

SCOMM

78:50

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIDSON

TO: CSHB 196(RESOURCES)

Page 4, following line 3:

Insert a new subsection to read:

"(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 release or threatened release ^{that RRA's act or omission with respect to it} ~~unless the release or threatened release is caused by an act or omission of the oil spill response action contractor that is negligent,~~ ^{unless the act} grossly negligent, or constitutes intentional misconduct."

Reletter the following subsection accordingly.

and except as provided in (d)(1) of this §

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 196 (RESOURCES)

Page 1, following line 6:

Insert a new bill section to read:

"* Section 1. FINDING AND INTENT. The legislature finds that the entire subject of response action contractor civil liability is in need of review. The legislature intends to review the subject of response action contractor civil liability and to complete a report on this subject before January 15, 1992. The legislature also intends to include in the report modifications necessary to state laws on response action contractor civil liability, and an analysis of whether the present state laws that require shippers and owners to contract with response action contractors to carry out contingency plans are adequate to protect the public in the event of an oil spill."

Page 1, line 7:

Delete "**Section 1.**"

Insert "**Sec. 2.**"

Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HUDSON

TO: CSHB 196 (RESOURCES)

Page 1, line 3, after "":

Insert "relating to agreements between response action contractors and other persons;"

Page 6, after line 21:

Insert a new subsection to read:

"(d) A response action contract entered into by a person who is required to show financial responsibility under AS 46.04.040 and a response action contractor under this section may contain a term that requires the person to insure or indemnify and protect the response action contractor or demonstrate financial ability to respond in damages in a form and amount that is separate and in addition to the financial responsibility the person must demonstrate to the state under AS 46.04.040 and regulations adopted under that section. However, the response action contract may not require, nor may it be conditioned on a separate agreement that requires, that the insurance, indemnification, or financial ability demonstrated or provided under this subsection be in a form or an amount that exceeds the financial responsibility requirements for the person under AS 46.04.040 and regulations adopted under that section. A term that violates this subsection is void and severable from the remainder of the agreement."

Reletter the following subsection accordingly.

Page 7, after line 15:

Insert a new bill section to read:

"* **Sec. 12.** AS 46.03.825(d), enacted by sec. 9 of this Act, applies to a response action contract entered into or renewed on or after the effective date of sec. 9 of this Act."

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE ELLIS

TO: CSHB 196 (JUDICIARY)

Page 1, line 4, after "":

Insert "relating to agreements between response action contractors and other persons;"

Page 6, after line 15:

Insert a new subsection to read:

"(d) A response action contract entered into by a person who is required to show financial responsibility under AS 46.04.040 and a response action contractor under this section that requires the person to demonstrate financial ability to respond to the response action contractor in damages must provide that the person may demonstrate financial responsibility in any of the forms allowed under AS 46.04.040(e) and regulations adopted under that section. A term that violates this subsection is void and severable from the remainder of the agreement."

Reletter the following subsection accordingly.

Page 7, after line 17:

Insert a new bill section to read:

"^a Sec. 12. AS 46.03.825(d), enacted by sec. 8 of this Act, applies to a response action contract entered into or renewed on or after the effective date of sec. 8 of this Act."

Renumber the following bill sections accordingly.

*Sec. 1. The legislature finds and declares that;

1. Oil spill response action contractors operate in a crisis atmosphere, and are required to make immediate decisions on the basis of often incomplete information and poor communications. The emergency nature of oil spill cleanup sets it apart from other, more long-term forms of environmental remediation;

2. As a result, even oil spill response action contractors with no involvement in the oil spill itself, and who responded to the oil spill in good faith, face an unreasonable risk of involvement in litigation over the oil spill;

3. The magnitude and immediacy of the risk to Alaska's environment from the production, transportation and storage of oil in large quantities, particularly near and across state waters, requires that special measures be taken to ensure that adequate containment and cleanup assets are promptly available within the state. No other commercial or industrial activity in the state presents the same risk of sudden and catastrophic harm, or requires the same extensive advance provision of local response services;

4. The unreasonable legal risks borne by oil spill response action contractors disserves the state's goal of encouraging prompt and sufficient oil spill response by:

(A) discouraging oil spill response action contractors from doing business in the state;

(B) causing oil spill response action contractors to hesitate during the first critical hours following the spill; and

(C) causing oil spill response action contractors to make their services available to the private and public sectors only under impractical insurance and indemnification terms;

5. The United States Congress, and the legislatures of several coastal states, have recently enacted legislation insulating innocent oil spill response action contractors from these unreasonable legal risks. This has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill response services to the state; and

6. Damages occasioned by the good faith actions of an innocent oil spill response action contractor, and the burdens of resultant litigation, should be borne by the persons responsible for the spill, rather than the response action contractor.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 196

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Page 1, line 3:

Delete "definition"

Insert "definitions"

Page 1, line 3, following "'response action'":

Insert "and 'response action contractor'"

Page 5, line 11:

Delete "and"

Page 5, line 14, following "contract":

Insert "; and

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

Add to "(16) response action contractor" (p.5, l. 15):

(c) a ^{volunteer} ~~person~~ authorized by the department, ~~or a federal~~
~~agency with jurisdiction over the release,~~ ^{ing} to engage in response
action;

To my old friend & mentor
R. DeLoach

02/11/91

J. R. Zyl

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[S] or omission[S] [ARE] is not contrary to [A RESPONSE PLAN] the state or applicable regional master plan under AS 46.04.200-210, or order [BY A STATE OR FEDERAL AGENCY HAVING JURISDICTION OVER THE RELEASE OR THREATENED RELEASE OF OIL] 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[S] or omission[S] 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

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 the state or applicable regional master plan under AS 46.04.200-210, or 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

Deborah - John T.
brought these
amendments to the
bill based on
my conversation
w/ Gene. I'm
here whenever
you can talk.
Paul 7907

OLD

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 [A RESPONSE PLAN OR] 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 release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

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

(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) an act or omission contrary to the applicable contingency plan under AS 46.04.030, if any, where the response action contractor's deviation from the plan was the result of gross negligence or intentional misconduct.

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 [A RESPONSE PLAN OR] 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 release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

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

(b) The limitation on liability contained in (a) of this section does not apply to an action for personal injury or death.

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 [A RESPONSE PLAN OR] 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 release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

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

(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) an act or omission contrary to a representation of the response action contractor, where:

(A) the representation was incorporated into the approved contingency plan under AS 46.04.030 of a person responsible for the release under AS 46.03.822; and

(B) the response action contractor's deviation from the representation was the result of gross negligence or intentional misconduct.

(b) The purposes of this act are to:

(1) define the liability of oil spill response action contractors in light of the crisis atmosphere in which they operate, and the uniquely severe consequences to the state of inadequate locally available oil spill cleanup capability;

(2) remove the existing deterrent to prompt and sufficient oil spill cleanup in this state;

(3) place Alaska on an equal competitive footing with other jurisdictions in attracting oil spill cleanup capability to the state; and

(4) place the liability for good faith response action on the persons responsible for the spill, rather than the response action contractor.

MODIFICATIONS OF HB 196

1. Add to Sec. 8 (Sec. 46.03.825(a)):

(4) In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

2. Change the 15 days in Sec. 8 (Sec. 46.03.825(b)(3)) to 60 days (commensurate with the new California statute).

3. Add to Sec. 8 (Sec. 46.03.825 (b)(3)):

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

MODIFICATIONS OF HB 196

BP
Suggesting

1. Add to Sec. 8 (Sec. 46.03.825(a)):
 - (4) In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.
2. Change the 15 days in Sec. 8 (Sec. 46.03.825(b)(3) to 60 days (commensurate with the new California statute).
3. Add to Sec. 8 (Sec. 46.03.825 (a)):
 - (5) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor.

what will happen
in June w/ out
unjustifiable

under 2

ALYESKA PROPOSED MODIFICATION TO HB 196

Modify the definition for "response action" at AS 46.03.825 (d) on page 5, lines 9 and 10 to read:

imminent

→ } ~~"In this section "response action" means~~ all actions taken to respond to an oil release or threatened release, including but not limited to mitigation, cleanup, or removal.

7-LS1290A

Ford

4/25/91

SENATE BILL NO.**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

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 46.03.826 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).

7-LS0797J ✓
Ford
4/23/91

CS FOR HOUSE BILL NO. 196 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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

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'; relating to a report by the Citizens Oversight Council on Oil
5 and Other Hazardous Substances; providing for the repeal of changes made by this Act
6 in one year; and providing for an effective date."

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

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

9 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
10 set out in (b) of this section and the exception set out in (i) of this section, the following persons
11 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
12 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
13 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,

1 containment, removal, or remedial action incurred by the state or a municipality, resulting from
2 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
3 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

24 * Sec. 2. AS 46.03.822(a) is repealed and reenacted to read:

25 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
26 set out in (b) of this section and the exception set out in (i) of this section, the following persons
27 are strictly liable, jointly and severally, for damages to persons or property, whether public or
28 private, including damage to the natural resources of the state or a municipality, and for the costs
29 of response, containment, removal, or remedial action incurred by the state or a municipality,
30 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
31 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

22 (k) In this section, "damages" include damage to persons or to public or private property,
23 damage to the natural resources of the state or a municipality, and damage caused by acts or
24 omissions of a response action contractor for which the response action contractor is not liable
25 under AS 46.03.823 or 46.03.825.

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

27 (a) A person who is a response action contractor with respect to a release or threatened
28 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
29 response plan or order by a state or federal agency having jurisdiction over the release or
30 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
31 results from the release or threatened release unless the release or threatened release is caused

1 by an act or omission of the response action contractor that is negligent or grossly negligent or
2 constitutes intentional misconduct. To show negligence by a response action contractor, a
3 claimant must show that the acts or omissions of the contractor under the response action contract
4 were not in accordance with generally accepted professional standards and practices at the time
5 the response action services were performed.

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

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

17 * Sec. 6. AS 46.03.823(g) is repealed and reenacted to read:

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

22 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

23 (g) In this section,

24 (1) "response action" means an action taken in connection with the mitigation or
25 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
26 plan development, mapping and surveying, engineering, design and construction, removal, and
27 equipment provision;

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

31 (A) the department;

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

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

5 (D) another person potentially liable for the release or threatened release
6 under state or federal law;

7 (3) "response action contractor" means

8 (A) a person who enters into a response action contract with respect to a
9 release or threatened release of a hazardous substance and who is carrying out the
10 contract, including a cooperative organization formed to maintain and supply response
11 equipment and materials that enters into a response action contract relating to a release
12 or threatened release; and

13 (B) a person who is retained or hired by and is under the control of a
14 person described in (A) of this paragraph to provide services related to the response
15 action contract.

16 * Sec. 8. AS 46.03 is amended by adding a new section to read:

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

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

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

29 (3) the response action contractor, without approval by the federal or state on-
30 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
31 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible

1 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
2 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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

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

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

6 (3) an act or omission that occurs more than 15 days after the release.

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

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

19 * Sec. 9. AS 46.03.826 is amended by adding new paragraphs to read:

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

23 (A) the department;

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

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

28 (D) another person potentially liable for the release or threatened release
29 under state or federal law;

30 (15) "response action contractor" means

31 (A) a person who enters into a response action contract with respect to a

1 release or threatened release of a hazardous substance and who is carrying out the
2 contract, including a cooperative organization formed to maintain and supply response
3 equipment and materials that enters into a response action contract relating to a release
4 or threatened release;

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

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

9 * Sec. 10. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

10 * Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances
11 (AS 24.20.600) shall review the entire subject of response action contractor civil liability and the status
12 of oil spill contingency plan holders. The review of both subjects shall be completed and a report
13 submitted to the legislature before January 15, 1992. The report must address whether further
14 modifications are necessary to state laws on response action contractor civil liability, and include an
15 analysis of whether the present state laws that require shippers and owners to hold contingency plans
16 and that enable shippers and owners to contract with response action contractors to carry out contingency
17 plans are adequate to protect the public in the event of an oil spill.

18 * Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

19 * Sec. 13. Sections 1, 3, 4, 6, 8, 9, and 11 of this Act take effect immediately under AS 01.10.070(c).

To : Legal Services

7-LS0797NG

SB ———
~~CS FOR HOUSE BILL NO. 196 (RESOURCES)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

~~SENATE~~
~~BY THE HOUSE RESOURCES COMMITTEE~~

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

OK
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:

Delet
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 contract with response action contractors to carry out contingency plans are adequate to protect
12 the public in the 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

AS 46.03.823 and
AS 46.03.823

1 set out in (b) of this section and the exception ^S 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) any person who by contract, agreement, or otherwise arranged for disposal or
19 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
20 substances owned or possessed by the person, other than domestic sewage, or by any other party
21 or entity, at any facility or vessel owned or operated by another party or entity and containing
22 hazardous substances, from which there is a release, or a threatened release that causes the
23 incurrence of response costs, of a hazardous substance;

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

28 ~~Sec. 3. AS 46.03.822(a) is repealed and reenacted to read:~~

29 ~~delete~~ (a) Notwithstanding any other provision or rule of law and subject only to the defenses
30 set out in (b) of this section and the exception set out in (i) of this section, the following persons
31 are strictly liable, jointly and severally, for damages to persons or property, whether public or

1 private, including damage to the natural resources of the state or a municipality, and for the costs
2 of response, containment, removal, or remedial action incurred by the state or a municipality,
3 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
4 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

25 * Sec. ² 4 AS 46.03.822 is amended by adding a new subsection to read:

26 (k) In this section, "damages" include damage to persons or to public or private property,
27 damage to the natural resources of the state or a municipality, and damage caused by acts or
28 omissions of a response action contractor for which the response action contractor is not liable
29 under AS 46.03.823 or 46.03.825.

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

31 (a) A person who is a response action contractor with respect to a release or threatened

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

10 * Sec. 6. AS 46.03.823(a) is repealed and reenacted to read:

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

21 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

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

26 * Sec. 8. AS 46.03.823(g) is repealed and reenacted to read:

27 (g) In this section,

28 (1) "response action" means an action taken in connection with the mitigation or
29 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
30 plan development, mapping and surveying, engineering, design and construction, removal, and
31 equipment provision;

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

4 (A) the department;

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

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

9 (D) another person potentially liable for the release or threatened release
10 under state or federal law;

11 (3) "response action contractor" means

12 (A) a person who enters into a response action contract with respect to a
13 release or threatened release of a hazardous substance and who is carrying out the
14 contract, including a cooperative organization formed to maintain and supply response
15 equipment and materials that enters into a response action contract relating to a release
16 or threatened release; and

17 (B) a person who is retained or hired by and is under the control of a
18 person described in (A) of this paragraph to provide services related to the response
19 action contract.

20 * Sec. 9. AS 46.03 is amended by adding a new section to read:

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

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

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

1 misconduct; or

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

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

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

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

10 (3) an act or omission that occurs more than ³⁰~~15~~ days after the release, ~~the 15-day~~
11 ~~period provided in this paragraph may be extended for an additional 15 days if approved by the~~
12 ~~state on-scene coordinator.~~

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

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

25 * ⁶Sec. ~~N~~Q. AS 46.03.826 is amended by adding new paragraphs to read:

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

29 (A) the department;

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

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

3 (D) another person potentially liable for the release or threatened release
4 under state or federal law;

5 (15) "response action contractor" means

6 (A) a person who enters into a response action contract with respect to a
7 release or threatened release of a hazardous substance and who is carrying out the
8 contract, including a cooperative organization formed to maintain and supply response
9 equipment and materials that enters into a response action contract relating to a release
10 or threatened release;

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

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

15 ~~* Sec. 11. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.825(15) are repealed.~~

16 ~~* Sec. 12. Sections 3, 6, 8, and 11 of this Act take effect July 1, 1994.~~

17 ~~* Sec. 13. Sections 1, 2, 4, 5, 7, 9, and 10 of this Act take effect immediately under AS 01.10.070(c).~~

* Sec. 7. The [] shall review the entire subject of response action contractor liability, and report to the legislature prior to January 15, 1992 as to whether any further modifications to rules of liability are required, and whether the present laws which require shippers and carriers to file contingency plans and to provide for response action are adequate to protect the public in the event of an oil spill.

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

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

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

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

6

7

8 *Sec. 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the
10 defenses set out in (b) of this section and the exceptions set out in (i) of this section, AS
11 46.03.823 and AS 46.03.825, the following persons are strictly liable, jointly and severally, for
12 damages [TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE,

SB _____

-1-

New Text Underlined [DELETED TEXT BRACKETED]

SB _____

April 18, 1991
1:39pm

1 INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A
2 MUNICIPALITY,] and for the costs of response, containment, removal, or remedial action
3 incurred by the state or a municipality, resulting from an unpermitted release of a hazardous
4 substance or, with respect to response costs, the substantial threat of an unpermitted release
5 of a hazardous substance:

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

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

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

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

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

5 *Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

6 (k) In this section, "damages" include damage to persons or to public or private
7 property, damage to the natural resources of the state or a municipality, and damage caused
8 by acts or omissions of a response action contractor for which the response action contractor
9 is not liable under AS 46.03.823 or 46.03.825.

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

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

1 *Sec. 4. AS 46.03 is amended by adding a new section to read:

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

9 (1) the response action contractor would have been liable for the initial
10 release or threatened release under AS 46.08.822 even if that contractor had not carried out
11 a response action;

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

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

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

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

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

3 (3) acts or omissions which occur more than 30 days after the release.

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

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

15 *Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

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

19 (A) the department;

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

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

6 (D) another person potentially liable for the release or threatened
7 release under state or federal law;

8 (15) "response action contractor" means

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

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

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

19 *Sec. 6. AS 46.03.823(g)(2) and (3) are repealed.

20 *Sec. 7. The [] shall review the entire subject of response action contractor liability,
21 and report to the legislature prior to January 15, 1992 as to whether any further

1 modifications to rules of liability are required, and whether the present laws which require
2 shippers and owners to file contingency plans and to contract with response action
3 contractors to carry out the plans are adequate to protect the public in the event of an oil
4 spill.

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

6

7-LS0797NG

Ford

4/12/91

Rep. Davidson

CS FOR HOUSE BILL NO. 196 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

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

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'; relating to a report concerning liability of response action
5 contractors and oil spill contingency plans; and providing for an effective date."

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

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

8 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
9 set out in (b) of this section and the exception set out in (i) of this section, the following persons
10 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
11 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
12 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
13 containment, removal, or remedial action incurred by the state or a municipality, resulting from

an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

* Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

(k) In this section, "damages" includes 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. 3. 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

1 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
2 results from the release or threatened release unless the release or threatened release is caused
3 by an act or omission of the response action contractor that is negligent or grossly negligent or
4 constitutes intentional misconduct. To show negligence by a response action contractor, a
5 claimant must show that the acts or omissions of the contractor under the response action contract
6 were not in accordance with generally accepted professional standards and practices at the time
7 the response action services were performed.

8 * Sec. 4. AS 46.03.823(g) is repealed and reenacted to read:

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

13 * Sec. 5. AS 46.03 is amended by adding a new section to read:

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

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

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

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

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) an act or omission that occurs more than 15 days after the release; the 15-day
4 period provided in this paragraph may be extended for an additional 15 days if approved by the
5 ~~federal~~ or state on scene coordinator.

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

15 (d) In this section, "response action" means an action taken during mitigation, cleanup,
16 or removal of a release or threatened release of oil.

17 * Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

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

21 (A) the department;

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

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

26 (D) another person potentially liable for the release or threatened release
27 under state or federal law;

28 (15) "response action contractor" means

29 (A) a person who enters into a response action contract with respect to a
30 release or threatened release of a hazardous substance and who is carrying out the
31 contract, including a cooperative organization formed to maintain and supply response

- 1 equipment and materials that enters into a response action contract relating to a release
2 or threatened release;
- 3 (B) a person who is retained or hired by and is under the control of a
4 person described in (A) of this paragraph to provide services related to the response
5 action contract; and
- 6 (C) a person who acts as a volunteer and is engaged in a response action.
- 7 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST 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 limiting civil liability for acts or omissions of an oil spill response action contractor
2 and establishing strict liability on responsible parties for certain acts or omissions of a
3 response action contractor; amending the definitions of 'response action' and 'response
4 action contractor'; and providing for an effective date."

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

6
7
8 *Sec. 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the
10 defenses set out in (b) of this section and the exceptions set out in (i) of this section, AS
11 46.03.823 and AS 46.03.825, the following persons are strictly liable, jointly and severally, for
12 damages [TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE,

1 INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A
2 MUNICIPALITY,] and for the costs of response, containment, removal, or remedial action
3 incurred by the state or a municipality, resulting from an unpermitted release of a hazardous
4 substance or, with respect to response costs, the substantial threat of an unpermitted release
5 of a hazardous substance:

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

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

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

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

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

5 *Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

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

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

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

1 *Sec. 4. AS 46.03 is amended by adding a new section to read:

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

9 (1) the response action contractor would have been liable for the release
10 or threatened release under AS 46.08.822 even if that contractor had not carried out a
11 response action with respect to the release or threatened release;

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

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

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

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

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

3 (3) acts or omissions which occur more than 30 days after the release.

4 (c) If an oil spill response action contractor's liability is not limited under (a)-(b)
5 of this section, that contractor is civilly liable for injuries, costs, damages, expenses, or other
6 liability that results from the release or threatened release, or from the response action
7 contractor's act or omission in response to the release or threatened release, if the response
8 action contractor acted with simple or gross negligence, or intentional misconduct.

9 (d) In this section, "response action" means an action taken during mitigation,
10 cleanup or removal of an oil release or threatened oil release.

11 *Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

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

15 (A) the department;

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

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

1 (D) another person potentially liable for the release or threatened
2 release under state or federal law;

3 (15) "response action contractor" means

4 (A) a person who enters into a response action contract with respect
5 to a release or threatened release of a hazardous substance and who is carrying out
6 the contract, including a cooperative organization formed to maintain and supply
7 response equipment and materials that enters into a response action contract relating
8 to a release or threatened release;

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

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

14 *Sec. 6. AS 46.03.823(g)(2) and (3) are repealed.

15 *Sec. 7. The [] shall review the entire subject of response action contractor liability,
16 and report to the legislature prior to January 15, 1992 as to whether any further
17 modifications to rules of liability are required, and whether the present laws which require
18 shippers and owners to file contingency plans and to contract with response action
19 contractors to carry out the plans are adequate to protect the public in the event of an oil
20 spill.

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

(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 result from that response action contractor's act or omission with respect to a release or threatened release unless the act or omission of the response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply if the response action contractor would have been liable under AS 46.03.822 for the initial release or threatened release even if that contractor had not carried out a response action.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE 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 omissions of a response action
3 contractor; amending the definition of 'response action'; and providing for an effective
4 date."

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

6 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) oil spill response action contractors operate in a crisis atmosphere and are required
8 to make immediate decisions on the basis of often incomplete information and poor communications;
9 the emergency nature of oil spill cleanup sets the activity apart from other more long-term forms of
10 environmental remediation;

11 (2) oil spill response action contractors with no involvement in the oil spill itself, and
12 who respond to the oil spill in good faith, face an unreasonable risk of involvement in litigation over
13 the oil spill;

14 (3) the magnitude and immediacy of the risk to the state's environment from the

1 production, transportation, and storage of oil in large quantities, particularly near and across state water,
2 require that special measures be taken to ensure that adequate containment and cleanup equipment are
3 promptly available within the state; no other commercial or industrial activity in the state presents the
4 same risk of sudden and catastrophic harm or requires the same extensive advance provision of local
5 response services;

6 (4) the unreasonable legal risks borne by oil spill response action contractors hinders the
7 state's goal of encouraging prompt and sufficient oil spill response by

8 (A) discouraging oil spill response action contractors from doing business in the
9 state;

10 (B) causing oil spill response action contractors to hesitate during the first critical
11 hours following the spill; and

12 (C) causing oil spill response action contractors to make their services available
13 to the private and public sectors only under impractical insurance and indemnification terms;

14 (5) the United States Congress and the legislatures of several coastal states have recently
15 enacted legislation insulating innocent oil spill response action contractors from these unreasonable legal
16 risks; this has placed Alaska at a severe competitive disadvantage in attracting necessary oil spill
17 response services to the state; and

18 (6) damages occasioned by the good faith actions of an innocent oil spill response action
19 contractor, and the burdens of resultant litigation, should be borne by the persons responsible for the spill
20 rather than the response action contractor.

21 (b) It is the purpose of this Act to encourage prompt oil spill cleanup efforts by limiting the
22 liability of innocent oil spill response action contractors whose acts or omissions are a good faith
23 response to an oil spill.

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

25 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
26 set out in (b) of this section and the exception set out in (i) of this section, the following persons
27 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
28 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
29 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
30 containment, removal, or remedial action incurred by the state or a municipality, resulting from
31 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial

1 threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

23 (k) In this section, "damages" includes damage to persons or to public or private
24 property, damage to the natural resources of the state or a municipality, and damage caused by
25 acts or omissions of a response action contractor for which the response action contractor is not
26 liable under AS 46.03.823 or 46.03.825.

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

28 (a) A person who is a response action contractor with respect to a release or threatened
29 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
30 response plan or order by a state or federal agency having jurisdiction over the release or
31 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that

1 results from the release or threatened release unless the release or threatened release is caused
2 by an act or omission of the response action contractor that is negligent or grossly negligent or
3 constitutes intentional misconduct. To show negligence by a response action contractor, a
4 claimant must show that the acts or omissions of the contractor under the response action contract
5 were not in accordance with generally accepted professional standards and practices at the time
6 the response action services were performed.

7 * Sec. 5. AS 46.03 is amended by adding a new section to read:

8 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
9 is a response action contractor with respect to a release or threatened release of oil whose acts
10 or omissions ^{is} are not contrary to a response plan or order by ^{on the part of state or federal agency having} ~~a state or federal agency having~~
11 ~~jurisdiction over the release or threatened release of oil~~ is not civilly liable for injuries, costs,
12 damages, expenses, or other liability that results from the release or threatened release, or from
13 the response action contractor's acts or omissions in response to the release or threatened release,
14 unless the person bringing a claim against the response action contractor proves by a
15 preponderance of the evidence that

16 (1) the response action contractor would have been liable for the release or
17 threatened release under state or federal law even if that contractor had not carried out a response
18 action with respect to the release or threatened release; or

19 (2) the response action contractor acted with gross negligence or intentional
20 misconduct.

21 (b) The limitation on liability contained in (a) of this section does not apply to an action
22 for personal injury or death.

23 * Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

24 (14) "response action" means an action taken in mitigation or cleanup of a
25 hazardous substance release or threatened release, including investigation, evaluation, plan
26 development, mapping and surveying, engineering, design and construction, removal, and
27 equipment provision;

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

31 (A) the department;

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

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

5 (D) another person potentially liable for the release or threatened release
6 under state or federal law;

7 (16) "response action contractor" means

8 (A) a person who enters into a response action contract with respect to a
9 release or threatened release of a hazardous substance and who is carrying out the
10 contract, including a cooperative organization formed to maintain and supply response
11 equipment and materials that enters into a response action contract relating to a release
12 or threatened release; and

13 (B) a person who is retained or hired by and is under the control of a
14 person described in (A) of this paragraph to provide services related to the response
15 action contract.

16 * Sec. 7. AS 46.03.823(g) is repealed.

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

7-LS0037A
Ford
2/21/91

HOUSE BILL NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

Introduced:

Referred:

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to civil liability for actions of a response action contractor; and
2 providing for an effective date."

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

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

5 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
6 set out in (b) of this section and the exception set out in (i) of this section, the following persons
7 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
8 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
9 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
10 containment, removal, or remedial action incurred by the state or a municipality, resulting from
11 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
12 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

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. 2. AS 46.03.822 is amended by adding a new subsection to read:

20 (k) In this section, "damages" includes damage to persons or to public or private
21 property, damage to the natural resources of the state or a municipality, and damage caused by
22 ^{the acts or omissions of} a response action contractor for which the response action contractor is not liable under
23 AS 46.03.823 or 46.03.825.

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

25 (a) A person who is a response action contractor with respect to a release or threatened
26 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
27 response plan or order by a state or federal agency having jurisdiction over the release or
28 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
29 results from the release or threatened release unless the release or threatened release is caused
30 by an act or omission of the response action contractor that is negligent or grossly negligent or
31 constitutes intentional misconduct. To show negligence by a response action contractor, a

1 claimant must show that the acts or omissions of the contractor under the response action contract
2 were not in accordance with generally accepted professional standards and practices at the time
3 the response action services were performed.

4 * Sec. 4. AS 46.03 is amended by adding a new section to read:

5 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
6 is a response action contractor with respect to a release or threatened release of oil whose acts
7 or omissions are not contrary to a response plan or order by a state or federal agency having
8 jurisdiction over the release or threatened release of oil is not civilly liable for injuries, costs,
9 damages, expenses, or other liability that results from the release or threatened release, or from
10 the response action contractor's acts or omissions in response to the release or threatened release,
11 unless the person bringing a claim against the response action contractor proves by a
12 preponderance of the evidence that

13 (1) the response action contractor would have been liable for the release or
14 threatened release under state or federal law even if that contractor had not carried out a response
15 action with respect to the release or threatened release; or

16 (2) the response action contractor acted with gross negligence or intentional
17 misconduct.

18 (b) The limitation on liability contained in (a) of this section does not apply to an action
19 for personal injury or death.

20 * Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

21 (14) "response action" means an action taken in connection with the mitigation
22 or cleanup of a hazardous substance release or threatened release, including investigation,
23 evaluation, plan development, mapping and surveying, engineering, design and construction,
24 removal, and equipment provision;

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

28 (A) the department;

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

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

1 release; or

2 (D) another person potentially liable for the release or threatened release
3 under state or federal law;

4 (16) "response action contractor" means

5 (A) a person who enters into a response action contract with respect to a
6 release or threatened release of a hazardous substance and who is carrying out the
7 contract, including a cooperative organization formed to maintain and supply response
8 equipment and materials that enters into a response action contract relating to a release
9 or threatened release; and

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

13 * Sec. 6. AS 46.03.823(g) is repealed.

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