

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

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8 SYNOPSIS: This bill would clarify that a response  
9 action contractor who responds to a hazardous  
10 materials discharge is entitled to civil immunity  
11 protection, even though he or she may receive  
12 compensation for providing response services.

13 This bill would also clarify that gasoline  
14 is included in the definition of oil with regard to  
15 civil immunity for persons responding to an oil  
16 spill.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 Relating to civil immunity; to amend Sections  
23 6-5-332.1 and 6-5-332.2, Code of Alabama 1975; to clarify that  
24 a response action contractor who responds to a hazardous  
25 materials discharge is entitled to civil immunity protection,  
26 even though he or she may receive compensation for providing  
27 response services; and to clarify that gasoline is included in

1 the definition of oil with regard to civil immunity for  
2 persons responding to an oil spill.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§6-5-332.1.

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

10 "(1) DISCHARGE. Includes leakage, seepage, or other  
11 release.

12 (2) HAZARDOUS MATERIALS. Includes all materials and  
13 substances which are now or hereafter designated or defined as  
14 hazardous by any state or federal law or by the regulations of  
15 any state or federal government agency.

16 "(3) PERSON. Includes any qualified individual,  
17 partnership, corporation, association, or other entity. A  
18 qualified individual is one who is trained in the handling of  
19 hazardous materials.

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

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

3           "~~(1) Whose~~ whose act or omission proximately caused,  
4 in whole or in part, the original actual or threatening  
5 discharge, ~~or~~

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

9           "(d) Nothing in subsection (b) of this section shall  
10 be construed to limit or otherwise affect the liability of any  
11 person for damages resulting from such person's gross  
12 negligence, or from such person's reckless, wanton, or  
13 intentional misconduct.

14           "(e) The provisions of this section shall be  
15 construed in pari materia with all laws or parts of laws  
16 providing protection from civil liability, or granting  
17 immunity, for persons performing other acts of public  
18 assistance or rescue.

19           "§6-5-332.2.

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

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

25           "(1) DAMAGES. Damages of any kind for which  
26 liability may exist under the laws of this state resulting

1 from, arising out of, or related to the discharge, or  
2 threatened discharge of oil.

3 "(2) DISCHARGE. Any emission (other than natural  
4 seepage), intentional or unintentional, and includes, but is  
5 not limited to, spilling, leaking, pumping, pouring, emitting,  
6 emptying, or dumping.

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

14 "(4) NATIONAL CONTINGENCY PLAN. The National  
15 Contingency Plan prepared and published under Section 311(d)  
16 of the Federal Water Pollution Control Act [33 U.S.C.  
17 1321(d)], as amended by the Oil Pollution Act of 1990, Pub. L.  
18 No. 101-380, 104 Stat. 484 (1990).

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

22 "(6) PERSON. An individual, corporation,  
23 partnership, association, state, municipality, commission, or  
24 political subdivision of a state, or any interstate body.

25 "(7) REMOVAL COSTS. The costs of removal that are  
26 incurred after a discharge of oil has occurred or, in any case  
27 in which there is a substantial threat of a discharge of oil,

1 the costs to prevent, minimize, or mitigate oil pollution from  
2 such an incident.

3 "(8) RESPONSIBLE PARTY.

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

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

13 "c. Offshore facilities. In the case of an offshore  
14 facility (other than a pipeline or a deepwater port licensed  
15 under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.),  
16 the lessee or permittee of the area in which the facility is  
17 located or the holder of a right of use and easement granted  
18 under applicable state law or the Outer Continental Shelf  
19 Lands Act (43 U.S.C. 1301-1356) for the area in which the  
20 facility is located (if the holder is a different person than  
21 the lessee or permittee), except a federal agency, state,  
22 municipality, commission or political subdivision of a state,  
23 or any interstate body, that as owner, transfers possession  
24 and right to use the property to another person by lease,  
25 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 is not liable for removal costs or damages which  
13 result from actions taken or omitted to be taken in the course  
14 of rendering care, assistance, or advice consistent with the  
15 National Contingency Plan or as otherwise directed by the  
16 Federal On-Scene Coordinator or by any state official with  
17 responsibility for oil spill response.

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

20 "a. to a responsible party;

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

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

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

1                   "(4) Nothing in this section affects the liability  
2 of a responsible party for oil spill response under state  
3 law."

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