

1 HB380
2 165450-6
3 By Representatives Garrett, Faulkner, South and Williams (JD)
4 RFD: Judiciary
5 First Read: 31-MAR-15

1
2 ENROLLED, An Act,

3 Relating to civil immunity; to amend Sections
4 6-5-332.1 and 6-5-332.2, Code of Alabama 1975; to clarify that
5 a response action contractor who responds to a hazardous
6 materials discharge is entitled to civil immunity protection,
7 even though he or she may receive compensation for providing
8 response services; and to clarify that gasoline is included in
9 the definition of oil with regard to civil immunity for
10 persons responding to an oil spill.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 6-5-332.1 and 6-5-332.2, Code of
13 Alabama 1975, are amended to read as follows:

14 "§6-5-332.1.

15 "(a) As used in this section, the following words
16 and terms shall have meanings respectively ascribed to them by
17 this section:

18 "(1) DISCHARGE. Includes leakage, seepage, or other
19 release.

20 (2) HAZARDOUS MATERIALS. Includes all materials and
21 substances which are now or hereafter designated or defined as
22 hazardous by any state or federal law or by the regulations of
23 any state or federal government agency.

24 "(3) PERSON. Includes any qualified individual,
25 partnership, corporation, association, or other entity. A

1 qualified individual is one who is trained in the handling of
 2 hazardous materials.

3 "(b) Notwithstanding any provision of law to the
 4 contrary, no person, including a response action contractor as
 5 defined in Section 22-35-3, who provides assistance or advice
 6 in mitigating or attempting to mitigate the effects of an
 7 actual or threatened discharge of hazardous materials, or in
 8 preventing, cleaning up, or disposing of, or in attempting to
 9 prevent, clean up or dispose of any such discharge, shall be
 10 subject to civil liabilities or penalties of any type.

11 "(c) The immunities provided in subsection (b) of
 12 this section shall not apply to any person:

13 ~~"(1) Whose whose act or omission acts or omissions~~
 14 proximately caused, in whole or in part, the original actual
 15 or threatening discharge or any additional or further actual
 16 or threatening discharge. ~~, or~~

17 ~~"(2) Who receives compensation other than~~
 18 ~~reimbursement for out-of-pocket expenses for its services in~~
 19 ~~rendering such assistance or advice.~~

20 "(d) Nothing in subsection (b) of this section shall
 21 be construed to limit or otherwise affect the liability of any
 22 person for damages resulting from such person's gross
 23 negligence, or from such person's reckless, wanton, or
 24 intentional misconduct.

1 ~~"(e) The provisions of this section shall be~~
 2 ~~construed in pari materia with all laws or parts of laws~~
 3 ~~providing protection from civil liability, or granting~~
 4 ~~immunity, for persons performing other acts of public~~
 5 ~~assistance or rescue.~~

6 "(e) Nothing in subsection (b) of the this section
 7 shall be construed to limit or otherwise affect the liability
 8 of any product manufacturer or seller for damages where such
 9 manufacturer or seller's product proximately caused, in whole
 10 or in part, the original actual or threatening discharge; any
 11 additional or further actual or threatening discharge; or the
 12 additional or further migration of the original actual
 13 discharge."

14 "§6-5-332.2.

15 "(a) This section shall be known and may be cited as
 16 the Alabama Act Regarding Liability for Persons Responding to
 17 Oil Spills.

18 "(b) For the purposes of this section, the following
 19 terms shall have the following meanings:

20 "(1) DAMAGES. Damages of any kind for which
 21 liability may exist under the laws of this state resulting
 22 from, arising out of, or related to the discharge, or
 23 threatened discharge of oil.

24 "(2) DISCHARGE. Any emission (other than natural
 25 seepage), intentional or unintentional, and includes, but is

1 not limited to, spilling, leaking, pumping, pouring, emitting,
2 emptying, or dumping.

3 "(3) FEDERAL ON-SCENE COORDINATOR. The federal
4 official predesignated by the U.S. Environmental Protection
5 Agency or the U.S. Coast Guard to coordinate and direct
6 federal responses under subpart D of the National Contingency
7 Plan, or the official designated by the lead agency to
8 coordinate and direct removal under subpart E, of the National
9 Contingency Plan.

10 "(4) NATIONAL CONTINGENCY PLAN. The National
11 Contingency Plan prepared and published under Section 311(d)
12 of the Federal Water Pollution Control Act [33 U.S.C.
13 1321(d)], as amended by the Oil Pollution Act of 1990, Pub. L.
14 No. 101-380, 104 Stat. 484 (1990).

15 "(5) OIL. Oil of any kind or in any form, including,
16 but not limited to, petroleum, fuel oil, gasoline, sludge, oil
17 refuse, and oil mixed with wastes other than dredged spoil.

18 "(6) PERSON. An individual, corporation,
19 partnership, association, state, municipality, commission, or
20 political subdivision of a state, or any interstate body.

21 "(7) REMOVAL COSTS. The costs of removal that are
22 incurred after a discharge of oil has occurred or, in any case
23 in which there is a substantial threat of a discharge of oil,
24 the costs to prevent, minimize, or mitigate oil pollution from
25 such an incident.

1 "(8) RESPONSIBLE PARTY.

2 "a. Vessels. In the case of a vessel, any person
3 owning, operating, or demise chartering the vessel.

4 "b. Onshore facilities. In the case of an onshore
5 facility (other than a pipeline), any person owning or
6 operating the facility, except a federal agency, state,
7 municipality, commission, or political subdivision of a state,
8 or any interstate body, that as owner, transfers possession
9 and right to use the property to another person by lease,
10 assignment, or permit.

11 "c. Offshore facilities. In the case of an offshore
12 facility (other than a pipeline or a deepwater port licensed
13 under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.),
14 the lessee or permittee of the area in which the facility is
15 located or the holder of a right of use and easement granted
16 under applicable state law or the Outer Continental Shelf
17 Lands Act (43 U.S.C. 1301-1356) for the area in which the
18 facility is located (if the holder is a different person than
19 the lessee or permittee), except a federal agency, state,
20 municipality, commission or political subdivision of a state,
21 or any interstate body, that as owner, transfers possession
22 and right to use the property to another person by lease,
23 assignment, or permit.

1 "d. Deepwater ports. In the case of a deepwater port
 2 licensed under the Deepwater Port Act of 1974 (33 U.S.C.
 3 1501-1524), the licensee.

4 "e. Pipelines. In the case of a pipeline, any person
 5 owning or operating the pipeline.

6 "f. Abandonment. In the case of an abandoned vessel,
 7 onshore facility, deepwater port, pipeline, or offshore
 8 facility, the persons who would have been responsible parties
 9 immediately prior to the abandonment of the vessel or
 10 facility.

11 "(c) (1) Notwithstanding any other provision of law,
 12 a person, including a response action contractor as defined in
 13 Section 22-35-3, is not liable for removal costs or damages
 14 which result from actions taken or omitted to be taken in the
 15 course of rendering care, assistance, or advice consistent
 16 with the National Contingency Plan or as otherwise directed by
 17 the Federal On-Scene Coordinator or by any state official with
 18 responsibility for oil spill response.

19 "(2) Subdivision (1) of this subsection does not
 20 apply:

21 "a. to a responsible party;

22 "b. with respect to personal injury or wrongful
 23 death; ~~or~~

24 "c. if the person is grossly negligent or engages in
 25 wanton or willful misconduct; ~~or~~ or

1 "d. If the person's act(s) or omission(s)
2 proximately caused, in whole or in part, the original actual
3 or threatening discharge; or any additional or further actual
4 or threatening discharge."

5 "(3) A responsible party is liable for any removal
6 costs and damages that another person is relieved of under
7 subdivision (1).

8 "(4) Nothing in this section affects the liability
9 of a responsible party for oil spill response under state
10 law."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

