12 of ch. 92, SLA 1991; amending Alaska Rule of Civil Procedure 65; and
 9 providing for an effective date."

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

11 * Section 1. PURPOSE. It is not the purpose of this Act to affect duties and
 12 responsibilities of Alyeska Pipeline Service Company and its owners arising under federal or

1 state law or the state and federal Trans Alaska Pipeline System agreements.

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

3 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
4 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the
5 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,
6 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
7 action incurred by the state, a municipality, or a village, and for the additional costs of a function
8 or service, including administrative expenses for the incremental costs of providing the function
9 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
11 village, resulting from an unpermitted release of a hazardous substance or, with respect to
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

1 of a hazardous substance.

2 * Sec. 3. AS 46.03.822(b) is amended to read:

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

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

7 (A) an act of war;

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

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

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

14 (C) an act of God; and

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

17 (A) discovered the release or threatened release of the hazardous
18 substance; and

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

20 * Sec. 4. AS 46.03.822(h) is amended to read:

21 (h) The state, a municipality, [OR] a village, a person who acts as a volunteer and is
22 engaged in a response action under the direction of the federal or state on-scene
23 coordinator, and a vessel of opportunity engaged in a response action under the direction
24 of the federal or state on-scene coordinator are [IS] not liable under this section for costs or
25 damages as a result of actions taken in response to an emergency created by a release or
26 threatened release of a hazardous substance generated by or from a facility or vessel owned by
27 another person unless the actions taken by the state, the municipality, [OR] the village, the
28 volunteer, or the vessel constitute gross negligence or intentional misconduct.

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

30 (k) In this section, "damages" has the meaning given in AS 46.03.824 and includes
31 [INCLUDE] damage to persons or to public or private property, damage to the natural resources

1 of the state or a municipality, and damage caused by acts or omissions of a response action
2 contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

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

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

7 (1) consistent with a contingency plan

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

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

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

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

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

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

16 (2) a response action contractor who

17 (A) would otherwise have been liable for the release or threatened
18 release under AS 46.03.822;

19 (B) acts with gross negligence or intentional misconduct or;

20 (C) has agreed in writing to be listed as a primary response action
21 contractor, who is listed as a primary response action contractor in a contingency
22 plan approved under AS 46.04.030, and who fails to respond to a release or
23 threatened release of oil that the primary response action contractor was required
24 to respond to under its contract with the applicable contingency plan holder; this
25 subparagraph does not apply to a primary response action contractor if the failure
26 to respond to a release or threatened release of oil results from a prior and ongoing
27 response under another contingency plan approved under AS 46.04.030 in which the
28 primary response action contractor has the primary duty to respond and a
29 significant portion of the response action contractor's oil spill cleanup equipment
30 listed in the contingency plan approved under AS 46.04.030 is in use [AN ACTION
31 FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL;

1 OR

2 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
3 THE RELEASE].

4 * Sec. 8. AS 46.03.825(d) is amended to read:

5 (d) In this section,

6 (1) "consistent with a contingency plan" means action that, when evaluated
7 as a whole, is in substantial compliance with a contingency plan, and includes action that
8 is a deviation from a contingency plan if the deviation is immaterial or insubstantial;

9 (2) "primary response action contractor" has the meaning given in
10 AS 46.04.035;

11 (3) "registered" means registered under AS 46.04.035;

12 (4) "response action" means an action taken to respond to a release or threatened
13 release of oil, including [BUT NOT LIMITED TO] mitigation, clean up, marine salvage, or
14 removal of a release or threatened release of oil.

15 * Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

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

21 (g) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup
22 or performance standard that must be met by a holder of a contingency plan or by a primary
23 response action contractor.

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

25 (g) In addition to existing obligations under state and federal law, and the provisions of
26 the state and federal trans-Alaska pipeline agreements, the common operating agent for the holder
27 and lessees of the right-of-way agreement for the Trans Alaska Pipeline System shall make initial
28 response action services available under contract terms as provided under AS 46.04.030(r). The
29 obligations imposed under this subsection do not affect the response action duties of any other
30 person or the liability of any other person for a discharge.

31 (h) A financial responsibility or insurance provision imposed on a tank vessel by the

1 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, or their
2 common operating agent, (1) must be fair, reasonable, and nondiscriminatory; and (2) with
3 respect to any financial responsibility requirement in excess of \$10,000,000, (A) may not exceed
4 the potential cost of containment and cleanup that the operating agent may reasonably be
5 expected to incur under its contract with the owner, operator, or charterer of the tank vessel
6 before the transfer of cleanup and containment management and control to the responsible party;
7 in establishing the financial responsibility requirement, the common operating agent shall assume
8 that transfer of management and control will occur at the earliest practicable time following a
9 discharge or a threat of discharge; and (B) must vary among each tank vessel in proportion to
10 the volume of oil carried by each tank vessel per voyage from the marine terminal serving the
11 Trans Alaska Pipeline System; for purposes of this subparagraph, the volume of oil carried by
12 the vessel must be reduced by the percentage of spill reduction credits granted that vessel under
13 regulations adopted by the department.

14 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
15 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin
16 a financial responsibility or insurance provision described in this section at the request of a tank
17 vessel owner, operator, or lessee. Except as provided in this subsection, nothing in this section
18 affects the jurisdiction of the Alaska Public Utilities Commission.

19 (j) If an injunction is sought in a court under (i) of this section for a violation of (h) of
20 this section, the court shall grant a temporary restraining order or preliminary injunction if the
21 tank vessel owner, operator, or lessee demonstrates that the financial responsibility or insurance
22 provision probably violates (h) of this section, even if other requirements for a temporary
23 restraining order or preliminary injunction are not met. However, the court may require security
24 before issuing an injunction or temporary restraining order under this subsection.

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

26 (e) The department may attach reasonable terms and conditions to its approval or
27 modification of a contingency plan that the department determines are necessary to ensure that
28 the applicant for a contingency plan has access to sufficient resources to protect environmentally
29 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
30 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
31 contingency plan. If a contingency plan submitted to the department for approval relies on

1 the services of an oil spill primary response action contractor, the department may not
2 approve the contingency plan unless the primary response action contractor is registered
3 and approved under AS 46.04.035. The contingency plan must provide for the use by the
4 applicant of the best technology that was available at the time the contingency plan was
5 submitted or renewed. The department may require an applicant or holder of an approved
6 contingency plan to take steps necessary to demonstrate its ability to carry out the contingency
7 plan, including

8 (1) periodic training;

9 (2) response team exercises; and

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

12 * Sec. 12. AS 46.04.030 is amended by adding new subsections to read:

13 (r) Except as provided in (n) of this section and in order to receive approval from the
14 department for an oil discharge prevention and contingency plan submitted under this section,
15 the owner, operator, or charterer of a tank vessel that intends to carry crude oil that has been
16 transported by the Trans Alaska Pipeline System shall obtain by contract the initial response
17 action services of the common operating agent for the holders and lessees of the right-of-way
18 agreement for the Trans Alaska Pipeline System. The contract must contain the following
19 provisions: (1) the common operating agent, as a primary response action contractor shall, unless
20 response services are transferred as provided in (2) of this subsection, provide initial response
21 services to the owner, operator, or charterer of the tank vessel for a discharge or a threatened
22 discharge of crude oil from a tank vessel while the vessel is berthed at the Trans Alaska Pipeline
23 System marine terminal or while the vessel is within 72 tanker lane miles to or from the marine
24 terminal; (2) that its coverage for any particular vessel may not be terminated by the common
25 operating agent while that vessel is within 72 tanker lane miles to or from the marine terminal;
26 this provision may not be interpreted to limit the department's authority to revoke approval under
27 this section for an oil discharge prevention and contingency plan submitted by the owner,
28 operator, or charterer of a tank vessel; and (3) if the contract provides for a transfer of the
29 management and control of the response action to a discharge or threatened discharge either to
30 an owner, operator, or charterer of the tank vessel or to the federal government following a
31 discharge or threatened discharge, the contract must provide for not less than 72 hours notice to

1 the owner, operator, or charterer of the tank vessel that transfer of management and control will
2 be required and must stipulate that any transfer of the management and control of the response
3 action must first be approved by the federal and state coordinators on-scene coordinator after
4 consultation with the state on-scene coordinator. In addition to the requirements of this
5 subsection, the department may require individual vessels to submit additional contingency plans
6 to cover specific vessel response, prevention equipment, and procedures. Nothing in this
7 subsection is intended to preclude the federal or state government from assuming management
8 and control of an oil spill response to a discharge or threatened discharge from a tank vessel
9 under appropriate circumstances.

10 * Sec. 13. AS 46.04 is amended by adding a new section to read:

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

16 (1) minimum training standards for personnel;
17 (2) verification requirements that ensure the existence of resources, including
18 personnel, equipment, services, and an adequate deployment plan necessary to a response action
19 or as required by a contingency plan in which the contractor has agreed in writing to be listed
20 and is listed;

21 (3) minimum professional response action standards and practices; and
22 (4) minimum planning standards for oil spill primary response action contractors
23 listed in an oil spill contingency plan approved under AS 46.04.030.

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

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

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

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

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

9 (g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup
10 or performance standard that must be met by a holder of a contingency plan or a response action
11 contractor.

12 (h) In this section,

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

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

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

20 * Sec. 14. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

21 * Sec. 15. COURT RULE CHANGE. (a) AS 46.04.020(j), added by sec. 10 of this Act, has the
22 effect of amending Alaska Rule of Civil Procedure 65 by changing the requirements for issuance of a
23 temporary restraining order or preliminary injunction in certain cases.

24 (b) AS 46.04.020(j), added by sec. 10 of this Act, takes effect only if (a) of this section receives
25 the two-thirds majority vote of each house required by art. IV, sec. 16, Constitution of the State of
26 Alaska.

27 * Sec. 16. TRANSITION. The Department of Environmental Conservation shall adopt regulations
28 to implement AS 46.04.035(a), enacted in sec. 13 of this Act, on or before January 1, 1993.

29 * Sec. 17. If sec. 14 of this Act takes effect after June 30, 1992, sec. 14 of this Act is retroactive to
30 June 30, 1992.

31 * Sec. 18. APPLICABILITY. (a) The amendments to AS 46.03.822 and 46.03.825, made by secs.

1 2 - 9 of this Act, apply only to causes of action accruing on or after the effective date of secs. 2 - 9 of
2 this Act.

3 * Sec. 19. Section 11 of this Act takes effect July 1, 1993.

4 * Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect immediately under
5 AS 01.10.070(c).

Ford
5-9-92
7-LS1290M
Sen. Cotton

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 270 (OIL & GAS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

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
4 prevention and contingency plans; relating to liability for release of a hazardous substance;
5 relating to the duty of the common operating agent for the holders and lessees of the
6 right-of-way agreement for the Trans Alaska Pipeline System to control and contain oil
7 discharges and to charges or financial responsibility requirements related to containment
8 and cleanup of oil; and providing 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 production moves through Alaska state waters;
12 in 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 vessel Exxon Valdez, there was a confusing and time
11 consuming transfer of spill response management from the oil spill contingency plan holder and one of
12 the parties responsible for the oil spill; this transfer of management delayed efficient and effective
13 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 primary response action
12 contractor 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 not listed in (3) of this section; in this
18 subparagraph, "oil" has the meaning 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, and the
22 limitation of liability provided under AS 46.03.825, the following persons are strictly liable,
23 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
24 action incurred by the state, a municipality, or a village, and for the additional costs of a function
25 or service, including administrative expenses for the incremental costs of providing the function
26 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
27 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
28 village, resulting from an unpermitted release of a hazardous substance or, with respect to
29 response costs, the substantial threat of an unpermitted release of 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 * Sec. 4. AS 46.03.822(b) is amended to read:

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

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

24 (A) an act of war;

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

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

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

31 (C) an act of God; and

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

3 (A) discovered the release or threatened release of the hazardous
4 substance; and

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

6 * Sec. 5. AS 46.03.822(h) is amended to read:

7 (h) The state, a municipality, [OR] a village, a person who acts as a volunteer and is
8 engaged in a response action under the direction of the federal or state on-scene
9 coordinator, and a vessel of opportunity engaged in a response action under the direction
10 of the federal or state on-scene coordinator are [IS] not liable under this section for costs or
11 damages as a result of actions taken in response to an emergency created by a release or
12 threatened release of a hazardous substance generated by or from a facility or vessel owned by
13 another person unless the actions taken by the state, the municipality, [OR] the village, the
14 volunteer, or the vessel constitute gross negligence or intentional misconduct.

15 * Sec. 6. AS 46.03.822(k) is amended to read:

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

20 * Sec. 7. AS 46.03.825(a) is repealed and reenacted to read:

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

24 (1) consistent with a contingency plan

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

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

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

30 * Sec. 8. AS 46.03.825(b) is amended to read:

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

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

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

3 (3) 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; or

7 (C) has agreed in writing to be listed and who is listed in a
8 contingency plan approved under AS 46.04.030 who fails to respond to a release or
9 threatened release of oil that the response action contractor was required to respond
10 to under its contract with the contingency plan holder; this subparagraph does not
11 apply to a response action contractor if the failure to respond to a release or
12 threatened release of oil results from a concurrent response under another
13 contingency plan approved under AS 46.04.030 in which the response action
14 contractor has the primary duty to respond;

15 (4) an action based on contractual duties arising out of the state and federal
16 Trans Alaska Pipeline System right-of-way agreements [AN ACT OR OMISSION THAT
17 OCCURS MORE THAN 15 DAYS AFTER THE RELEASE].

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

19 (d) In this section,

20 (1) "primary response action contractor" has the meaning given in
21 AS 46.04.035;

22 (2) "registered" means registered under AS 46.04.035;

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

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

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

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

1 * Sec. 11. AS 46.03.826(11) is amended to read:

2 (11) "response action contractor" means a person who

3 (A) [A PERSON WHO] enters into a response action contract with respect
4 to a release or threatened release of a hazardous substance and who is carrying out the
5 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
7 or threatened release;

8 (B) [A PERSON WHO] is retained or hired by and is under the control
9 of a person described in (A) of this paragraph to provide services related to the response
10 action contract; [AND]

11 (C) [A PERSON WHO] acts as a volunteer, including a person on a
12 vessel of opportunity, and is engaged in a response action; or

13 (D) is required to respond under AS 46.04.020(g).

14 * Sec. 12. 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. 13. AS 46.04.020 is amended by adding new subsections to read:

24 (g) In addition to existing obligations under state and federal law, and the provisions of
25 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
26 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
27 pipeline shall immediately contain and clean up a discharge or threatened discharge of oil
28 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
29 activities, including activities related to a vessel en route to, berthed at, or transiting from the
30 Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince
31 William Sound. The obligations imposed under this subsection do not affect the response action

1 duties of another person or the liability of another person for a discharge or threatened discharge.
2 Upon the request of the person required to respond to a discharge or threatened discharge under
3 this subsection, the obligation imposed by this subsection may be transferred to another person
4 required by law, to respond to the discharge or threatened discharge if the transfer is approved
5 by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has
6 the meaning given in 33 C.F.R. 3.85-20.

7 (h) A charge or financial responsibility requirement imposed by the holders and lessees
8 of the right-of-way agreement for the Trans Alaska Pipeline System, or the holders and lessees'
9 common operating agent, on or for a vessel traveling from a marine terminal and related to
10 containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed
11 under (g) of this section

12 (1) must be fair, reasonable, and nondiscriminatory; and

13 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,
14 must

15 (A) not exceed the potential cost of containment and cleanup as provided
16 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
17 expected to incur from a discharge or threatened discharge of oil from that vessel before
18 the transfer of cleanup and containment management and control to the responsible party;
19 in establishing the financial responsibility requirement, the common operating agent shall
20 assume that transfer of management and control will occur at the earliest practicable time
21 following the discharge or threat of discharge; and

22 (B) vary among each vessel in proportion to the volume of oil carried by
23 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
24 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
25 credits granted that vessel under regulations adopted by the department.

26 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
27 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review a charge
28 or financial responsibility requirement described under (h) of this section. An action to enforce
29 this subsection may be brought in either forum at the election of a vessel owner, operator, or
30 lessee, or the owner of oil carried as cargo on the vessel.

31 (j) The department may waive an oil discharge containment and cleanup requirement

1 imposed under (a) or (g) of this section if

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

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

7 * Sec. 14. AS 46.04.030(a) is amended to read:

8 (a) A person may not cause or permit the operation of an oil terminal facility in the state
9 unless an oil discharge prevention and contingency plan for the facility has been approved by the
10 department and the person is in compliance with the plan. In addition to the existing
11 obligations under state and federal law, and provisions of the state and federal Trans
12 Alaska Pipeline System right-of-way agreements, the common operating agent for the
13 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System
14 must include in its oil discharge prevention and contingency plan coverage for a vessel en
15 route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal
16 or while traveling on waters lying within Prince William Sound. In addition to the
17 contingency plan requirement of this subsection, the department may require an individual
18 vessel to submit an individual contingency plan to cover specific vessel response, prevention
19 equipment, and procedures. Except as may be required by the department under this
20 subsection, vessel owners, operators, and charterers are not required to submit individual
21 contingency plans for the transport of crude oil from the marine terminal serving the Trans
22 Alaska Pipeline System in Prince William Sound. In this subsection, "Prince William
23 Sound" has the meaning given in 33 C.F.R. 3.85-20.

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

25 (e) The department may attach reasonable terms and conditions to its approval or
26 modification of a contingency plan that the department determines are necessary to ensure that
27 the applicant for a contingency plan has access to sufficient resources to protect environmentally
28 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
29 vessel as provided in (k) of this section, and to ensure that the applicant complies with the
30 contingency plan. If a contingency plan submitted to the department for approval relies on
31 the services of an oil spill primary response action contractor, the department may not

1 approve the contingency plan unless the primary response action contractor is registered
2 and approved under AS 46.04.035. The contingency plan must provide for the use by the
3 applicant of the best technology that was available at the time the contingency plan was
4 submitted or renewed. The department may require an applicant or holder of an approved
5 contingency plan to take steps necessary to demonstrate its ability to carry out the contingency
6 plan, including

7 (1) periodic training;

8 (2) response team exercises; and

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

11 * Sec. 16. AS 46.04.030(d) is amended to read:

12 (d) Upon approval of a contingency plan, the department shall issue to the plan holder
13 a certificate stating that the contingency plan has been approved by the department. The
14 certificate must include the name of the facility, pipeline, or [TANK] vessel, [OR OIL BARGE]
15 for which it is issued, the effective date of the contingency plan, and the date by which the
16 contingency plan must be submitted for renewal. A contingency plan must be submitted for
17 renewal every three years. Except as otherwise provided in this section, a contingency plan
18 may be held by a person other than the vessel operator or the terminal operator, including
19 a cooperative, a joint venture response organization, or other holder.

20 * Sec. 17. AS 46.04.030 is amended by adding a new subsection to read:

21 (r) Except as provided in (n) of this section and in order to receive approval from the
22 department for an oil discharge prevention and contingency plan submitted under this section,
23 the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by
24 the Trans Alaska Pipeline System shall obtain by contract the initial response action services of
25 the common operating agent for the holders and lessees of the right-of-way agreement for the
26 Trans Alaska Pipeline System. If the contract provides for a transfer of the management and
27 control of the response action to a discharge or threatened discharge either to the vessel or to the
28 federal government following a discharge or threatened discharge, the contract must provide for
29 not less than 72 hours notice to the vessel if transfer of management and control occurs and must
30 stipulate that any transfer of the management and control of the response action must first be
31 approved by the federal and state on-scene coordinators. In addition to the requirements of this

1 subsection, the department may require individual vessels to submit additional contingency plans
2 to cover specific vessel response, prevention equipment, and procedures. Nothing in this
3 subsection is intended to preclude the federal or state government from assuming management
4 and control of an oil spill response to a discharge or threatened discharge from a vessel under
5 appropriate circumstances.

6 * Sec. 18. AS 46.04 is amended by adding a new section to read:

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

12 (1) minimum training standards for personnel;

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

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

18 (4) minimum performance assurances for oil spill primary response action
19 contractors listed in an oil spill contingency plan approved under AS 46.04.030.

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

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

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

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

1 interested persons.

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

5 (g) In this section,

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

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

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

13 * Sec. 19. TRANSITION. The Department of Environmental Conservation shall adopt regulations
14 to implement AS 46.04.035(a), enacted in sec. 18 of this Act, on or before July 1, 1993.

15 * Sec. 20. REPORT. The Department of Environmental Conservation shall report to the legislature
16 by March 31, 1993, on the progress of the department in developing the ability of the state to respond
17 to oil spills of an unknown origin and enhance regional response and coastline protection.

18 * Sec. 21. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

19 * Sec. 22. If sec. 21 of this Act takes effect after June 30, 1992, sec. 21 of this Act is retroactive to
20 June 30, 1992.

21 * Sec. 23. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
22 AS 46.03.822 and 46.03.825, made by secs. 3 - 10 of this Act, apply only to causes of action accruing
23 on or after the effective date of secs. 3 - 10 of this Act.

24 (b) The provisions of AS 46.03.825(b)(3)(C) apply only to causes of action accruing on or after
25 the effective date of that paragraph under sec. 24 of this Act.

26 * Sec. 24. AS 46.03.825(b)(3)(C), added by sec. 8 of this Act, and sec. 15 of this Act take effect
27 January 1, 1994.

28 * Sec. 25. Except as provided in sec. 24 of this Act, this Act takes effect immediately under
29 AS 01.10.070(c).

7-LS1290P

Ford

5/8/92

S. R. COTTEN

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 270 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act amending sec. 12, ch. 92, SLA 1991; and providing for an effective date."

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

3 * Section 1. Section 12, ch. 92, SLA 1991, is amended to read:

4 Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1993 [1992].5 * Sec. 2. If sec. 1 of this Act takes effect after June 30, 1992, sec. 1 of this Act is retroactive to
6 June 30, 1992.

7 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

7-LS1290M
Ford
5/5/92

Sam Costen

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 270 (OIL & GAS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

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
4 prevention and contingency plans; relating to liability for release of a hazardous substance;
5 relating to the duty of the common operating agent for the holders and lessees of the
6 right-of-way agreement for the Trans Alaska Pipeline System to control and contain oil
7 discharges and to charges or financial responsibility requirements related to containment
8 and cleanup of oil; and providing 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 production moves through Alaska state waters;
12 in particular, 650,000,000 barrels of crude oil move through Prince William Sound each year;

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

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

7 (g) In this section,

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

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

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

15 * Sec. 17. TRANSITION. The Department of Environmental Conservation shall adopt regulations
16 to implement AS 46.04.035(a), enacted in sec. 16 of this Act, on or before July 1, 1993.

17 * Sec. 18. REPORT. The Department of Environmental Conservation shall report to the legislature
18 by March 31, 1993, on the progress of the department in developing the ability of the state to respond
19 to oil spills of an unknown origin and enhance regional response and coastline protection.

20 * Sec. 19. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

21 * Sec. 20. If sec. 19 of this Act takes effect after June 30, 1992, sec. 19 of this Act is retroactive to
22 June 30, 1992.

23 * Sec. 21. APPLICABILITY. (a) Except as provided in (b) of this section, the amendments to
24 AS 46.03.822 and 46.03.825, made by secs. 3 - 9 of this Act, apply only to causes of action accruing
25 on or after the effective date of secs. 3 - 9 of this Act.

26 (b) The provisions of AS 46.03.825(b)(3)(C) apply only to causes of action accruing on or after
27 the effective date of that paragraph under sec. 22 of this Act.

28 * Sec. 22. AS 46.03.825(b)(3)(C), added by sec. 7 of this Act, and sec. 13 of this Act take effect
29 January 1, 1994.

30 * Sec. 23. Except as provided in sec. 22 of this Act, this Act takes effect immediately under
31 AS 01.10.070(c).

1 a certificate stating that the contingency plan has been approved by the department. The
2 certificate must include the name of the facility, pipeline, or [TANK] vessel, [OR OIL BARGE]
3 for which it is issued, the effective date of the contingency plan, and the date by which the
4 contingency plan must be submitted for renewal. A contingency plan must be submitted for
5 renewal every three years. Except as otherwise provided in this section, a contingency plan
6 may be held by a person other than the vessel operator or the terminal operator, including
7 a cooperative, a joint venture response organization, or other holder.

8 * Sec. 16. AS 46.04 is amended by adding a new section to read:

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

14 (1) minimum training standards for personnel;

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

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

20 (4) minimum performance assurances for oil spill primary response action
21 contractors listed in an oil spill contingency plan approved under AS 46.04.030.

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

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

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

contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

* Sec. 14. AS 46.04.030(a) is amended to read:

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan. In addition to the existing obligations under state and federal law, and provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System must include in its oil discharge prevention and contingency plan coverage for a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince William Sound. In addition to the contingency plan requirement of this subsection, the department may require an individual vessel to submit an individual contingency plan to cover specific vessel response, prevention equipment, and procedures. Except as may be required by the department under this subsection, vessel owners, operators, and charterers are not required to submit individual contingency plans for the transport of crude oil from the marine terminal serving the Trans Alaska Pipeline System in Prince William Sound. In this subsection, "Prince William Sound" has the meaning given in 33 C.F.R. 3.85-20.

* Sec. 15. AS 46.04.030(d) is amended to read:

- (d) Upon approval of a contingency plan, the department shall issue to the plan holder

1 (2) with respect to a financial responsibility requirement in excess of \$10,000,000,
2 must

3 (A) not exceed the potential cost of containment and cleanup as provided
4 in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be
5 expected to incur from a discharge or threatened discharge of oil from that vessel before
6 the transfer of cleanup and containment management and control to the responsible party;
7 in establishing the financial responsibility requirement, the common operating agent shall
8 assume that transfer of management and control will occur at the earliest practicable time
9 following the discharge or threat of discharge; and

10 (B) vary among each vessel in proportion to the volume of oil carried by
11 each vessel per voyage from a marine terminal; for purposes of this subparagraph, the
12 volume of oil carried by the vessel must be reduced by the percentage of spill reduction
13 credits granted that vessel under regulations adopted by the department.

14 (i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities
15 Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review a charge
16 or financial responsibility requirement described under (h) of this section. An action to enforce
17 this subsection may be brought in either forum at the election of a vessel owner, operator, or
18 lessee, or the owner of oil carried as cargo on the vessel.

19 (j) The department may waive an oil discharge containment and cleanup requirement
20 imposed under (a) or (g) of this section if

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

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

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

27 (e) The department may attach reasonable terms and conditions to its approval or
28 modification of a contingency plan that the department determines are necessary to ensure that
29 the applicant for a contingency plan has access to sufficient resources to protect environmentally
30 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
31 vessel as provided in (k) of this section, and to ensure that the applicant complies with the

1 (D) is required to respond under AS 46.04.020(g).

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) In addition to existing obligations under state and federal law, and the provisions of
13 the state and federal Trans Alaska Pipeline System right-of-way agreements, the common
14 operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska
15 pipeline shall immediately contain and clean up a discharge or threatened discharge of oil
16 transported by or due to the operation of the Trans Alaska Pipeline System or due to related
17 activities, including activities related to a vessel en route to, berthed at, or transiting from the
18 Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince
19 William Sound. The obligations imposed under this subsection do not affect the response action
20 duties of another person or the liability of another person for a discharge or threatened discharge.
21 Upon the request of the person required to respond to a discharge or threatened discharge under
22 this subsection, the obligation imposed by this subsection may be transferred to another person
23 required by law to respond to the discharge or threatened discharge if the transfer is approved
24 by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has
25 the meaning given in 33 C.F.R. 3.85-20.

26 (h) A charge or financial responsibility requirement imposed by the holders and lessees
27 of the right-of-way agreement for the Trans Alaska Pipeline System, or the holders and lessees'
28 common operating agent, on or for a vessel traveling from a marine terminal and related to
29 containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed
30 under (g) of this section

31 (1) must be fair, reasonable, and nondiscriminatory; and

contingency plan approved under AS 46.04.030 in which the response action contractor has the primary duty to respond;

(4) an action based on contractual duties arising out of the state and federal Trans Alaska Pipeline System right-of-way agreements [AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER THE RELEASE].

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

(d) In this section,

(1) "primary response action contractor" has the meaning given in AS 46.04.035;

(2) "registered" means registered under AS 46.04.035;

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

* Sec. 9. AS 46.03.825 is amended by adding new subsections to read:

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

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

* Sec. 10. AS 46.03.826(11) is amended to read:

(11) "response action contractor" means a person who

(A) [A PERSON WHO] enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

(B) [A PERSON WHO] is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract; [AND]

(C) [A PERSON WHO] acts as a volunteer, including a person on a vessel of opportunity, and is engaged in a response action; or

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

3 (A) discovered the release or threatened release of the hazardous
4 substance; and

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

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

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

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

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

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

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

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

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

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

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

22 (3) a response action contractor who

23 (A) would otherwise have been liable for the release or threatened
24 release under AS 46.03.822;

25 (B) acts with gross negligence or intentional misconduct; or

26 (C) has agreed in writing to be listed and who is listed in a
27 contingency plan approved under AS 46.04.030 who fails to respond to a release or
28 threatened release of oil that the response action contractor was required to respond
29 to under its contract with the contingency plan holder; this subparagraph does not
30 apply to a response action contractor if the failure to respond to a release or
31 threatened release of oil results from a concurrent response under another

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

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

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

24 (A) an act of war;

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

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

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

31 (C) an act of God; and

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 primary response action
12 contractor 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 not listed in (3) of this section; in this
18 subparagraph, "oil" has the meaning 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, and the
22 limitation of liability provided under AS 46.03.825, the following persons are strictly liable,
23 jointly and severally, for damages, for the costs of response, containment, removal, or remedial
24 action incurred by the state, a municipality, or a village, and for the additional costs of a function
25 or service, including administrative expenses for the incremental costs of providing the function
26 or service, that are incurred by the state, a municipality, or a village, and the costs of projects
27 or activities that are delayed or lost because of the efforts of the state, the municipality, or the
28 village, resulting from an unpermitted release of a hazardous substance or, with respect to
29 response costs, the substantial threat of an unpermitted release of 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 (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 vessel Exxon Valdez, there was a confusing and time
11 consuming transfer of spill response management from the oil spill contingency plan holder and one of
12 the parties responsible for the oil spill; this transfer of management delayed efficient and effective
13 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

Ford
4/7/92
7-LS1290G

Sen. Cotten

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:

Referred:

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:

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

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

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

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

- (1) minimum training standards for personnel;
- (2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;
- (3) minimum professional response action standards and practices; and
- (4) minimum performance standards for oil spill response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(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 46.03.826;

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).

ford
4-25-91

7-LS1290A

Sen. Secretary

SENATE BILL NO. 270

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; and providing for an effective date."

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

6 * Section 1. FINDING AND INTENT. The legislature finds that the entire subject of response action
7 contractor civil liability is in need of review. The legislature intends to review the subject of response
8 action contractor civil liability and to complete a report on this subject before January 15, 1992. The
9 legislature also intends to include in the report modifications necessary to state laws on response action
10 contractor civil liability, and an analysis of whether the present state laws that require shippers and
11 owners to file contingency plans and to provide response action are adequate to protect the public in the
12 event of an oil spill.

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

14 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

1 set out in (b) of this section and the exception set out in (i) of this section, the following persons
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
7 threat of an unpermitted release of a hazardous substance:

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

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

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

18 (4) except for a response action contractor, any person who by contract,
19 agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for
20 transport for disposal or treatment, of hazardous substances owned or possessed by the person,
21 other than domestic sewage, or by any other party or entity, at any facility or vessel owned or
22 operated by another party or entity and containing hazardous substances, from which there is a
23 release, or a threatened release that causes the incurrence of response costs, of a hazardous
24 substance;

25 (5) except for a response action contractor, any person who accepts or accepted
26 any hazardous substances, other than refined oil, for transport to disposal or treatment facilities,
27 vessels or sites selected by the person, from which there is a release, or a threatened release that
28 causes the incurrence of response costs, of a hazardous substance.

29 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

30 (k) In this section, "damages" include damage to persons or to public or private property,
31 damage to the natural resources of the state or a municipality, and damage caused by acts or

omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

* Sec. 4. AS 46.03.823(a) is amended to read:

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

* Sec. 5. AS 46.03.823(g) is repealed and reenacted to read:

(g) In this section, "response action" means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

* Sec. 6. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of oil whose act or omission is not contrary to an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that

(1) the response action contractor would have been liable for the initial release or threatened release under AS 46.03.822 even if that contractor had not carried out a response action;

(2) the response action contractor acted with gross negligence or intentional misconduct; or

1 (3) the response action contractor, without approval by the federal or state on-
2 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
3 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible
4 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
5 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

9 (3) an act or omission that occurs more than 30 days after the release.

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

19 (d) In this section, "response action" means an action taken to respond to a release or
20 threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release
21 or threatened release of oil.

22 * Sec. 7. AS 46.03.826 is amended by adding new paragraphs to read:

23 (14) "response action contract" means a written contract or agreement to provide
24 response action with respect to a release or threatened release of a hazardous substance entered
25 into by a person with

26 (A) the department;

27 (B) another person who has entered into an agreement with the department
28 that provides for response action subject to the department's oversight and control;

29 (C) a federal agency with jurisdiction over the release or threatened
30 release; or

31 (D) another person potentially liable for the release or threatened release

1 under state or federal law;

2 (15) "response action contractor" means

3 (A) a person who enters into a response action contract with respect to a
4 release or threatened release of a hazardous substance and who is carrying out the
5 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
7 or threatened release;

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

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

12 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

7-LS1290A

Ford

4/25/91

Sen Cotten

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

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7 contractor civil liability is in need of review. The legislature intends to review the subject of response
8 action contractor civil liability and to complete a report on this subject before January 15, 1992. The
9 legislature also intends to include in the report modifications necessary to state laws on response action
10 contractor civil liability, and an analysis of whether the present state laws that require shippers and
11 owners to file contingency plans and to provide response action are adequate to protect the public in the
12 event of an oil spill.

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

14 (a) Notwithstanding any other provision or rule of law and subject only to the defenses

1 set out in (b) of this section and the exception set out in (i) of this section, the following persons
2 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
3 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
4 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
5 containment, removal, or remedial action incurred by the state or a municipality, resulting from
6 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
7 threat of an unpermitted release of a hazardous substance:

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

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

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

18 (4) except for a response action contractor, any person who by contract,
19 agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for
20 transport for disposal or treatment, of hazardous substances owned or possessed by the person,
21 other than domestic sewage, or by any other party or entity, at any facility or vessel owned or
22 operated by another party or entity and containing hazardous substances, from which there is a
23 release, or a threatened release that causes the incurrence of response costs, of a hazardous
24 substance;

25 (5) except for a response action contractor, any person who accepts or accepted
26 any hazardous substances, other than refined oil, for transport to disposal or treatment facilities,
27 vessels or sites selected by the person, from which there is a release, or a threatened release that
28 causes the incurrence of response costs, of a hazardous substance.

29 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

30 (k) In this section, "damages" include damage to persons or to public or private property,
31 damage to the natural resources of the state or a municipality, and damage caused by acts or

1 omissions of a response action contractor for which the response action contractor is not liable
2 under AS 46.03.823 or 46.03.825.

3 * Sec. 4. AS 46.03.823(a) is amended to read:

4 (a) A person who is a response action contractor with respect to a release or threatened
5 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
6 response plan or order by a state or federal agency having jurisdiction over the release or
7 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
8 results from the release or threatened release unless the release or threatened release is caused
9 by an act or omission of the response action contractor that is negligent or grossly negligent or
10 constitutes intentional misconduct. To show negligence by a response action contractor, a
11 claimant must show that the acts or omissions of the contractor under the response action contract
12 were not in accordance with generally accepted professional standards and practices at the time
13 the response action services were performed.

14 * Sec. 5. AS 46.03.823(g) is repealed and reenacted to read:

15 (g) In this section, "response action" means an action taken in connection with the
16 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
17 including investigation, evaluation, plan development, mapping and surveying, engineering,
18 design and construction, removal, and equipment provision.

19 * Sec. 6. AS 46.03 is amended by adding a new section to read:

20 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
21 is a response action contractor with respect to a release or threatened release of oil whose act or
22 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
23 liable for injuries, costs, damages, expenses, or other liability that results from the release or
24 threatened release, or from the response action contractor's act or omission in response to the
25 release or threatened release, unless the person bringing a claim against the response action
26 contractor proves by a preponderance of the evidence that

27 (1) the response action contractor would have been liable for the initial release
28 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
29 action;

30 (2) the response action contractor acted with gross negligence or intentional
31 misconduct; or

(3) the response action contractor, without approval by the federal or state on-scene coordinator, substantially deviated from an oil spill contingency plan previously approved under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

(1) an action for personal injury or death;

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

(3) an act or omission that occurs more than 30 days after the release.

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

(d) In this section, "response action" means an action taken to respond to a release or threatened release of oil, including but not limited to mitigation, cleanup, or removal of a release or threatened release of oil.

* Sec. 7. AS 46.0? 26 is amended by adding new paragraphs to read:

(14) "response action contract" means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release

1 under state or federal law;

2 (15) "response action contractor" means

3 (A) a person who enters into a response action contract with respect to a
4 release or threatened release of a hazardous substance and who is carrying out the
5 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
7 or threatened release;

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

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

12 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).